

# Code of Civil Procedure

(Act No. 109 of June 26, 1996)

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- Part I General Provisions**
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(Purpose)

Article 1 Beyond what is provided for in other laws and regulations, procedure in civil litigation is governed by the provisions of this Code.

(Responsibilities of the Courts and the Parties)

Article 2 The courts shall endeavor to ensure that civil litigation is conducted fairly and expeditiously, and the parties shall conduct that litigation in good faith.

(Rules of the Supreme Court)

Article 3 Beyond what is provided for in this Code, necessary particulars in connection with procedure in civil litigation are prescribed by the Rules of the Supreme Court.

## **Chapter II The Courts**

### **Section 1 Jurisdiction of the Japanese Courts**

(Jurisdiction Based on the Defendant's Domicile)

Article 3-2 (1) The courts have jurisdiction over an action that is brought against a person domiciled in Japan; against a person without a domicile or of domicile unknown, whose residence is in Japan; and against a person without a residence or of residence unknown, who was domiciled in Japan before the action was filed (unless the person has been domiciled in a foreign country after last being domiciled in Japan).

(2) Notwithstanding the provisions of the preceding paragraph, the courts have jurisdiction over an action that is brought against an ambassador, minister, or any other Japanese national in a foreign country who enjoys immunity from the jurisdiction of that country.

(3) The courts have jurisdiction over an action that is brought against a corporation or any other association or foundation whose principal office or business office is located in Japan, and against a corporation, association, or foundation without a business office or other office, or with a business office or other office of unknown location, whose representative or other person principally in charge of its business is domiciled in Japan.

(Jurisdiction over an Action Involving a Contractual Obligation)

Article 3-3 An action set forth in one of the following items may be filed with the Japanese courts in the case specified in said item:

(i) an action on a claim for performance of a contractual obligation; on a claim involving benevolent intervention in another's affairs that has been done, or unjust enrichment that has arisen, in connection with a contractual obligation; on a claim for damages due to nonperformance of a contractual

- obligation; or on any other claim involving a contractual obligation: if the contractually specified place for performance of the obligation is within Japan, or if the law of the place adopted under the contract gives a place within Japan as the place for performance of the obligation;
- (ii) an action on a claim for the payment of monies for a bill or note or for a check: if the place for payment of the bill or note or for the check is within Japan;
  - (iii) an action on a property right: if the subject matter of the claim is located within Japan, or if the action is a claim for the payment of monies, and seizable property of the defendant is located within Japan (except when the value of such property is extremely low);
  - (iv) an action against a person with an office or a business office, which is filed in connection with the business conducted at that person's office or business office: if said office or business office is located within Japan;
  - (v) an action against a person that conducts business in Japan (including a foreign company (meaning a foreign company as prescribed in Article 2, item (ii) of the Companies Act (Act No. 86 of 2005)) that continually carries out transactions in Japan): if said action involves the business that the person conducts in Japan;
  - (vi) an action based on a ship claim or any other claim secured by a ship: if the ship is located within Japan;
  - (vii) one of the following actions involving a company or any other association or foundation: if the association or foundation is a corporation and it is incorporated pursuant to the laws and regulations of Japan, or if the association or foundation is not a corporation but its principal office or business office is located within Japan:
    - (a) an action brought by a company or any other association against its member or a person that was its member, an action brought by one member against another member or against a person that was a member, or an action brought by a person that was a member against a member, which is based on the relevant person's status as a member;
    - (b) an action brought by an association or foundation against its officer or a person that was its officer, which is based on the person's status as an officer;
    - (c) an action brought by a company against its incorporator or a person that was its incorporator, or against its inspector or a person that was its inspector, which is based on the person's status as an incorporator or inspector;
    - (d) an action brought by a company's or other association's creditor against its member or a person that was its member, which is based on the person's status as a member.

- (viii) an action for a tort: if the place where the tort occurred is within Japan (excluding if the consequences of a wrongful act committed in a foreign country have arisen within Japan but it would not ordinarily have been possible to foresee those consequences arising within Japan);
- (ix) an action for damages due to the collision of a ship or any other accident at sea: if the first place where the damaged ship docked is within Japan;
- (x) an action related to a maritime rescue: if the place where the maritime rescue took place or the first place where the salvaged ship docked is within Japan;
- (xi) an action related to real property: if the real property is located within Japan;
- (xii) an action related to a right of inheritance or legitime, or an action related to a legacy or any other act that comes into effect upon a person's death: if at the time of the opening of the succession, the decedent was domiciled in Japan; if at the time of the opening of the succession, the decedent was without a domicile or was of domicile unknown, but had a residence in Japan; or if at the time of the opening of the succession, the decedent was without a residence or was of residence unknown, but before the opening of the succession, the decedent had been domiciled in Japan (unless the decedent was domiciled in a foreign country after last being domiciled in Japan);
- (xiii) an action involving a claim against a succession or any other charge on an estate which does not fall under the category of an action set forth in the preceding item: as specified in that item.

(Jurisdiction over Actions Involving Consumer Contracts and Labor Relations)

- Article 3-4 (1) An action involving a contract concluded between a Consumer (meaning an individual (except for an individual that becomes a party to a contract as a part of a business undertaking or for business purposes); the same applies hereinafter) and an Enterprise (meaning a corporation or any other association or foundation or an individual that becomes a party to a contract as a part of a business undertaking or for business purposes; the same applies hereinafter) (this excludes a labor contract; hereinafter referred to as a "Consumer Contract"), which is brought by the Consumer against the Enterprise, may be filed with the Japanese courts if the Consumer is domiciled in Japan at the time the action is filed or at the time the Consumer Contract is concluded.
- (2) An action involving a dispute over a civil matter that arises between an individual worker and that worker's employer with regard to the existence or absence of a labor contract or any other particulars of their labor relations (hereinafter referred to as an "Individual Civil Labor Dispute"), which is

brought by the worker against the employer, may be filed with the Japanese courts if the place where the labor is to be provided as per the labor contract to which the Individual Civil Labor Dispute pertains (or if such a place is not established, the location of the place of business that hired the worker) is within Japan.

- (3) The provisions of the preceding Article do not apply to an action involving a Consumer Contract which is brought by an Enterprise against a Consumer, or an action involving Individual Civil Labor Dispute which is brought by an employer against a worker.

(Exclusive Jurisdiction)

Article 3-5 (1) Actions prescribed in Part VII, Chapter II of the Companies Act (excluding those prescribed in Sections 4 and 6 of that Chapter), actions prescribed in Chapter VI, Section 2 of the Act on General Incorporated Associations and General Incorporated Foundations (Act No. 48 of 2006), and other actions equivalent thereto involving associations or foundations incorporated pursuant to Japanese laws and regulations other than those Acts, are under the exclusive jurisdiction of the Japanese courts.

- (2) An action related to a registration is under the exclusive jurisdiction of the Japanese courts if the place where the registration is to be made is within Japan.
- (3) An action about the existence or absence or the validity of an intellectual property right (meaning an intellectual property right as prescribed in Article 2, paragraph (2) of the Intellectual Property Basic Act (Act No. 122 of 2002)) that arises through a registration establishing that intellectual property right is under the exclusive jurisdiction of the Japanese courts if that registration was made in Japan.

(Jurisdiction over a Joint Claim)

Article 3-6 If multiple claims are involved in a single action and the Japanese courts have jurisdiction over one of those claims and no jurisdiction over the others, the action may be filed with the Japanese courts only if the one claim is closely connected with the other claims; provided, however, that with regard to an action brought by multiple persons or an action brought against multiple persons, this applies only in the case specified in the first sentence of Article 38.

(Agreement on Jurisdiction)

Article 3-7 (1) Parties may establish, by agreement, the country in which they are permitted to file an action with the courts.

- (2) The agreement as referred to in the preceding paragraph is not valid unless it

is made regarding actions that are based on a specific legal relationship, and executed by means of a paper document.

- (3) If Electronic or Magnetic Records (meaning records used in computer data processing which are created in electronic form, magnetic form, or any other form that is otherwise impossible to perceive through the human senses alone; the same applies hereinafter) in which the content of the agreement is recorded are used to execute the agreement as referred to in paragraph (1), the agreement is deemed to have been executed by means of a paper document and the provisions of the preceding paragraph apply.
- (4) An agreement that an action may be filed only with the courts of a foreign country may not be invoked if those courts are unable to exercise jurisdiction by law or in fact.
- (5) An agreement as referred to in paragraph (1) which covers Consumer Contract disputes that may arise in the future is valid only in the following cases:
  - (i) if the agreement provides that an action may be filed with the courts of the country where the Consumer was domiciled at the time the Consumer Contract was concluded (except in the case set forth in the following item, any agreement that an action may be filed only with a court of such a country is deemed not to preclude the filing of an action with a court of any other country);
  - (ii) if the Consumer, in accordance with said agreement, has filed an action with the courts of the agreed-upon country, or if an Enterprise has filed an action with the Japanese courts or with the courts of a foreign country and the Consumer has invoked said agreement.
- (6) An agreement as referred to in paragraph (1) which covers Individual Civil Labor Dispute that may arise in the future is valid only in the following cases:
  - (i) if the agreement is made at the time a labor contract ends, and establishes that an action may be filed with the courts of the country where the place that the labor was being provided as of that time is located (except in the case set forth in the following item, an agreement that an action may be filed only with the courts of such a country is deemed not to preclude the filing of an action with the courts of any other country);
  - (ii) if the worker, in accordance with said agreement, files an action with the courts of the agreed-upon country; or if the enterprise files an action with the Japanese courts or with the courts of a foreign country and the worker invokes said agreement.

(Jurisdiction Based on Appearance)

Article 3-8 If the defendant presents an oral argument on the merits of the case or enters a statement in preparatory proceedings without entering the

affirmative defense that the Japanese courts lack jurisdiction, the courts have jurisdiction.

(Dismissal without Prejudice Due to Special Circumstances)

Article 3-9 Even when the Japanese courts have jurisdiction over an action (except when an action is filed based on an agreement that only permits an action to be filed with the Japanese courts), the court may dismiss the whole or part of an action without prejudice if it finds that there are special circumstances because of which, if the Japanese courts were to conduct a trial and reach a judicial decision in the action, it would be inequitable to either party or prevent a fair and speedy trial, in consideration of the nature of the case, the degree of burden that the defendant would have to bear in responding to the action, the location of evidence, and other circumstances.

(Exclusion from Application in the Case of Exclusive Jurisdiction)

Article 3-10 The provisions of Articles 3-2 to 3-4 and Articles 3-6 to the preceding Article do not apply if law or regulation provides for the exclusive jurisdiction of the Japanese courts over the action in question.

(Examination of Evidence by the Court Sua Sponte)

Article 3-11 A court may conduct an examination of the evidence sua sponte with regard to matters that concern the jurisdiction of the Japanese courts.

(Basis of Timing for Determining Jurisdiction)

Article 3-12 Whether the Japanese courts have jurisdiction is determined on the basis of the time at which an action is filed.

## **Section 2 Jurisdiction**

(Jurisdiction by General Venue)

- Article 4 (1) An action is subject to the jurisdiction of the court of jurisdiction in the locality that constitutes the general venue for an action against the defendant.
- (2) The general venue for an action against a natural person is determined by the person's domicile; by the person's residence, if the person is not domiciled in Japan or is of domicile unknown; or by the person's last domicile in Japan, if the person does not have a residence in Japan or is of residence unknown.
- (3) If there is no general venue pursuant to the provisions of the preceding paragraph for an action against an ambassador, minister, or any other Japanese national in a foreign country who enjoys immunity from the jurisdiction of that country, the general venue for an action against that person



is deemed to be the general venue in the locality specified by the Rules of the Supreme Court.

- (4) The general venue for an action against a corporation or any other association or foundation is determined by the location of its principal office or business office; or by the domicile of its representative or any other principal person in charge of its business, if it has no business office or other office.
- (5) Notwithstanding the provisions of the preceding paragraph, the general venue for an action against a foreign association or foundation is determined by the location of its principal office or business office in Japan; or by the domicile of its representative or any other principal person in charge of its business in Japan, if it has no business office or other office in Japan.
- (6) The general venue for an action against the State is determined by the location of the government agency that represents the State in the litigation.

(Jurisdiction over an Action Involving Property Rights)

Article 5 An action set forth in one of the following items may be filed with the court of jurisdiction in the place specified in said item:

- (i) an action involving a property right: the place of performance of the obligation;
- (ii) an action on a claim for payment of monies for a bill or note or for a check: the place of payment of the bill or note or for the check;
- (iii) an action involving a property right against a mariner: a location in the ship's country of registration;
- (iv) an action involving a property right against a person that is not domiciled in Japan (or a corporation with no business office or other office in Japan; hereinafter the same applies in this item) or that is of domicile unknown: the location of the subject matter of the claim or the subject matter of the security against the claim, or of any seizable property of the defendant;
- (v) an action against a person with an office or business office, which is filed in connection with the business conducted at the person's office or business office: the location of said office or business office;
- (vi) an action related to a ship or to travel by sea which is filed against the shipowner or other person using the ship: a location in the ship's country of registration;
- (vii) an action based on a ship claim or any other claim secured by a ship: the location of the ship;
- (viii) the following actions involving a company or any other association or foundation: the locality that constitutes the general venue for an action against the association or foundation:
  - (a) an action brought by a company or other association against its member or a person that was its member; an action brought by one member against

- another member or against a person that was a member; or an action brought by a person that was a member against a member; which is based on the relevant person's status as a member;
- (b) an action brought by an association or foundation against its officer or a person that was its officer, which is based on the person's status as an officer;
  - (c) an action brought by a company against its incorporator or a person that was its incorporator, or against its inspector or a person that was its inspector, which is based on the person's status as an incorporator or inspector;
  - (d) an action brought by a company's or any other association's creditor against its member or a person that was its member, which is based on the person's status as a member.
  - (ix) an action for a tort: the place where the tort took place;
  - (x) an action for damages due to the collision of a ship or any other accident at sea: the first place where the damaged ship docked;
  - (xi) an action related to a maritime rescue: the place where the maritime rescue took place or the first place where the salvaged ship docked;
  - (xii) an action related to real property: the location of the real property;
  - (xiii) an action related to a registration: the place where the registration is required to be made;
  - (xiv) an action related to a right of inheritance or an heir's statutory reserved share, or an action related to a testamentary gift or any other act that becomes valid upon a person's death: the locality that constituted the general venue for an action involving the decedent as of the time that inheritance commenced;
  - (xv) an action involving a claim against an inheritance or any other encumbrance on inheritance property, which does not fall under the category of an action set forth in the preceding item: the place specified in that item.

(Jurisdiction over an Action Involving a Patent Right)

Article 6 (1) In an action involving a patent right, utility model right, a layout-design exploitation right for an integrated circuit, or an author's right to a work of computer programming (hereinafter referred to as an "Action Involving a Patent Right, etc."), if a court listed in the first portion of either of the following items would have jurisdiction pursuant to the provisions of the preceding two Articles, the action is under the exclusive jurisdiction of the court specified in the latter portion of said item:

- (i) a district court located within the territorial jurisdiction of the Tokyo High Court, the Nagoya High Court, the Sendai High Court, or the Sapporo High Court: the Tokyo District Court;

- (ii) a district court located within the territorial jurisdiction of the Osaka High Court, the Hiroshima High Court, the Fukuoka High Court, or the Takamatsu High Court: the Osaka District Court.
- (2) In an Action Involving a Patent Right, etc., if a summary court located within the territorial jurisdiction of a court listed in the first portion of one of the items of the preceding paragraph would have jurisdiction pursuant to the provisions of the preceding two Articles, the action may also be filed with the court specified in the latter portion of said item.
- (3) An appeal to the court of second instance against a final judgment that the court specified in paragraph (1), item (ii) has entered as the court of first instance in an Action Involving a Patent Right, etc., is under the exclusive jurisdiction of the Tokyo High Court; provided, however, that this does not apply to an appeal to the court of second instance against a final judgment in an action if litigation has been transferred pursuant to the provisions of Article 20-2, paragraph (1).

(Jurisdiction over an Action Involving a Design Right)

Article 6-2 With regard to an action involving design rights, trademark rights, author's rights (excluding author's rights to a work of computer programming), publishing rights, neighboring rights, or breeder's rights, or an action for infringement of a business interest due to unfair competition (meaning unfair competition as prescribed in Article 2, paragraph (1) of the Unfair Competition Prevention Act (Act No. 47 of 1993)), if a court listed in the first portion of either of the following items has jurisdiction pursuant to the provisions of Article 4 or Article 5, the action may also be filed with the court specified in the latter portion of said item:

- (i) a court set forth in paragraph (1), item (i) of the preceding Article (other than the Tokyo District Court): the Tokyo District Court;
- (ii) a court set forth in paragraph (1), item (ii) of the preceding Article (other than the Osaka District Court): the Osaka District Court.

(Jurisdiction over a Joint Claim)

Article 7 If multiple claims are involved in a single action, the action may be filed with a court that, pursuant to the provisions of Article 4 to the preceding Article (excluding Article 6, paragraph (3)), has jurisdiction over one of those claims; provided, however, that with regard to an action brought by two or more persons or an action brought against two or more persons, this applies only in the case specified in the first sentence of Article 38.

(Calculation of the Value of the Subject Matter of Litigation)

Article 8 (1) If jurisdiction is determined by the value of the subject matter of

litigation pursuant to the Court Act (Act No. 59 of 1947), the value is calculated on the basis of the interest alleged in the action.

- (2) If it is impossible or extremely difficult to calculate the value as referred to in the preceding paragraph, the value is deemed to exceed 1,400,000 yen.

(Calculation of the Value in a Joint Claim)

Article 9 (1) If multiple claims are involved in a single action, the total value of the claims is the value of the subject matter of litigation; provided, however, that this does not apply to each claim if the interest alleged in the action is common to all claims.

- (2) If a claim upon the fruits of something or a claim for damages, penalties, or expenses is an incidental subject matter of litigation, its value is not included in the calculation of the value of the subject matter of the litigation.

(Designation of the Court of Jurisdiction)

Article 10 (1) If the court of jurisdiction is unable to exercise its jurisdiction by law or in fact, the immediate superior court issues a ruling designating the court of jurisdiction, upon petition.

- (2) If the court of jurisdiction cannot be determined due to ill-defined territorial jurisdictions among the courts, the immediate superior court common to the relevant courts issues a ruling designating the court of jurisdiction, upon petition.
- (3) No appeal may be entered against the ruling set forth in the preceding two paragraphs.

(Special Provisions on the Court of Jurisdiction)

Article 10-2 With regard to an action over which the Japanese courts have jurisdiction pursuant to the provisions of the preceding Section, if the court of jurisdiction is not determined pursuant to other provisions of this Code or provisions of other laws and regulations, the action is under the jurisdiction of the court of jurisdiction in the locality specified by the Rules of the Supreme Court.

(Agreement on Jurisdiction)

Article 11 (1) The parties may determine the court of jurisdiction by agreement, but only in the first instance.

- (2) The agreement as referred to in the preceding paragraph is not valid unless it is made regarding actions that are based on a specific legal relationship, and executed by means of a paper document.
- (3) If Electronic or Magnetic Records in which the content of the agreement is recorded are used to execute the agreement as referred to in paragraph (1), the

agreement is deemed to have been executed by means of a paper document and the provisions of the preceding paragraph apply.

(Jurisdiction by Appearance)

Article 12 If a defendant presents an oral argument on the merits of the case or enters a statement in preparatory proceedings before the court of first instance without entering a defense of lack of jurisdiction, that court has jurisdiction.

(Exclusion from Application Due to Exclusive Jurisdiction)

Article 13 (1) The provisions of Article 4, paragraph (1); Article 5; Article 6, paragraph (2); Article 6-2; Article 7; and the preceding two Articles do not apply if exclusive jurisdiction over an action is provided for by law or regulation.

(2) Notwithstanding the provisions of the preceding paragraph, if a court stipulated in the first portion of either of the items of Article 6, paragraph (1) is to have jurisdiction pursuant to the provisions of Article 7 or the preceding two Articles over an Action Involving a Patent Right, etc., that court has jurisdiction over the action, pursuant to the provisions of Article 7 or the preceding two Articles.

(Examination of Evidence by the Court Sua Sponte)

Article 14 The court may conduct an examination of evidence sua sponte with regard to matters that concern jurisdiction.

(Basis of Timing for Determining Jurisdiction)

Article 15 Whether a court has jurisdiction is determined on the basis of the time at which an action is filed.

(Handling of Lack of Jurisdiction)

Article 16 (1) If the court finds that the whole or part of litigation is not subject to its jurisdiction, it transfers the litigation sua sponte to the court of jurisdiction.

(2) Notwithstanding the provisions of the preceding paragraph, even if the litigation is subject to the jurisdiction of a summary court that is under its territorial jurisdiction, the district court, upon petition or sua sponte, may conduct the trial and reach a judicial decision itself for the whole or part of the litigation, if it finds this to be appropriate; provided, however, that this does not apply if the litigation is subject to the exclusive jurisdiction of such a summary court (excluding exclusive jurisdiction determined by an agreement between the parties pursuant to the provisions of Article 11).

(Transfer to Avoid Delay)

Article 17 Even if the litigation is subject to its jurisdiction, the court of first instance, upon petition or sua sponte, may transfer the whole or part of the litigation to another court of jurisdiction if it finds this to be necessary in order to avoid a substantial delay in litigation or to ensure equity between the parties, in consideration of the domicile of each party and witnesses to be examined, the location of any object to be inspected that is to be used, and any other circumstances.

(Discretionary Transfer by the Summary Court)

Article 18 Even if the litigation is subject to its jurisdiction, a summary court, upon petition or sua sponte, may transfer the whole or part of litigation to the district court of jurisdiction in that locality, if it finds this to be appropriate.

(Mandatory Transfer)

Article 19 (1) If a party petitions and the adverse party consents, the court of first instance shall transfer the whole or part of litigation to the district court or summary court under that petition, even if the litigation is subject to its jurisdiction; provided, however, that this does not apply if the transfer would substantially delay litigation proceedings or if the petition is filed after the defendant has presented an oral argument on the merits of the case or entered a statement in preparatory proceedings, and if the petition is not for a transfer from the summary court to the district court of jurisdiction in that locality.

(2) At the petition of the defendant in litigation involving real property that is under the jurisdiction of the summary court, the summary court shall transfer the whole or part of litigation to the district court of jurisdiction in that locality; provided, however, that this does not apply if the defendant has presented an oral argument on the merits of the case before filing that petition.

(Restriction on Transfer If There Is Exclusive Jurisdiction)

Article 20 (1) The provisions of the preceding three Articles do not apply if the litigation is subject to the exclusive jurisdiction of the court before which it is pending (except exclusive jurisdiction determined by an agreement between the parties pursuant to the provisions of Article 11).

(2) Notwithstanding the provisions of the preceding paragraph, if litigation in an Action Involving a Patent Right, etc. is to be transferred to a court specified in either item of Article 6, paragraph (1) pursuant to the provisions of Article 17 or paragraph (1) of the preceding Article, the provisions of Article 17 or paragraph (1) of the preceding Article apply.

(Transfer of Litigation in an Action Involving a Patent Right, etc.)

Article 20-2 (1) Even if the litigation in an Action Involving a Patent Right, etc. is under the exclusive jurisdiction of a court specified in either item of Article 6, paragraph (1) pursuant to the provisions of the same paragraph, the court, upon petition or sua sponte, may transfer the whole or part of litigation to the district court that has jurisdiction pursuant to the provisions of Article 4, 5, or 11 or the district court that shall accept litigation transferred thereto pursuant to the provisions of Article 19, paragraph (1), if the court finds this to be necessary in order to avoid substantial harm or delay due to its lack of ability to try a specialized and technical matter that is to be tried through the litigation, or due to other circumstances.

(2) At the filing an appeal to the court of second instance as mentioned in Article 6, paragraph (3), the Tokyo High Court, upon petition or sua sponte, may transfer the whole or part of litigation to the Osaka High Court, if it finds this to be necessary in order to avoid substantial harm or delay due to its lack of ability to try a specialized and technical matter that is to be tried by the court of second instance, or due to other circumstances.

(Immediate Appeals)

Article 21 An immediate appeal may be filed against a ruling to transfer litigation or a ruling to dismiss a petition without prejudice for transfer.

(Binding Effect of a Judicial Decision for a Transfer)

Article 22 (1) A judicial decision for a transfer which has become final and binding is binding on the court that has accepted the transferred case.

(2) The court that has accepted a transferred case may not further transfer the case to another court.

(3) Once a judicial decision for a transfer becomes final and binding, the litigation is deemed to have been pending before the court to which it has been transferred since it was first brought to the initial court.

### **Section 3 Disqualifying or Challenging a Court Official**

(Disqualifying a Judge)

Article 23 (1) In the following cases, a judge is disqualified from performing the duties of a judge; provided, however, that in the case set forth in item (vi), this does not preclude a judge from performing duties as a commissioned judge based on a commission from another court:

(i) if the judge, or the judge's spouse or former spouse, is a party to the case, or is related to a party to the case as a joint obligee, joint obligor, or obligor for redemption;

(ii) if the judge is or was formerly the relative of a party to the case within the

- fourth degree of consanguinity or the third degree of affinity, or is or was formerly the cohabiting relative of a party to the case;
- (iii) if the judge is the guardian, supervisor of the guardian, curator, supervisor of the curator, assistant, or supervisor of the assistant of a party to the case;
  - (iv) if the judge becomes a witness or expert in the case;
  - (v) if a judge is or was formerly a party's representative or assistant in court in the case;
  - (vi) if the judge participated in granting an arbitral award in the case or participated in reaching the judicial decision in the prior instance against which an appeal has been entered.
- (2) If any of the grounds for disqualification prescribed in the preceding paragraph exist, the court, upon petition or sua sponte, reaches a judicial decision to disqualify.

#### (Challenging a Judge)

- Article 24 (1) If there are circumstances involving a judge which could prejudice the impartiality of a judicial decision, a party may challenge that judge.
- (2) Once a party has presented an oral argument or entered a statement in preparatory proceedings before a judge, the party may not challenge that judge; provided, however, that this does not apply if the party did not know of the existence of any grounds for challenge at that time or if the grounds for the challenge occur thereafter.

#### (Judicial Decisions Regarding a Disqualification or Challenge)

- Article 25 (1) The judicial decision on the disqualification of or challenge against a judge who is a member of a judicial panel or against a single district court judge is reached in the form of a ruling by the court to which the judge belongs, and the judicial decision on the disqualification of or challenge against a summary court judge is reached in the form of a ruling by the district court of jurisdiction in that locality.
- (2) In the district court, the judicial decision as referred to in the preceding paragraph is reached by a judicial panel.
  - (3) A judge may not be involved in a judicial decision on that judge's own disqualification or on a challenge against that judge.
  - (4) No appeal may be entered against a ruling finding grounds for disqualification or challenge.
  - (5) An immediate appeal may be filed against a ruling finding there to be no grounds for disqualification or challenge.

#### (Stay of Litigation Proceedings)

- Article 26 If a petition to disqualify or challenge is filed, litigation proceedings



shall be stayed until the ruling on the petition becomes final and binding; provided, however, that this does not apply with respect to any act requiring urgency.

(Mutatis Mutandis Application to Court Clerks)

Article 27 The provisions of this Section apply mutatis mutandis to court clerks. This being the case, the judicial decision is reached by the court to which the court clerk belongs.

### **Chapter III The Parties**

#### **Section 1 Capacity as a Party and Capacity to Sue or Be Sued**

(Principles)

Article 28 Except as otherwise provided for in this Code, capacity as a party, the capacity to sue or be sued, and the statutory representation of a person lacking the capacity to sue or be sued are governed by the Civil Code (Act No. 89 of 1896) and other laws and regulations. The same applies to the delegation of the powers necessary for performing procedural acts.

(A Non-Corporate Association's or Foundation's Capacity as a Party)

Article 29 An association or foundation that is not a corporation and that has a designated representative or administrator may sue or be sued in the name of that representative or administrator.

(Appointed Party)

Article 30 (1) Persons with a common interest that do not fall under the provisions of the preceding Article may appoint one or more persons from among themselves to stand as the plaintiff or defendant on behalf of all.

(2) If, after litigation becomes pending before the court, a person is appointed to stand as the plaintiff or defendant pursuant to the provisions of the preceding paragraph, any plaintiff other than the party appointed to stand as the plaintiff or any defendant other than the party appointed to stand as the defendant is automatically withdrawn from the litigation.

(3) A person that shares a common interest with the plaintiff or defendant in pending litigation but that is not a party to the litigation may appoint that plaintiff or defendant to also stand as plaintiff or defendant on that person's behalf.

(4) A person that has appointed a party to stand as the plaintiff or defendant pursuant to the provisions of paragraph (1) or the preceding paragraph (hereinafter referred to as an "Appointer") may rescind the appointment or change the party thus appointed (hereinafter referred to as the "Appointed

Party").

- (5) If an Appointed Party dies, or due to other reasons loses that status, another Appointed Party may perform procedural acts on behalf of all.

(Minors' and Adult Wards' Capacity to Sue and Be Sued)

Article 31 A minor or an adult ward may not perform any procedural act except through a statutory agent; provided, however, that this does not apply if the minor may perform juridical acts independently.

(Special Provisions on Procedural Acts by Persons under Curatorship, Persons under Assistance, and Statutory Agents)

Article 32 (1) A person under curatorship, a person under assistance (limited to a person that is required to obtain consent from the assistant to perform procedural acts; the same applies in the following paragraph and Article 40, paragraph (4)), or a guardian or any other statutory agent is not required to obtain consent or the delegation of powers from the curator or supervisor of the curator, assistant or supervisor of the assistant, or supervisor of the guardian in order to perform a procedural act with regard to an action or appeal filed by an adverse party.

(2) A person under curatorship, a person under assistance, or a guardian or any other statutory agent shall obtain a special delegation of powers in order to perform any of the following procedural acts:

- (i) withdrawing an action, entering into a settlement, waiving or acknowledging a claim, or withdrawing from litigation pursuant to the provisions of Article 48 (including as applied *mutatis mutandis* pursuant to Article 50, paragraph (3) and Article 51);
- (ii) withdrawing an appeal to the court of second instance, a final appeal, or the petition as referred to in Article 318, paragraph (1);
- (iii) withdrawing an objection under the provisions of Article 360 (including as applied *mutatis mutandis* pursuant to Article 367, paragraph (2) and Article 378, paragraph (2)) or consenting to such a withdrawal.

(Special Provisions on Foreign Nationals' Capacity to Sue and Be Sued)

Article 33 Even if a foreign national does not have the capacity to sue or be sued pursuant to the laws of the home country, the foreign national is deemed to have the capacity to sue or be sued if such is the case pursuant to Japanese law.

(Measures If a Person Lacks Capacity to Sue or Be Sued)

Article 34 (1) If a person lacks the capacity to sue or be sued, authority of statutory representation, or delegation of powers that is necessary for performing a procedural act, the court shall order this to be corrected within a

specified time frame. In such a case, if there is a risk of damage arising from a delay, the court may have such a person perform procedural acts on a temporary basis.

- (2) A procedural act performed by a person who lacks the capacity to sue or be sued, the authority of statutory representation, or the delegation of powers that is necessary for performing that procedural act, becomes valid, retroactive to the time of the act, once ratified by a party or statutory agent that has come to satisfy such requirements.
- (3) The provisions of the preceding two paragraphs apply mutatis mutandis if an appointed party performs procedural acts.

(Special Agents)

- Article 35 (1) If there is no statutory agent or if a statutory agent is unable to exercise the authority of representation, a person seeking to perform a procedural act against a minor or adult ward may request the presiding judge of the court in charge of the case to appoint a special agent, by making a prima facie showing of the risk that the person will incur damage if there is a delay.
- (2) The court may replace a special agent at any time.
  - (3) In order to perform procedural acts, a special agent shall have the same delegation of powers as a guardian.

(Notice of Lapse of the Authority of Statutory Representation)

- Article 36 (1) The lapse of the authority of statutory representation does not become valid until the principal or the agent notifies the adverse party thereof.
- (2) The provisions of the preceding paragraph apply mutatis mutandis to the rescission of the appointment of an Appointed Party or a change of the appointed party.

(Mutatis Mutandis Application to the Representative of a Corporation)

- Article 37 In this Code, the provisions concerning a statutory agent and statutory representation apply mutatis mutandis to the representative of a corporation and to the representative or administrator of an association or foundation that is not a corporation but can sue or be sued in its own name.

## **Section 2 Joint Litigation**

(Requirements for Joint Litigation)

- Article 38 If rights or obligations that are the subject matter of litigation are common to two or more persons or are based on the same factual or statutory causes, these persons may sue or be sued as co-litigants. The same applies if rights or obligations that are the subject matter of litigation are of the same

kind and based on the same kind of factual or statutory causes.

(Status of Co-Litigants)

Article 39 A procedural act performed by one of the co-litigants, a procedural act performed against one of the co-litigants by the adverse party, and any matter arising with regard to one of the co-litigants does not affect any other co-litigant.

(Mandatory Joint Litigation)

Article 40 (1) If the subject matter of litigation is to be determined for all co-litigants only as a unified matter, procedural acts performed by one of them become valid only in the interests of all of the co-litigants.

(2) In a case prescribed in the preceding paragraph, procedural acts performed against one of the co-litigants by the adverse party are valid against all of them.

(3) In a case prescribed in paragraph (1), if there are grounds for a continuance or suspension of litigation proceedings with regard to one of the co-litigants, the continuance or suspension is valid against all of them.

(4) The provisions of Article 32, paragraph (1) apply mutatis mutandis, in the case prescribed in paragraph (1), to procedural acts that a co-litigant who is a person under curatorship or person under assistance, or a guardian or other statutory agent shall perform in an appeal filed by one of the co-litigants.

(Joint Litigation Involving a Request for a Simultaneous Trial and Decision)

Article 41 (1) If a right that is the subject matter of litigation for one codefendant and a right that is the subject matter of litigation for another codefendant cannot legally coexist and the plaintiff so requests, oral arguments shall be held and judicial decisions reached without instituting separate litigation.

(2) The request as referred to in the preceding paragraph shall be made by the time of conclusion of oral arguments in the second instance.

(3) In the case as referred to in paragraph (1), if cases under appeal that each have a codefendant are pending separately before the same court of second instance, oral arguments shall be held and judicial decisions reached following their consolidation.

### **Section 3 Intervention**

(Supporting Intervention)

Article 42 A third party with an interest in the outcome of litigation may intervene in the litigation in order to assist either party.

(Application for Supporting Intervention)

- Article 43 (1) An application for supporting intervention shall clarify the purpose and the grounds for the intervention, and shall be filed with the court where procedural acts in that supporting intervention are required to be performed.
- (2) An application for supporting intervention may be filed in conjunction with the performance of a procedural act that may be performed by a supporting intervener.

(Objection to Supporting Intervention)

- Article 44 (1) If a party objects to a supporting intervention, the court reaches a judicial decision, in the form of a ruling, on whether or not to permit the supporting intervention. In such a case, the supporting intervener shall make a prima facie showing of the reasons for the intervention.
- (2) A party may not raise the objection as referred to in the preceding paragraph after having presented oral arguments or entered a statement in preparatory proceedings without raising such objection.
- (3) An immediate appeal may be filed against the judicial decision as referred to in paragraph (1).

(Procedural Acts by a Supporting Intervener)

- Article 45 (1) A supporting intervener may present allegations and evidence, file an objection, file an appeal, file a demand for a retrial, or perform any other procedural act in the litigation in question; provided, however, that this does not apply to procedural acts that the supporting intervener may not perform due to the progress of the litigation at the time of the supporting intervention.
- (2) A procedural act performed by a supporting intervener is invalid if it conflicts with a procedural act performed by the party being supported in the intervention.
- (3) Even if an objection has been raised against a supporting intervention, a supporting intervener may perform procedural acts until a judicial decision disallowing the supporting intervention becomes final and binding.
- (4) A procedural act performed by a supporting intervener is valid if invoked by a party, even if a judicial decision disallowing the supporting intervention becomes final and binding.

(Effect of a Judicial Decision against a Supporting Intervener)

- Article 46 A judicial decision in litigation that involves a supporting intervention is also effective against the supporting intervener, except in the following cases:

- (i) if the supporting intervener is unable to perform a procedural act, pursuant to the provisions of the proviso to paragraph (1) of the preceding Article;
- (ii) if a procedural act by the supporting intervener is invalid, pursuant to the provisions of paragraph (2) of the preceding Article;
- (iii) if the party being supported in the intervention interferes with a procedural act by the supporting intervener;
- (iv) if the party being supported in the intervention intentionally or negligently fails to perform a procedural act that a supporting intervener is not permitted to perform.

(Intervention as an Independent Party)

- Article 47 (1) A third party asserting that a right will be prejudiced by the outcome of litigation or a third party asserting entitlement to the whole or part of the subject matter of litigation may intervene in the litigation as a party, designating either or both of the parties to the litigation as an adverse party.
- (2) An application for the intervention under the provisions of the preceding paragraph shall be filed by means of a paper document.
- (3) The paper document as referred to in the preceding paragraph shall be served upon both parties.
- (4) The provisions of Article 40, paragraphs (1) to (3) apply mutatis mutandis to the parties to litigation set forth in paragraph (1) and a person that has intervened in the litigation pursuant to the provisions of said paragraph; and the provisions of Article 43 apply mutatis mutandis to an application for intervention under the provisions of said paragraph.

(Original Party's Withdrawal from Litigation)

Article 48 If a person has intervened in litigation pursuant to the provisions of paragraph (1) of the preceding Article in order to assert that person's own right, the plaintiff or defendant from prior to the intervention may withdraw from the litigation, with the consent of the adverse party. In such a case, the judgment on the litigation is also valid against the withdrawing party.

(Interruption of Prescription for Intervention by the Transferee of a Right)

Article 49 If a person has intervened in litigation pursuant to the provisions of Article 47, paragraph (1) by asserting that, while the litigation has been pending, the person has accepted by transfer the whole or part of the right that is the subject matter of litigation, that person's intervention has the effect of interrupting prescription or causing a statutory time frame to be observed, retroactive to the time when the litigation first became pending.

(Assumption of Litigation by the Successor of an Obligation)

Article 50 (1) If, while litigation is pending, a third party succeeds to the whole or part of an obligation that is the subject matter of litigation, the court, at the petition of an original party, may issue a ruling to have such third party assume the litigation.

(2) Before issuing the ruling as referred to in the preceding paragraph, the court shall hear the original party and the third party.

(3) The provisions of Article 41, paragraphs (1) and (3) and the preceding two Articles apply mutatis mutandis if a ruling is issued to have a third party assume litigation pursuant to the provisions of paragraph (1).

(Intervention by the Successor of an Obligation and Assumption of Litigation by the Transferee of a Right)

Article 51 The provisions of Articles 47 to 49 apply mutatis mutandis to intervention by a third party that asserts that, while the litigation has been pending, that third party has succeeded to the whole or part of the obligation that is the subject matter of litigation; and the provisions of the preceding Article apply mutatis mutandis if, while litigation is pending, a third party is transferred the whole or part of a right that is the subject matter of litigation.

(Intervention as a Co-litigant)

Article 52 (1) If the subject matter of litigation is to be determined for one of the original parties and a third party only as a unified matter, the third party may intervene in the litigation as a co-litigant.

(2) The provisions of Article 43 and Article 47, paragraphs (2) and (3) apply mutatis mutandis to an application for intervention under the provisions of the preceding paragraph.

(Notice of Litigation)

Article 53 (1) While litigation is pending, a party may convey notice of the litigation to a third party that is permitted to intervene therein.

(2) A person receiving notice of litigation may further convey notice of litigation to another person.

(3) Notice of litigation shall be conveyed through the submission of a paper document to the court stating the grounds therefor and the progress of the litigation.

(4) Even if a person receiving notice of litigation does not intervene in the litigation, that person, for the purpose of application of the provisions of Article 46, is deemed to have intervened in the litigation at the time that that person could have intervened.

#### **Section 4 Litigation Representatives and Assistants in Court**

(Qualification as a Litigation Representative)

Article 54 (1) Except for a representative who may act in court pursuant to law or regulation, no person other than an attorney at law may serve as a litigation representative; provided, however, that in summary court, with the court's permission, a person who is not an attorney at law may be named litigation representative.

(2) The permission set forth in the preceding paragraph may be rescinded at any time.

(Scope of Authority of Representation in Litigation)

Article 55 (1) A litigation representative may perform procedural acts involved in a counterclaim, intervention, compulsory execution, provisional seizure, or provisional disposition for a case delegated thereto, and may receive payment.

(2) A litigation representative shall be specially delegated in order to perform the following:

(i) filing a counterclaim;

(ii) withdrawing an action, entering into a settlement, waiving or acknowledging a claim, or effecting a withdrawal from litigation under the provisions of Article 48 (including as applied mutatis mutandis pursuant to Article 50, paragraph (3) and Article 51);

(iii) filing an appeal to the court of second instance, a final appeal, or the petition as referred to in Article 318, paragraph (1), or withdrawing the same;

(iv) withdrawing an objection under the provisions of Article 360 (including as applied mutatis mutandis pursuant to Article 367, paragraph (2) and Article 378, paragraph (2)) or consenting to such withdrawal;

(v) appointing a representative.

(3) The authority of representation in litigation may not be restricted; provided, however, that this does not apply with respect to a litigation representative that is not an attorney at law.

(4) The provisions of the preceding three paragraphs do not restrict the authority of a representative that may act in court pursuant to law or regulation.

(Individual Representation)

Article 56 (1) If there are multiple litigation representatives, each one shall represent a single party.

(2) Any provisions agreed upon between the parties that are contrary to the provisions of the preceding paragraph are invalid.

(Correction by the Party)



Article 57 Statements of fact that are entered by a litigation representative are invalid if immediately retracted or corrected by the party.

(Non-Extinguishment of Authority of Representation in Litigation)

Article 58 (1) The following grounds do not extinguish the authority of representation in litigation:

- (i) a party's death or loss of capacity to sue or be sued;
  - (ii) the disappearance due to merger of a corporation that is a party;
  - (iii) termination of duties involved in a trust assigned to a trustee that is a party;
  - (iv) a statutory agent's death or loss of capacity to sue or be sued, or extinguishment or modification of the statutory agent's authority of representation.
- (2) A litigation representative's authority of representation for a person of a certain status that stands as a party to litigation in that person's own name on behalf of another person does not extinguish due to the party's loss of that status due to death or on any other grounds.
- (3) The provisions of the preceding paragraph apply mutatis mutandis if an appointed party has lost that status due to death or on any other grounds.

(Mutatis Mutandis Application of Provisions on Statutory Representation)

Article 59 The provisions of Article 34, paragraphs (1) and (2) and Article 36, paragraph (1) apply mutatis mutandis to representation in litigation.

(Assistants in Court)

- Article 60 (1) A party or litigation representative, with the permission of the court, may appear with an assistant in court.
- (2) The permission set forth in the preceding paragraph may be rescinded at any time.
- (3) Statements entered by an assistant in court, unless immediately retracted or corrected by the party or the litigation representative, are deemed to have been made by the party or litigation representative, personally.

## **Chapter IV Court Costs**

### **Section 1 Burden of Court Costs**

(Principle of Burden of Court Costs)

Article 61 The defeated party bears the court costs.

(Burden of Costs: Unnecessary Acts)

Article 62 Depending on the circumstances, the court may have the winning

party bear all or part of court costs incurred due to any act that was unnecessary for the expansion or defense of the winning party's rights, or court costs incurred due to any act that was necessary, in light of the progress of the litigation as of the time of the act, for the expansion or defense of the adverse party's rights.

(Burden of Costs: Delay in Litigation)

Article 63 If a party delays litigation due to a failure to present allegations or evidence in a timely manner, failure to keep a court date or observe a time frame, or any other grounds attributable to that party, the court may have that party bear all or part of court costs incurred due to the delay, even if that party wins the case.

(Burden of Costs: Partial Defeat)

Article 64 In the case of a partial defeat, the burden of court costs on each party is determined by the court at its discretion; provided, however, that depending on the circumstances, the court may have either party bear all court costs.

(Burden of Costs in Joint Litigation)

Article 65 (1) Co-litigants bear court costs equally; provided, however, that the court, depending on the circumstances, may have co-litigants bear court costs jointly and severally or in any other manner.

(2) Notwithstanding the provisions of the preceding paragraph, the court may have a party that has performed any act that was unnecessary for the expansion or defense of a right bear court costs incurred due to that act.

(Burden of Costs: Supporting Intervention)

Article 66 The provisions of Article 61 to the preceding Article apply mutatis mutandis to the bearing of court costs incurred due to an objection to supporting intervention between the supporting intervener and the party that raises the objection, and to the bearing of court costs incurred due to supporting intervention between the supporting intervener and the adverse party.

(Judicial Decisions on the Burden of Court Costs)

Article 67 (1) In the judicial decision that concludes a case, the court shall reach a judicial decision sua sponte on the bearing of all court costs incurred in the relevant instance; provided, however, that depending on the circumstances, in a judicial decision on part of a case or on an interlocutory dispute, the court may reach a judicial decision on the bearing of those costs.

(2) If a superior court modifies a judicial decision on the merits, it shall reach a

judicial decision on the bearing of the total costs of litigation. The same applies when a court that has accepted a case remanded or transferred thereto reaches the judicial decision that concludes the case.

(Burden of Costs: Settlement)

Article 68 If the parties reach a court settlement but make no special stipulations on the bearing of settlement costs or court costs, each party bears its own costs.

(Reimbursement of Costs by a Statutory Agent)

Article 69 (1) If a statutory agent, litigation representative, court clerk, or court execution officer, intentionally or through gross negligence, gives rise to unnecessary court costs, the court in charge of the case, upon petition or sua sponte, may order that person to reimburse the amount of such costs.

(2) If a person performing a procedural act as a statutory agent or litigation representative has failed to prove that the person has the authority of representation or delegation of powers necessary for performing a procedural act and has also failed to have the act ratified, the provisions of the preceding paragraph apply mutatis mutandis to the court costs arising from that procedural act.

(3) An immediate appeal may be filed against a ruling under the provision of paragraph (1) (including as applied mutatis mutandis pursuant to the provision of the preceding paragraph).

(The Bearing of Costs by an Unauthorized Representative)

Article 70 In a case prescribed in paragraph (2) of the preceding Article, if the court dismisses an action without prejudice, the person performing procedural acts as a representative bears the court costs.

(Procedures for Fixing the Amount of Court Costs)

Article 71 (1) The amount of court costs to be borne is fixed, upon petition, by the court clerk of the court of first instance after the judicial decision on the bearing of costs becomes enforceable.

(2) In the case as referred to in the preceding paragraph, except when specified by the Rules of the Supreme Court, if both parties bear court costs, the costs that each party shall bear are deemed to offset the corresponding amount of costs that the other party or parties shall bear.

(3) A disposition on the petition as referred to in paragraph (1) takes effect when notice thereof is given by a method that is considered to be appropriate.

(4) Any objection to a disposition as referred to in the preceding paragraph shall be made within an inalterable time frame of one week from the day on which

notice of the disposition is received.

- (5) An objection under the preceding paragraph has the effect of a stay of execution.
- (6) If the court finds that an objection to a disposition fixing the amount under the provisions of paragraph (1) is based on legal grounds and the amount of court costs to be borne shall be fixed, the court shall fix such amount itself.
- (7) An immediate appeal may be filed against a ruling on an objection set forth in paragraph (4).

(Procedures for Fixing the Amount of Costs in a Settlement)

Article 72 If the parties reach a court settlement but make no special stipulations about the bearing of settlement costs or court costs or do not fix the amount of these costs, the amount thereof is fixed, upon petition, by the court clerk of the court of first instance (for a settlement as referred to in Article 275, the court where the settlement is established). In such a case, the provisions of paragraphs (2) to (7) of the preceding Article apply mutatis mutandis.

(Handling When Litigation Is Concluded Not by Judicial Decision or Settlement)

- Article 73 (1) If litigation is concluded not by a judicial decision or settlement, the court of first instance, upon petition, shall issue a ruling ordering court costs to be borne, and the court clerk of that court shall fix the amount to be borne after the ruling becomes enforceable. The same applies if an application for supporting intervention is withdrawn or if an objection to supporting intervention is withdrawn.
- (2) The provisions of Articles 61 to 66 and Article 71, paragraph (7) apply mutatis mutandis to a ruling on a petition under the preceding paragraph; the provisions of Article 71, paragraphs (2) and (3) apply mutatis mutandis to a disposition rendered by the court clerk on a petition under the preceding paragraph, and the provisions of Article 71, paragraphs (4) through (7) apply mutatis mutandis to an objection to such disposition.

(Correction of a Disposition Fixing the Amount of Costs)

- Article 74 (1) If a miscalculation, clerical error, or any other similar mistake that is clearly an error has been made in a disposition that fixes the amount under the provisions of Article 71, paragraph (1), Article 72 or paragraph (1) of the preceding Article, the court clerk, upon petition or sua sponte, may correct the disposition at any time.
- (2) The provisions of Article 71, paragraphs (3) to (5) and paragraph (7) apply mutatis mutandis to a disposition for a correction under the provisions of the

preceding paragraph and any objection thereto.

- (3) Once a lawful objection is raised against a disposition that fixes the amount prescribed in paragraph (1), an objection may not be raised under the preceding paragraph.

## **Section 2 Security for Court Costs**

(Order to Provide Security)

Article 75 (1) If a plaintiff is not domiciled in Japan or does not have a business office or other office in Japan, at the petition of the defendant, the court shall issue a ruling ordering the plaintiff to provide security for court costs. The same applies if such security becomes insufficient.

- (2) The provisions of the preceding paragraph do not apply if there is no dispute over part of a claim for the payment of money and the amount of such part of the claim is sufficient as security.
- (3) Once a defendant has presented an oral argument on the merits or entered a statement in preparatory proceedings after having learned that there are grounds for security to be provided, the defendant may not file the petition as referred to in paragraph (1).
- (4) A defendant filing a petition under paragraph (1) may refuse to appear until the plaintiff provides security.
- (5) In the ruling set forth in paragraph (1), the court shall specify the amount of security and the time frame for providing security.
- (6) The amount of security is specified on the basis of the total amount of court costs the defendant would need to pay in all instances.
- (7) An immediate appeal may be filed against a ruling on a petition under paragraph (1).

(Manner of Providing Security)

Article 76 In providing security, money or securities (including book-entry transfer company bonds, etc. prescribed in Article 129, paragraph (1) of the Act on Book-Entry Transfer of Company Bonds, etc. (Act No. 75 of 2001); the same applies in the following Article) that the court considers appropriate shall be deposited with an official depository within the territorial jurisdiction of the district court of jurisdiction in the locality of the court that orders the security to be provided, or shall be provided by a specified by the Rules of the Supreme Court; provided, however, that if the parties have entered into a special contract, such contract prevails.

(Defendant's Right to Collateral)

Article 77 A defendant has the right to receive payment for court costs, in

preference to other creditors, from the money or securities deposited pursuant to the provisions of the preceding Article.

(Result of Failure to Provide Security)

Article 78 If a plaintiff fails to provide security within the time frame during which it shall be provided, the court may enter a judgment dismissing the action without prejudice, without hearing oral arguments; provided, however, that this does not apply if the plaintiff provides security before such a judgment is entered.

(Release of Security)

Article 79 (1) If a person providing security proves that the grounds for providing security have ceased to exist, the court, upon petition, shall rule to release that security.

(2) The provisions of the preceding paragraph also apply if a person providing security proves that the person has obtained the consent of the security interest holder for the release of the security.

(3) If, after the conclusion of litigation, the court, at the petition of the person providing the security, notifies the security interest holder that the holder shall exercise the right to the security within a certain time frame and the security interest holder fails to do so, the security interest holder is deemed to consent to the release of the security.

(4) An immediate appeal may be filed against a ruling under the provisions of paragraphs (1) and (2).

(Substitution of Security)

Article 80 At the petition of a person providing the security, the court may issue a ruling ordering the substitution of that security; provided, however, that this does not preclude other security from being substituted for that security pursuant to a contract.

(Mutatis Mutandis Application to Security under Other Laws and Regulations)

Article 81 The provisions of Article 75, paragraphs (4), (5), and (7) and Articles 76 to the preceding Article apply mutatis mutandis to any security that shall be provided pursuant to other laws and regulations for the filing of an action.

### **Section 3 Legal Aid**

(Granting Aid)

Article 82 (1) The court, upon petition, may issue a ruling granting legal aid to a person lacking the financial resources to pay the expenses necessary for

preparing for and conducting litigation, or to a person for that paying such expenses would cause substantial adversity in daily life; provided, however, that this applies only if the person has some chance of winning the case.

(2) Rulings granting legal aid are issued separately for each instance.

#### (Effects of Aid)

Article 83 (1) A ruling granting legal aid has the following effects with regard to litigation and compulsory execution, in line with what is provided for in the ruling:

(i) a grace period for the payment of court costs, as well as for fees for a court execution officer and expenses necessary for the performance of the duties of the same;

(ii) a grace period for the payment of compensation and expenses for an attorney at law that is ordered by the court to help the person that has been granted legal aid;

(iii) exemption from providing security for court costs.

(2) A ruling granting legal aid is only valid for assisting the person in whose favor the ruling is issued.

(3) The court issues a ruling ordering any successor to litigation to pay expenses and costs for which a grace period for payment has been given.

#### (Revocation of a Ruling Granting Aid)

Article 84 If a person in whose favor a ruling granting legal aid is issued is found not to meet the requirements prescribed in the main clause of Article 82, paragraph (1) or if such person comes to no longer meet those requirements, the court that has the case record on file may at any time, upon at the petition of an interested party or sua sponte, issue a ruling revoking the ruling that granted the person legal aid, and order the person to pay any expenses and costs for which a grace period has been given.

#### (Manner of Collecting Expenses and Costs with a Grace Period)

Article 85 Expenses and costs in respect of which a person in whose favor a ruling granting legal aid is issued is given a payment grace period may be collected directly from the adverse party that it has been decided will bear such expenses and costs. To do so, an attorney at law or a court execution officer, on behalf of the person in whose favor the ruling granting legal aid has been issued, may file a petition set forth in Article 71, paragraph (1), Article 72 or Article 73, paragraph (1) or enforce a compulsory execution with regard to compensation or fees and expenses and costs.

#### (Immediate Appeals)

Article 86 An immediate appeal may be filed against a ruling prescribed in this Section.

## **Chapter V Litigation Proceedings**

### **Section 1 Trial Litigation**

(Necessity of Oral Arguments)

Article 87 (1) The parties shall conduct oral arguments before the court in connection with the litigation; provided, however, that for a case to be concluded by a ruling, the court determines whether or not oral arguments should be conducted.

(2) If oral arguments are not conducted pursuant to the provisions of the proviso to the preceding paragraph, the court may hear the parties.

(3) The provisions of the preceding two paragraphs do not apply when otherwise provided.

(Hearings by an Authorized Judge)

Article 88 If a hearing is held, the court may have it held by an authorized judge.

(Attempts at Settlement)

Article 89 Irrespective of the extent to which litigation has progressed, the court may attempt to arrange a settlement or have an authorized judge or a commissioned judge attempt to arrange a settlement.

(Loss of the Right to Object to Litigation Proceedings)

Article 90 If a party learns or could have learned of a violation of the provisions concerning litigation proceedings but fails to make an objection without delay, the party loses the right to object to such proceedings; provided, however, that this does not apply to a right that cannot be waived.

(Inspection of Case Records)

Article 91 (1) Any person may file a request with the court clerk to inspect a case record.

(2) Only the parties to the case or a third party that makes a prima facie showing of interest in the case may file the request under the provision of the preceding paragraph with regard to a case record involving oral arguments that are prohibited from being disclosed to the public.

(3) The parties to a case and any third party that makes a prima facie showing of interest in the case may file a request with the court clerk to copy the case record, to be issued an authenticated copy, transcript, or extract of the case record, or to be issued a certificate of the particulars of the litigation.



- (4) The provisions of the preceding paragraph do not apply with respect to case records that have been prepared in the form of audiotapes or videotapes (including objects on which a fixed set of information has been recorded by any means equivalent thereto). Nevertheless, the court clerk shall permit the reproduction of such audiotapes or videotapes at the request of a party to the case or a third party that makes a prima facie showing of interest in these objects.
- (5) A request to inspect, copy, or reproduce a case record may not be filed if these actions would be detrimental to the preservation of the case record or the performance of the court's duties.

(Restrictions on Inspection to Preserve Confidential Information)

Article 92 (1) If the party to a case makes a prima facie showing of the following grounds, the court, at the petition of said party, may rule to limit the persons that may request to inspect or copy the part of said case record in which the relevant confidential information is entered or recorded, that may request to be issued an authenticated copy, transcript, or extract of that part of the case record, or that may request to reproduce that part of the case record (hereinafter referred to as "Inspection, etc. of the Confidential Portion") to the parties to the case:

- (i) a material piece of confidential information about the private life of a party is entered or recorded in the case record, and a third party's Inspection, etc. of the Confidential Portion of the case record would be substantially detrimental to that party's social life;
  - (ii) a trade secret (meaning a trade secret as prescribed in Article 2, paragraph (6) of the Unfair Competition Prevention Act; the same applies in Article 132-2, paragraph (1), item (iii) or paragraph (2)) being kept by a party to the case has been entered or recorded in the case record.
- (2) Once a petition as referred to in the preceding paragraph has been filed, a third party may not request for Inspection, etc. of the Confidential Portion of the case record until a judicial decision on the petition becomes final and binding.
  - (3) A third party seeking to file a request for Inspection, etc. of the Confidential Portion of a case record may file a petition with the court of record, to revoke the ruling set forth in paragraph (1), on the grounds that any requirement prescribed in said paragraph has not been met or is no longer being met.
  - (4) An immediate appeal may be filed against a judicial decision dismissing the petition set forth in paragraph (1) without prejudice and against a judicial decision on the petition set forth in the preceding paragraph.
  - (5) A judicial decision revoking a ruling as referred to in paragraph (1) does not come into force unless it becomes final and binding.

## **Section 2 Technical Advisers**

### **Subsection 1 Technical Advisers**

(Participation of Technical Advisers)

Article 92-2 (1) If the court finds that it will need to have a technical adviser participate during deliberations on the necessary particulars involved in the arrangement of issues and evidence or the progress of litigation proceedings in order to clarify a matter related to the litigation or create a framework for smooth progress in the litigation proceedings, the court, after hearing the opinions of the parties, may rule to have a technical adviser participate in the proceedings so as to hear an explanation based on the technical adviser's expert knowledge. In such a case, the presiding judge shall have the technical adviser give an explanation in writing or orally on a date for oral arguments or preparatory proceedings.

(2) If the court finds that it will need to have a technical adviser participate during the examination of evidence in order to clarify a matter related to the litigation or the import of the results of the examination of evidence, the court, after hearing the opinions of the parties, may rule to have a technical adviser participate in the proceedings on a date for the examination of evidence, so as to hear an explanation based on the technical adviser's expert knowledge. In such a case, in order to have the technical adviser give an explanation on a date for the examination of a witness or the parties themselves or on a date for the questioning of an expert, the presiding judge, with the consent of the parties, may permit the technical adviser to directly ask the witness, the parties themselves, or the expert questions about the necessary particulars for clarifying a matter that is related to the litigation or for clarifying the import of the results of the examination of evidence.

(3) If the court finds that it will be necessary during an attempt to arrange a settlement, the court, with the consent of the parties, may rule to have a technical adviser participate in the proceedings on a date when the court will attempt to arrange a settlement and on which both parties are able to attend, so as to hear an explanation based on the technical adviser's expert knowledge.

(Participation of a Technical Adviser Through Communication by Audio Transmissions)

Article 92-3 If the court has a technical adviser participate in proceedings pursuant to the provisions of any paragraph of the preceding Article and the technical adviser resides in a distant location or the court finds it appropriate for any other reason, the court, after hearing the opinions of the parties, may have the technical adviser give an explanation or ask questions pursuant to the

relevant paragraph of that Article on a date as referred to in the relevant paragraph of that Article, as provided for by the Rules of the Supreme Court, in a way that enables the court and both parties to communicate with the technical adviser at the same time, through audio transmissions.

(Revocation of a Ruling for the Participation of a Technical Adviser)

Article 92-4 If the court finds it to be appropriate, it is permitted to revoke a ruling to have a technical adviser participate in the proceedings, upon petition or sua sponte; provided, however, that the court is required to revoke such a ruling if both parties so petition.

(Designation, Appointment, and Dismissal of a Technical Adviser)

Article 92-5 (1) The number of technical advisers is one or more for each case.

(2) Any technical adviser who the court has participate in the proceedings pursuant to the provisions of Article 92-2 is designated by the court for each case, after the opinions of the parties are heard.

(3) A technical adviser serves part-time, and the necessary particulars involved in the appointment and dismissal of a technical adviser are specified by the Rules of the Supreme Court.

(4) A technical adviser is paid an allowance as separately provided for by law, as well as travel expenses, a daily allowance, and accommodation costs in the amounts specified by the Rules of the Supreme Court.

(Disqualifying or Challenging a Technical Adviser)

Article 92-6 (1) The provisions of Articles 23 to 25 (excluding paragraph (2) of said Article) apply mutatis mutandis to a technical adviser.

(2) Once a petition to disqualify or challenge a technical adviser is filed, the technical adviser may not participate in the proceedings of the case with respect to which the petition has been filed until the ruling on the petition becomes final and binding.

(Powers of an Authorized Judge)

Article 92-7 If an authorized judge or a commissioned judge conducts the procedures set forth in each paragraphs of Article 92-2, that judge shall perform the duties of the court and those of the presiding judge under the provisions of said Article to Article 92-4 and Article 92-5, paragraph (2); provided, however, that if an authorized judge carries out the procedures set forth in Article 92-2, paragraph (2), the ruling to have a technical adviser participate in the proceedings, the revocation of such a ruling, and the designation of the technical adviser is made by the court in charge of the case.

## **Subsection 2 Function of a of Judicial Research Official in a Case Involving Intellectual Property**

(Functions of a Judicial Research Official in a Case Involving Intellectual Property)

Article 92-8 If the court finds it to be necessary, it may have the judicial research official who is in charge of conducting research in connection with the trial and judicial decision in a case involving intellectual property at a high court or district court, fulfill the following functions in said case. In such a case, said judicial research official, as ordered by the presiding judge, is to fulfill said functions:

- (i) asking questions of the parties or urging them to offer proof with regard to factual or legal matters, on the following court dates or in the following proceedings, in order to clarify a matter that is related to the litigation:
  - (a) a date for oral arguments or hearing;
  - (b) proceedings for arranging issues or evidence;
  - (c) proceedings for determining whether there exists an obligation to submit a document or an obligation to present an object for inspection;
  - (d) proceedings for deliberating on the particulars involved in the arrangement of issues or evidence or any other necessary particulars involved in the progress of litigation proceedings.
- (ii) asking questions directly of a witness, the parties themselves, or an expert on a date for the examination of evidence;
- (iii) giving an explanation based on expert knowledge on a date for attempting to arrange a settlement;
- (iv) stating opinions about the case to a judge.

(Disqualifying or Challenging a Judicial Research Official in a Case Involving Intellectual Property)

Article 92-9 (1) The provisions of Articles 23 to 25 apply mutatis mutandis to a judicial research official who fulfills the functions as referred to in the preceding Article.

- (2) If a petition has been filed to disqualify or challenge a judicial research official who fulfills the functions as referred to in the preceding Article, the judicial research official may not participate in the case for which the petition has been filed until the ruling on the petition becomes final and binding.

## **Section 3 Court Dates and Time Frames**

(Designation and Change of Court Dates)

Article 93 (1) Court dates are designated by the presiding judge upon petition or

sua sponte.

- (2) A court date may be designated for a Sunday or any other general holiday, but only when this is unavoidable.
- (3) A change of date for oral arguments or preparatory proceedings is only allowed if there are clear grounds for doing so; provided, however, that a change of the initial court date is also allowed if agreed upon by the parties.
- (4) Notwithstanding the provisions of the preceding paragraph, a change of date for oral arguments following preparatory proceedings may only be allowed if there are unavoidable grounds for doing so.

#### (Summons to Appear on a Court Date)

Article 94 (1) A summons to appear for a court date is effected through the service of a writ of summons, through the announcement of a court date to a person who has appeared in connection with the relevant case, or by any other means that is considered to be appropriate.

- (2) If a summons to appear on a court date is effected other than through the service of a writ of summons or the announcement of the court date to a person who has appeared in connection with the case, no legal sanction nor any other disadvantage may be attributed to a party, witness, or expert who does not appear on that court date for failure to keep the court date; provided, however, that this does not apply if the relevant person has submitted a paper document indicating receipt of the summons to appear on that date.

#### (Computation of Time Frames)

Article 95 (1) The computation of a time frames is governed by Civil Code provisions on periods of time.

- (2) If a judicial decision specifying a time frame does not specify when the time frame begins, the time frame begins from the time that the judicial decision becomes effective.
- (3) If the last day of a time frame falls on a Sunday, Saturday, a holiday prescribed in the Act on National Holidays (Act No. 178 of 1948), January 2nd, January 3rd, or any day from December 29th to December 31st, that time frame expires on the following day.

#### (Extension and Shortening of a Time Frame and Additional Time Frames)

Article 96 (1) The court may extend or shorten a statutory time frame or a time frame that it has specified; provided, however, that this does not apply to an inalterable time frame.

- (2) If a time frame is inalterable, the court may establish an additional time frame for a person that is domiciled or resides in a distant location.

(Subsequent Completion of Procedural Acts)

- Article 97 (1) If a party is unable to observe an inalterable time frame due to grounds not attributable thereto, the party may subsequently complete the procedural act that was to be performed within the inalterable time frame, within one week after those grounds cease to exist; provided, however, that a party that is in a foreign country may subsequently complete such a procedural act within two months' time after the relevant grounds cease to exist.
- (2) The provisions of the main clause of paragraph (1) of the preceding Article do not apply to the time frame set forth in the preceding paragraph.

#### **Section 4 Service**

(Principle of Service by the Court Sua Sponte)

- Article 98 (1) Except as otherwise provided, service is effected sua sponte.
- (2) Administrative affairs involved in service are handled by the court clerk.

(Mechanisms for Service)

- Article 99 (1) Except as otherwise provided, service is effected by mail or by a court execution officer.
- (2) In the case of service by mail, a person engaged in postal services is the person that effects service.

(Service by the Court Clerk)

- Article 100 The court clerk may personally serve a person who has appeared for a case that is pending before the court to which the court clerk is assigned.

(Principle of Personal Service)

- Article 101 Except as otherwise provided, a service is effected through the delivery of the document with which a person is to be served, to the person on that it is to be served.

(Service of a Person without the Capacity to Sue or Be Sued)

- Article 102 (1) Service of a person without the capacity to sue or be sued is effected through the statutory agent of such a person.
- (2) If multiple persons are to exercise the authority of representation jointly, service of a person is sufficient for one of them to be served.
- (3) Service of a person who is in a penal institution is effected through the head of the penal institution.

(Place for Service)

- Article 103 (1) Service is effected at the domicile, residence, office, or business

office (hereinafter referred to as the "domicile, etc." in this Section) of the person that is to be served; provided, however, that a statutory agent may also be served at the office or business office of the principal.

- (2) If the place specified in the preceding paragraph is unknown or there is an obstacle to effecting service at that place, service may be effected at the domicile, etc. of another person, where the person who is to be served works based on employment, entrustment, or any other legal act (hereinafter referred to as the "Workplace"). The same applies if the person who is to be served (except one prescribed in paragraph (1) of the following Article) has entered a statement indicating willingness to be served at the Workplace.

(Notification of the Place for Service)

Article 104 (1) The party, statutory agent, or litigation representative shall notify the court in charge of the case of the place or places where the relevant person may be served (limited to a place in Japan). In doing so, the party, statutory agent, or litigation representative may also notify the court of the person to be served.

- (2) Notwithstanding the provisions of the preceding Article, if a notification has been submitted pursuant to the provision of the first sentence of the preceding paragraph, service is effected at the place given in the notification.

- (3) Notwithstanding the provisions of the preceding Article, subsequent service upon a person that does not submit a notification pursuant to the provision of the first sentence of paragraph (1) and that has been served as set forth in one of the following items is effected at the place specified in the relevant item:

(i) service pursuant to the provisions of the preceding Article: the place where such service was effected;

(ii) service pursuant to the provision of the second sentence of the following Article to be effected by a person engaged in postal services at a business office of Japan Post Service Co., Ltd (including a business office of a person that is entrusted by Japan Post Service Co., Ltd with said postal services; the same applies in the second sentence of Article 106, paragraph (1)), and service pursuant to the provision of the second sentence of Article 106, paragraph (1): the place designated as the place where such service was to be effected;

(iii) service pursuant to the provision of Article 107, paragraph (1), item (i): the place designated as the address for such service.

(Service of Persons Wherever They May Be Found)

Article 105 Notwithstanding the provisions of the preceding two Articles, a person that is to be served but that does not manifestly have a domicile, etc. in Japan (excluding one that has submitted a notification pursuant to the

provision of the first sentence of paragraph (1) of the preceding Article), may be served wherever the person effecting the service finds the person that is to be served. The same applies if a person that clearly has a domicile, etc. in Japan or a person that has submitted a notification pursuant to the provision of the first sentence of the same paragraph does not refuse to be served.

(Substituted Service and Service by Leaving Documents)

Article 106 (1) If a person effecting service does not find the person that is to be served at the non-Workplace location where service is to be effected, the relevant document may be delivered to an employee or any other worker or to a person that lives with the person to be served, that has reasonable discretion concerning the receipt of documents. The same applies if a person engaging in postal services is to deliver the document at the business office of Japan Post Service Co., Ltd.

(2) If a person effecting service does not find the person that is to be served at the Workplace (including if the place reported in the notification submitted pursuant to the provisions of the first sentence of Article 104, paragraph (1) is the Workplace) and another person set forth in Article 103, paragraph (2) or that person's statutory agent or employee or any other worker that has reasonable discretion concerning the receipt of documents does not refuse to be delivered the document, the document may be delivered to such a person.

(3) If a person that is to be served or a person that is to be delivered a document pursuant to the provisions of the first sentence of paragraph (1) refuses to service or refuses delivery of the document without a legitimate reason for refusing to do so, the relevant document may be left at a place where service may be effected.

(Service by Registered Mail)

Article 107 (1) In the cases listed in the following items, if it is impossible for service to be effected pursuant to the provisions of the preceding Article, the court clerk may send the document to the place specified in the relevant item by registered mail or using the correspondence delivery services prescribed in Article 2, paragraph (2) of the Act on Correspondence Delivery by Private Business Operators (Act No. 99 of 2002) that are provided by a general correspondence delivery operator prescribed in paragraph (6) of said Article or a specified correspondence delivery operator prescribed in paragraph (9) of said Article, and which are specified by the Rules of the Supreme Court as constituting services equivalent to registered mail (hereinafter referred to as "registered mail, etc." in the following paragraph and paragraph (3)):

(i) if service is to be effected pursuant to the provisions of Article 103: the place specified in Article 103, paragraph (1);



- (ii) if service is to be effected pursuant to the provision of Article 104, paragraph (2): the place set forth in that paragraph;
  - (iii) if service is to be effected pursuant to the provisions of Article 104, paragraph (3): the place set forth in that paragraph (or, if this is the Workplace, this means the domicile, etc. of the person in question as indicated in the case record).
- (2) If a document is sent by registered mail, etc. pursuant to the provisions of item (ii) or (iii) of the preceding paragraph, any document to be served subsequently may be sent by registered mail, etc. to the place specified in item (ii) or (iii) of that paragraph.
- (3) If a document is sent by registered mail, etc. pursuant to the provisions of the preceding two paragraphs, the document is deemed to have been served at the time it is sent.

(Service in a Foreign Country)

Article 108 Service to be effected in a foreign country is served as commissioned by the presiding judge to the competent government agency of that country or the Japanese ambassador, minister, or consul stationed in that country.

(Return of Service)

Article 109 A person that has effected service shall prepare a paper document, enter therein the particulars of the service, and submit it to the court.

(Requirements for Service by Publication)

Article 110 (1) In the following cases and upon petition, the court clerk may effect service by publication:

- (i) if the party's domicile and residence are unknown, and no other place where the party may be served is known;
  - (ii) if it is impossible to effect service pursuant to the provisions of Article 107, paragraph (1);
  - (iii) if, with regard to service that shall be effected in a foreign country, it is impossible to effect service through the means under the provision of Article 108 or it is found to be impossible to effect service even through such means.
  - (iv) if, even after six months have elapsed since the competent government agency of a foreign country is issued a commission pursuant to the provision of Article 108, no paper document that certifies that the agency has effected service is sent.
- (2) In the case as referred to in the preceding paragraph, if the court finds it to be necessary in order to avoid a delay in litigation, it may order the court clerk to effect service by publication, even if there has been no such petition.
- (3) Second and subsequent service by publication on the same party is effected

sua sponte; provided, however, that this does not apply in the case set forth in paragraph (1), item (iv).

(Manner of Effecting Service by Publication)

Article 111 Service by publication is effected by the posting, in the posting area for the court, of notice that the court clerk has retained the document to be served and will deliver it to the person that is to be served at any time.

(When Service by Publication Takes Effect)

Article 112 (1) Service by publication takes effect when two weeks have passed since the day on which the posting under the provision of the preceding Article was made; provided, however, that service by publication as set forth in Article 110, paragraph (3) takes effect on the day following the day on which the posting was made.

(2) In the case of service by publication for service that shall be effected in a foreign country, the time frame set forth in the preceding paragraph is six weeks.

(3) The time frames set forth in the preceding two paragraphs may not be shortened.

(Arrival of Manifestation of Intention by Service by Publication)

Article 113 If a party to litigation is unable to learn the whereabouts of the adverse party and a document served by publication on the adverse party that the party makes a manifestation of intention to the adverse party with respect to the claim that is the subject matter of litigation or with respect to the means of defense, the manifestation of intention is deemed to have reached the adverse party when two weeks have elapsed since the day on which the posting under the provision of Article 111 was made. In such a case, the provision of the proviso to Article 98, paragraph (3) of the Civil Code applies *mutatis mutandis*.

## **Section 5 Judicial Decisions**

(Scope of Res Judicata)

Article 114 (1) Res judicata applies only with regard to the contents of a final and binding judgment that are included in the main text.

(2) In judging the validity or invalidity of a claim asserted for the purpose of an offset, res judicata applies to an amount of money that has been duly asserted in order to effect an offset.

(Scope of Persons Subject to the Effect of a Final and Binding Judgment)

Article 115 (1) A final and binding judgment is valid against the following persons:

- (i) the parties;
  - (ii) a person for that a party has served as a plaintiff or defendant;
  - (iii) the successor to a person listed in one of the preceding two items, that succeeds following the conclusion of oral arguments;
  - (iv) the person retaining possession of the subject matter of the claim on behalf of a person listed in one of the preceding three items.
- (2) The provisions of the preceding paragraph apply mutatis mutandis to a declaration of provisional execution.

(When a Judgment Becomes Final and Binding)

Article 116 (1) A judgment does not become final and binding until the expiration of the time frame specified for filing of an appeal with the court of second instance or a final appeal (excluding a final appeal as referred to in Article 327, paragraph (1) (including as applied mutatis mutandis pursuant to Article 380, paragraph (2))), for filing of a petition as referred to in Article 318, paragraph (1), or for filing of an objection under the provisions of Article 357 (including as applied mutatis mutandis pursuant to Article 367, paragraph (2)) or Article 378, paragraph (1).

- (2) A judgment is blocked from becoming final and binding by the filing of an appeal with the court of second instance, the filing of a final appeal as referred to in the preceding paragraph, or the filing of a petition or an objection as referred to in that paragraph, that is made within the time frame set forth in that paragraph.

(Action to Modify a Final and Binding Judgment Ordering Compensation by Periodic Payments)

Article 117 (1) If, with regard to a final and binding judgment ordering compensation through periodic payments for damage arising prior to the conclusion of oral arguments, any significant change has occurred in terms of the severity of residual disability, wage standards, or any other circumstances that were used as the basis for calculation of the amount of damages after the conclusion of oral arguments, an action may be filed to modify the judgment; provided, however, that this applies only to the part of the judgment involving periodic payments that will become due after the date the action is filed.

- (2) An action as referred to in the preceding paragraph is under the exclusive jurisdiction of the court of first instance.

(Validity of a Final and Binding Judgment Rendered by a Foreign Court)

Article 118 A final and binding judgment rendered by a foreign court is valid

only if it meets all of the following requirements:

- (i) the jurisdiction of the foreign court is recognized pursuant to laws and regulations, conventions, or treaties;
- (ii) the defeated defendant has been served (excluding service by publication or any other service similar thereto) with the requisite summons or order for the commencement of litigation, or has appeared without being so served;
- (iii) the content of the judgment and the litigation proceedings are not contrary to public policy in Japan;
- (iv) a guarantee of reciprocity is in place.

(Notice of Rulings and Orders)

Article 119 A ruling or order takes effect when notice thereof is given by a means that is considered to be appropriate.

(Revocation of a Judicial Decision Concerning Control of Litigation Proceedings)

Article 120 A ruling or order concerning control of litigation proceedings may be revoked at any time.

(Objection to a Disposition by the Court Clerk)

Article 121 The court to which the court clerk is assigned reaches a judicial decision on any objection to a disposition made by that court clerk, in the form of a ruling.

(Mutatis Mutandis Application of Provisions on Judgments)

Article 122 Provisions on judgments apply mutatis mutandis to rulings and orders, unless contrary to the nature thereof.

(Powers of Assistant Judges)

Article 123 An assistant judge may independently reach a judicial decision other than a judgment.

## **Section 6 Continuance or Suspension of Litigation Proceedings**

(Continuance of Litigation Proceedings and Substitution)

Article 124 (1) Litigation proceedings are subject to a continuance if any of the following grounds occur. In such a case, the person specified in the relevant item shall be substituted as a party:

- (i) a party's death: the party's heir, administrator of the inherited property, or any other person that shall continue the action pursuant to law or regulation;

- (ii) the disappearance due to merger of a corporation that is a party: the corporation incorporated in the merger or the corporation surviving the merger;
  - (iii) a party's loss of the capacity to sue or be sued, or a statutory agent's death or extinguishment of the authority of representation: the party's statutory agent or the party who has acquired the capacity to sue or be sued;
  - (iv) termination of duties involved in a trust assigned to one of the persons listed in (a) to (c) below: the relevant person specified in (a) to (c):
    - (a) a trustee that is a party: the new trustee or the trust property administrator or incorporated trust property administrator;
    - (b) a trust property administrator or incorporated trust property administrator that is a party: the new trustee, new trust property administrator, or new incorporated trust property administrator;
    - (c) a trust caretaker that is a party: the beneficiary or the new trust caretaker.
  - (v) the loss of status, due to death or any other grounds, of the person of a certain status who stood as a party to the litigation in that person's own name on behalf of another person: a person of the same status;
  - (vi) all appointed parties' loss of status due to death or any other grounds: all appointers or a newly appointed party.
- (2) The provisions of the preceding paragraph do not apply during a time when there is a litigation representative.
- (3) Even if there are grounds as set forth in paragraph (1), item (i), the heir is not permitted to be substituted as a party during the time frame in which it is possible to renounce the inheritance.
- (4) The provision of paragraph (1), item (ii) do not apply if the merger may not be duly asserted against the adverse party.
- (5) If the statutory agent set forth in paragraph (1), item (iii) is a curator or assistant, the provision of that paragraph do not apply in the following cases:
- (i) the person under curatorship or person under assistance is not required to obtain consent of the curator or assistant for performing procedural acts;
  - (ii) the person under curatorship or person under assistance is required to obtain consent prescribed in the preceding item, and has obtained it.

Article 125 Deleted

(Adverse Party's Petition for Substitution)

Article 126 The adverse party may also file a petition for the substitution of a party.

(Notice of Substitution)

Article 127 When a petition for the substitution of a party has been filed, the court shall notify the adverse party thereof.

(Judicial Decision on Substitution)

Article 128 (1) When a petition for the substitution of a party has been filed, if the court finds the petition to be groundless after conducting an examination sua sponte, the court shall rule to dismiss the petition without prejudice, in the form of a ruling.

(2) If a petition for the substitution of a party is filed during a continuance of litigation proceedings following the service of a judgment document or written statement as referred to in Article 254, paragraph (2) (including as applied mutatis mutandis pursuant to Article 374, paragraph (2)), the court that reached the judgment in question shall reach a judicial decision on the petition.

(Order to Continue Sua Sponte)

Article 129 Even if neither party has filed a petition for the substitution of a party, the court may order litigation proceedings to continue sua sponte.

(Suspension Due to Court Inability to Execute Duties)

Article 130 If the court is unable to execute its duties due to a natural disaster or any other cause, litigation proceedings are suspended until such cause ceases to exist.

(Suspension Due to the Incapacitation of a Party)

Article 131 (1) If a party is unable to continue with litigation proceedings due to an incapacitation of an uncertain duration, the court may issue an order the suspension of litigation proceedings, in the form of a ruling.

(2) The court may revoke the ruling as referred to in the preceding paragraph.

(Impact of Continuances and Suspensions)

Article 132 (1) A judgment may be rendered even during a continuance of litigation proceedings.

(2) If there is a continuance or suspension of litigation proceedings, the progress of time frames is interrupted. In such a case, all time frames start to run again at the time notice is given of the substitution of a party in proceedings or at the time that litigation proceedings continue.

## **Chapter VI Dispositions on the Collection of Evidence Prior to the Filing of an Action**

(Inquiry Prior to the Filing of an Action)

Article 132-2 (1) If a person that intends to file an action has provided advance, written notice to the would-be defendant in the action (hereinafter referred to as "advance notice" in this Chapter) of the filing of an action, the person that has provided the advance notice (hereinafter referred to as the "person providing advance notice" in this Chapter), within four months after providing that notice and before filing of the action, may specify a reasonable time frame for response and direct a written inquiry to the person that has received the advance notice, so as to elicit from that person a written response with regard to particulars that will clearly be necessary for preparing allegations or proof if the action is filed; provided, however, that this does not apply if the inquiry falls under any of the following items:

- (i) an inquiry that falls under any of the items of Article 163;
  - (ii) an inquiry into the particulars of a confidential matter in the private life of the adverse party or a third party, any response to which would be substantially detrimental to the adverse party or the third party in that party's social life;
  - (iii) an inquiry into the particulars of a trade secret of the adverse party or a third party.
- (2) If the third party in question in an inquiry into the particulars of a confidential matter the private life of a third party as prescribed in item (ii) of the preceding paragraph or in an inquiry into the trade secret of a third party as prescribed in item (iii) of that paragraph, authorizes the adverse party to respond to the inquiry, those provisions do not apply.
- (3) Written advance notice shall detail the substance of the claim behind the action that the person intends to file and the essential points of the dispute.
- (4) It is not permissible for an inquiry as referred to in paragraph (1) to be made based on an advance notice that duplicates any previous advance notice.

Article 132-3 (1) After a person that has received advance notice (hereinafter referred to as a "recipient of advance notice" in this Chapter) has responded to the person providing advance notice with a written response to that advance notice which details the substance of the recipient's answers with regard to the substance of the claim and essential points of dispute as referred to in paragraph (3) of the preceding Article that are detailed in the written advance notice, the recipient of advance notice, within four months after the day on which the advance notice was provided and before the action is filed, may specify a reasonable time frame for response and direct a written inquiry to the person providing advance notice, so as to elicit from that person a written response with regard to particulars that will clearly be necessary for preparing allegations or proof if the action is filed. In such a case, the provisions of the proviso to paragraph (1) of the preceding Article and paragraph (2) of that

Article apply mutatis mutandis.

- (2) It is not permissible for an inquiry as referred to in the preceding paragraph to be made based on a response to an advance notice that duplicates any previous advance notice.

(Dispositions on the Collection of Evidence Prior to the Filing of an Action)

Article 132-4 (1) If the court, at the petition by the person providing advance notice or by a recipient of advance notice that has responded as referred to in paragraph (1) of the preceding Article, finds that it is difficult for the petitioner to collect evidence that will clearly be necessary as proof if the action for which advance notice has been provided is filed, the court, after hearing the opinions of the adverse party to the advance notice or the response (hereinafter simply referred to as the "adverse party" in this Chapter) and before the action is filed, may reach one of the following dispositions in connection with the collection of evidence; provided, however, that this does not apply if the court finds that doing so would be inappropriate due to the time that would be required for the collection of evidence or the unreasonable burden that it would place on the person that would undertake the commission:

- (i) commissioning the person in possession of a document (including an object prescribed in Article 231; hereinafter the same applies in this Chapter) to send the document;
  - (ii) commissioning a government agency or public office, a foreign government agency or public office, or a school, chamber of commerce, exchange, or any other organization (referred to as a "public agency, etc." in paragraph (1), item (ii) of the following Article) to conduct the necessary examination;
  - (iii) commissioning a person who has expert knowledge and experience to state an opinion based on such expert knowledge and experience;
  - (iv) ordering a court execution officer to conduct an examination into the form, possession, or other current conditions of an object.
- (2) A petition for a disposition as referred to in the preceding paragraph shall be filed within an inalterable time frame of four months from the day on which the advance notice is provided; provided, however, that this does not apply if the adverse party consents to the petition's being filed after the expiration of this time frame.
- (3) It is not permissible for a petition for a disposition as referred to in paragraph (1) to be filed based on an advance notice that duplicates any previous advance notice or based on the response to a duplicate advance notice.
- (4) After having reached a disposition as referred to in paragraph (1), the court may revoke that disposition if it finds that the disposition has come to be inappropriate due to the circumstances prescribed in the proviso to that paragraph.



(Court of Jurisdiction in Dispositions on the Collection of Evidence)

Article 132-5 (1) A petition for a disposition listed in one of the following items shall be filed with the district court of jurisdiction for the place specified in the relevant item:

- (i) a petition for the disposition as referred to in paragraph (1), item (i) of the preceding Article: the locality that constitutes the general venue for an action involving the petitioner or for an action involving the adverse party, or the residence of the person in possession of the document
  - (ii) a petition for the disposition as referred to in paragraph (1), item (ii) of the preceding Article: the locality that constitutes the general venue for an action involving the petitioner or for an action involving the adverse party, or the locality of the public agency, etc. that would undertake the commission for the examination;
  - (iii) a petition for the disposition as referred to in paragraph (1), item (iii) of the preceding Article: the locality that constitutes the general venue for an action involving the petitioner or for an action involving the adverse party, or the location of the specific object about which the commission would be issued for a statement of opinions;
  - (iv) a petition for the disposition as referred to in paragraph (1), item (iv) of the preceding Article: the location of the object connected with the examination.
- (2) The provisions of Article 16, paragraph (1), Articles 21 and 22 apply mutatis mutandis to a case that involves a petition for a disposition as referred to in paragraph (1) of the preceding Article.

(Procedures for a Disposition on the Collection of Evidence)

Article 132-6 (1) If the court reaches a disposition as referred to in Article 132-4, paragraph (1), items (i) to (iii), it shall specify a time frame during which the person issued the commission shall send the document, report the examination results, or state an opinion.

- (2) A report of examination results in connection with a commission as referred to in Article 132-4, paragraph (1), item (ii) or an order as referred to in Article 132-4, paragraph (1), item (iv), or a statement of opinion under the commission as referred to in Article 132-4, paragraph (1), item (iii) shall be offered by means of a paper document.
- (3) When a document has been sent, examination results have been reported, or opinions have been stated based on a disposition as referred to in Article 132-4, paragraph (1), the court shall notify the petitioner and the adverse party to that effect.
- (4) The court shall retain any document sent thereto and any written report of examination results or written statement of opinion during the one-month

period after the day on which the court notifies the petitioner and the adverse party as prescribed in the provision of the preceding paragraph, in order to provide them for the petitioner's and the adverse party's use through the process specified in the following Article.

- (5) The provision of Article 180, paragraph (1) applies mutatis mutandis to a disposition as referred to in Article 132-4, paragraph (1), the provision of Article 184, paragraph (1) applies mutatis mutandis to a disposition as referred to in Article 132-4, paragraph (1), items (i) to (iii), and the provision of Article 213 applies mutatis mutandis to a disposition as referred to in Article 132-4, paragraph (1), item (iii).

(Inspection of the Record of a Case)

Article 132-7 (1) The petitioner and the adverse party may file a request with the court clerk to inspect or copy the record of a case in connection with which a petition for a disposition as referred to in Article 132-4, paragraph (1) has been filed, to be issued an authenticated copy, transcript, or extract of such a record, or to be issued a certificate of the particulars of said case.

- (2) The provisions of Article 91, paragraphs (4) and (5) apply mutatis mutandis to the record as referred to in the preceding paragraph. In this, the term "the preceding paragraph" in paragraph (4) of that Article is deemed to be replaced with "Article 132-7, paragraph (1)", and the phrase "a party to the case or a third party that makes a prima facie showing of interest" is deemed to be replaced with "the petitioner or the adverse party".

(Appeal Not Permitted)

Article 132-8 No appeal may be entered against a judicial decision on a petition for a disposition as referred to in Article 132-4, paragraph (1).

(Burden of Costs in Connection with a Judicial Decision Involving a Disposition for the Collection of Evidence)

Article 132-9 Costs involved in a judicial decision on a petition for a disposition as referred to in Article 132-4, paragraph (1) are borne by the petitioner.

## **Chapter VII Filing Petitions Through Electronic Data Processing Systems**

Article 132-10 (1) A petition or other statement connected with proceedings in a civil action (hereinafter referred to as a "Petition, etc.") which, pursuant to the provisions of this Code or other laws and regulations concerning said Petition, etc., is to be filed or entered with the court specified by the Supreme Court (including one to be filed or entered with that court's presiding judge, authorized judge, commissioned judge, or court clerk) by means of Paper

Documents, etc. (meaning a paper document, a transcript, extract, authenticated copy, or duplicate of a document, a duplicate of a bill or note, or any other paper or other tangible object into which information that can be perceived with the human senses, such as characters and shapes, has been entered; the same applies hereinafter), may be filed or entered using electronic data processing systems (meaning the electronic data processing systems that connect a Computer (including its input and output devices; the same applies hereinafter) used by the court and the Computer used by the person filing the petition, etc. or the person receiving notice of a disposition under the provision of Article 399, paragraph (1), over telecommunication lines; the same applies in Articles 397 to 401) as provided for by the Rules of the Supreme Court, notwithstanding the provisions of said laws and regulations; provided, however, that this does not apply to a Petition, etc. connected with demand procedures if the application for a demand for payment is filed by means of a paper document.

- (2) A Petition, etc. filed pursuant to the provision of the main clause of the preceding paragraph is deemed to have been filed by means of the Paper Documents, etc. prescribed in the provisions of the laws and regulations relevant to said Petition, etc., in which it is provided that the Petition, etc. is to be filed by means of a Paper Documents, etc., and the provisions of the laws and regulations relevant to said Petition, etc. apply.
- (3) A Petition, etc. filed pursuant to the provision of the main clause of paragraph (1) is deemed to have arrived at the court as referred to in that paragraph when it is recorded in a file stored on the Computer used by said court.
- (4) Notwithstanding the provisions of other laws and regulations, in a case as referred to in the main clause of paragraph (1), a person filing a Petition, etc. that is to bear a signature, etc. (meaning the relevant person's signature, name, or seal or other inclusion of the relevant person's name or trade name in Paper Documents, etc.; hereinafter the same applies in this paragraph) pursuant to the provisions of other laws and regulations relevant to said Petition, etc., in lieu of affixing said signature, etc., shall take measures to clarify the name or trade name of the person filing said Petition, etc., as provided for by the Rules of the Supreme Court.
- (5) When a Petition, etc. filed pursuant to the provision of the main clause of paragraph (1) (excluding a Petition, etc. filed during demand procedures; the same applies in the following paragraph) has been recorded in the file prescribed in paragraph (3), the court as referred to in paragraph (1) shall output the contents of the data recorded in said file in the form of a paper document.
- (6) The inspection or copying of a case record or issuance of an authenticated

copy, transcript, or extract of a case record under the provisions of Article 91, paragraph (1) or (3) (referred to as the "inspection, etc. of a case record" in Article 401) that includes a Petition, etc. filed pursuant to the provision of the main clause of paragraph (1), is to be effected by means of the paper document as referred to in the preceding paragraph. The same applies to service or delivery of a document in connection with said Petition, etc.

## **Part II Litigation Proceedings in the First Instance**

### **Chapter I Actions**

(Formalities of Filing of an Action)

Article 133 (1) An action shall be filed through the submission of a complaint to the court.

(2) The following particulars shall be entered in a complaint:

- (i) the parties and statutory agents;
- (ii) the object of the claim and a statement of the claims.

(Action for Declaratory Judgment as to the Validity of a Certificate)

Article 134 An action for declaratory judgment may also be filed to determine the authenticity of the provenance of a paper document that certifies a legal relationship.

(Action for Future Performance)

Article 135 An action seeking future performance may be filed only if it is necessary to claim this in advance.

(Joinder of Claims)

Article 136 Multiple claims may only be filed in a single action if they are handled through the same kind of litigation proceeding.

(Presiding Judge's Authority to Examine a Complaint)

Article 137 (1) If a complaint is in violation of the provisions of Article 133, paragraph (2), the presiding judge shall specify a reasonable time frame and order that the defect to be corrected within that time frame. The same applies if the fees for filing of an action required under the provisions of the Act on the Costs of Civil Procedure (Act No. 40 of 1971) have not been paid.

(2) In the case as referred to in the preceding paragraph, if the plaintiff fails to correct the defect, the presiding judge shall issue an order dismissing the complaint.

(3) An immediate appeal may be filed against the order as referred to in the preceding paragraph.

(Service of a Complaint)

Article 138 (1) A complaint shall be served on the defendant.

(2) The provisions of the preceding Article apply mutatis mutandis if it is not possible to serve the complaint (including if the expenses necessary for serving the complaint are not prepaid).

(Designation of a Date for Oral Arguments)

Article 139 When an action has been filed, the presiding judge shall designate a date for oral arguments and summon the parties to appear.

(Dismissal of an Action Without Prejudice, Without Oral Arguments Being Heard)

Article 140 If an action is not in accordance with the law and this defect cannot be corrected, the court may enter a judgment to dismiss the action without prejudice, without hearing oral arguments.

(Dismissal of an Action Without Prejudice When Expenses for a Summons Have Not Been Prepaid)

Article 141 (1) If the court has specified a reasonable time frame and ordered the plaintiff to prepay the necessary expenses for summoning the parties to appear for a court date under the provisions of the Act on the Costs of Civil Procedure, but those expenses have not been prepaid, the court may rule to dismiss the action without prejudice, in the form of a ruling, but only if the defendant has no objection to this.

(2) An immediate appeal may be filed against the ruling as referred to in the preceding paragraph.

(Prohibition Against the Filing of Duplicate Actions)

Article 142 It is not permitted for a party to a case pending before the court to file another action in the case.

(Amendment of a Claim)

Article 143 (1) As long as it does not fundamentally change the claim, the plaintiff may amend the claim or the statement of the claims until such time as oral arguments have reached a conclusion; provided, however, that this does not apply if doing so would substantially delay the litigation proceedings.

(2) The amendment of a claim shall be effected by means of a paper document.

(3) The paper document as referred to in the preceding paragraph shall be served upon the adverse party.

(4) If the court finds the amendment of the claim or of the statement of the

claims to be inappropriate, it shall rule against permitting such amendment, upon petition or sua sponte.

(Addition of Appointers' Claims)

- Article 144 (1) If a party is appointed to stand as plaintiff through an appointment under the provision of Article 30, paragraph (3), that party may add a claim on behalf of the appointers until such time as oral arguments have reached a conclusion.
- (2) If a party is appointed to stand as defendant through an appointment under the provision of Article 30, paragraph (3), the plaintiff may add a claim concerning the defendant's appointers until such time as oral arguments have reached a conclusion.
- (3) The provisions of the proviso to paragraph (1) of the preceding Article and paragraphs (2) to (4) of that paragraph apply mutatis mutandis to the addition of a claim as referred to in the preceding two paragraphs.

(Action with an Interlocutory Declaration)

- Article 145 (1) If the judicial decision being sought in pending litigation is connected with the validity or invalidity of the legal relationship in dispute, a party may expand the claim and request a declaratory judgment as to such legal relationship; provided, however, that this does not apply if the request for a declaration as to the relationship is subject to the exclusive jurisdiction of another court (excluding one determined by an agreement between the parties pursuant to the provisions of Article 11).
- (2) If the litigation as referred to in the preceding paragraph is pending before the court specified in any of the items of Article 6, paragraph (1), and the request for the declaration as referred to in the preceding paragraph is subject to the exclusive jurisdiction of another court pursuant to the provisions of paragraph (1) of that Article, the provision of the proviso to the preceding paragraph do not apply.
- (3) If, pursuant to the provisions concerning exclusive jurisdiction, Japanese courts have no jurisdiction over a request for a declaration as referred to in paragraph (1), a party may not request a declaratory judgment as referred to in that paragraph.
- (4) The provisions of Article 143, paragraphs (2) and (3) apply mutatis mutandis to the expansion of a claim under the provision of paragraph (1).

(Counterclaims)

- Article 146 (1) The defendant may file a counterclaim with the court where the principal action is pending up until such time as oral arguments have reached a conclusion, but only if the subject matter of the counterclaim is a claim with

a bearing on the claim that is the subject matter of the principal action or with a bearing on the means of defense; provided, however, that this does not apply in the following cases:

- (i) if the claim that is the subject matter of the counterclaim is subject to the exclusive jurisdiction of another court (excluding one determined by an agreement between the parties pursuant to the provisions of Article 11);
  - (ii) if the filing of a counterclaim would substantially delay litigation proceedings.
- (2) If the principal action is pending before a court specified in any of the items of Article 6, paragraph (1), and the claim that is the subject matter of the counterclaim is subject to the exclusive jurisdiction of another court pursuant to the provisions of paragraph (1) of that Article, the provision of item (i) of the preceding paragraph does not apply.
- (3) If the Japanese courts have no jurisdiction over a claim that is the subject matter of a counterclaim, the defendant may file a counterclaim pursuant to the provisions of paragraph (1) only if the subject matter of the counterclaim is a claim with a close bearing on the claim that is the subject matter of the principal action or with a close bearing on the means of defense; provided, however, that this does not apply if the Japanese courts have no jurisdiction over the claim that is the subject matter of the counterclaim pursuant to the provisions on exclusive jurisdiction.
- (4) Counterclaims are governed by the provisions on actions.

(When Interruption of Prescription Takes Effect)

Article 147 The necessary judicial claim to interrupt prescription or cause a statutory time frame to be observed takes effect at the time that an action is filed or at the time that the paper document as referred to in Article 143, paragraph (2) (including as applied *mutatis mutandis* pursuant to Article 144, paragraph (3) or Article 145, paragraph (4)) is submitted to the court.

## **Chapter II Planned Trials**

(Planned Progress of Litigation Proceedings)

Article 147-2 The court and the parties, in order to achieve a fair and speedy trial, shall endeavor to abide by the planned progress of litigation proceedings.

(Plan for Trial)

Article 147-3 (1) If due to the complexities of a case, such as the large number of particulars that shall be examined or complications involving the same, or if due to any other circumstances, it is found to be necessary in order for the court to hold a fair and speedy trial, the court shall consult with both parties

- and formulate a plan for trial based on the outcome of that consultation.
- (2) A plan for trial as referred to in the preceding paragraph shall specify the following particulars:
- (i) the time frame for arranging issues and evidence;
  - (ii) the time frame for examining witnesses and the parties themselves;
  - (iii) the intended time frame for concluding oral arguments and rendering a judgment.
- (3) In addition to the particulars set forth in the items of the preceding paragraph, the plan for trial as referred to in paragraph (1) may specify the time frame for presenting allegations or evidence with regard to any specific matter, and any other particulars that are necessary from the perspective of the planned progress of litigation proceedings.
- (4) If the court finds it necessary in consideration of the current status of a trial, the status of the party's pursuit of litigation, and any other circumstances, the court may consult with both parties and modify the plan for trial as referred to in paragraph (1) based on the outcome of the consultation.

### **Chapter III Oral Arguments and Preparation Therefor**

#### **Section 1 Oral Arguments**

(Presiding Judge's Authority to Control Litigation Proceedings)

Article 148 (1) The presiding judge directs oral arguments.

- (2) The presiding judge may permit a person to speak or prohibit a person who does not comply with the judge's orders from speaking.

(Authority to Ask for an Explanation)

Article 149 (1) The presiding judge, on a date for oral arguments or on any other date, may ask questions of a party or call for a party to give proof with regard to a factual or legal matter, in order to clarify a matter that is related to the litigation.

- (2) An associate judge, after notifying the presiding judge, may take the measures prescribed in the preceding paragraph.
- (3) A party may, on a date for oral arguments or on any other date, request the presiding judge to ask any necessary questions.
- (4) If the presiding judge or associate judge takes the measures under the provisions of paragraph (1) or paragraph (2) on a date other than a date for oral arguments with regard to a matter that could materially change the allegations or evidence, the judge shall notify the adverse party of the content thereof.

(Objection to the Control of Litigation Proceedings)



Article 150 If a party objects to an order issued by the presiding judge in connection with the control of oral arguments or objects to the measures taken by the presiding judge or associate judge under the provisions of paragraph (1) or paragraph (2) of the preceding Article, the court reaches a judicial decision on such objection in the form of a ruling.

(Order for Clarification)

Article 151 (1) In order to clarify a matter related to litigation, the court may reach any of the following dispositions:

- (i) ordering one of the parties themselves or the statutory agent thereof to appear on a date for oral arguments;
- (ii) requesting a person that the court considers to be appropriate, and who handles a party's business affairs or acts as a party's assistant, to enter a statement on a date for oral arguments;
- (iii) requesting the submission of a litigation document, document cited during litigation, or any other object held by a party;
- (iv) retaining a document or other object submitted by a party or a third party at the court;
- (v) inspecting evidence or ordering expert testimony;
- (vi) commissioning an examination.

(2) Provisions on the examination of evidence apply *mutatis mutandis* to the inspection of evidence, expert testimony, and the commissioning of examinations under the preceding paragraph.

(Consolidation of Oral Arguments)

Article 152 (1) The court may order the restriction, separation, or consolidation of oral arguments, or revoke such order.

(2) If the court has ordered the consolidation of oral arguments for cases involving different parties and a party requests the examination of a witness who has already been examined before the consolidation but whom the party had no chance to examine, that examination shall be carried out.

(Resumption of Oral Arguments)

Article 153 The court may order the resumption of oral arguments that have been concluded.

(Presence of Interpreters)

Article 154 (1) If a person participating in oral arguments is unable to communicate in Japanese or is unable to hear or speak, arrangements are made for an interpreter to be present at oral arguments; provided, however, that it is permissible to ask questions of a person who is unable to hear or

speak or to cause such a person to enter a statement, by means of writing.

(2) The provisions on the experts apply *mutatis mutandis* to interpreters.

(Measures for Persons Lacking the Ability to Participate in Oral Arguments)

Article 155 (1) The court may prohibit a party, agent, or assistant in court who is unable to enter the necessary statement for clarifying a matter related to the litigation, from entering a statement, and specify a new date for continuing oral arguments.

(2) If the court has prohibited a person from entering a statement pursuant to the provisions of the preceding paragraph, the court may order the person to be accompanied by an attorney at law, when it finds this to be necessary.

(Timing for Presenting Allegations and Evidence)

Article 156 Allegations and evidence shall be presented at an appropriate time, in accordance with the status of progress in the litigation.

(Time Frame for Presenting Allegations and Evidence When a Plan for Trial Has Been Set)

Article 156-2 If the presiding judge finds it to be necessary for the progress of litigation proceedings based on a plan for trial as referred to in Article 147-3, paragraph (1), the presiding judge may specify a time frame for presenting allegations and evidence on a specific matter, after hearing the opinions of the parties.

(Dismissal of Allegations or Evidence Presented After Its Time Without Prejudice)

Article 157 (1) With regard to allegations or evidence that a party has presented after the time for doing so, whether intentionally or through gross negligence, if the court finds that such allegations or evidence will delay the conclusion of litigation, it may rule to dismiss them without prejudice, upon petition or *sua sponte*.

(2) The provisions of the preceding paragraph also apply if a party does not give the necessary explanation with regard to allegations or evidence whose import is unclear, or does not appear on the date for giving an explanation.

(Dismissal of Allegations or Evidence Without Prejudice When a Plan for Trial Is Set)

Article 157-2 If a time frame for presenting allegations and evidence on a specific matter is specified pursuant to the provisions of Article 147-3, paragraph (3) or Article 156-2 (including as applied *mutatis mutandis* pursuant to Article 170, paragraph (5)), and the court, with regard to

allegations or evidence that a party has presented after the expiration of such time frame, finds that such allegations or evidence would be substantially detrimental to the progress of litigation proceedings based on the plan for trial, the court may rule to dismiss them without prejudice upon petition or sua sponte; provided, however, that this does not apply if the party has made a prima facie showing of reasonable grounds for the party having been unable to present the allegations or evidence within that time frame.

(Constructive Statements in a Complaint)

Article 158 If a plaintiff or defendant does not appear on the first date for oral arguments or appears on that date but does not present any oral arguments on the merits, the court may deem the plaintiff or defendant to have stated the particulars detailed in the complaint or written answer or any other brief that party has submitted, and have the adverse party who has appeared on that date present oral arguments.

(Constructive Admission)

Article 159 (1) If a party, during oral arguments, does not make it clear that the party denies a fact alleged by the adverse party, the party is deemed to have admitted that fact; provided, however, that this does not apply if it should be found, based on the entire import of oral arguments, that the party has denied such a fact.

(2) A person offering a statement indicating that person to have no knowledge of a fact alleged by the adverse party is presumed to have denied that fact.

(3) The provision of paragraph (1) apply mutatis mutandis if a party does not appear on a date for oral arguments; provided, however, that this does not apply if such party is summoned through service by publication.

(Record of Oral Arguments)

Article 160 (1) The court clerk shall prepare a record of oral arguments for each date of oral arguments.

(2) An objection made by a party or any other person concerned to any entry in the record shall be entered in the record.

(3) Observance of provisions concerning the formalities of oral arguments may be proven only through the record; provided, however, that this does not apply in the event of the loss of the record.

## **Section 2 Briefs**

(Briefs)

Article 161 (1) Oral arguments shall be prepared in writing.

- (2) A brief details the following particulars:
- (i) allegations and evidence;
  - (ii) statements about the adverse party's claim and allegations and evidence.
- (3) During oral arguments for which the adverse party is not present in court, no facts other than those stated in a brief (limited to one served on the adverse party or one whose receipt the adverse party has indicated in a paper document submitted thereby) may be alleged.

(Time Frame for Submission of Briefs)

Article 162 The presiding judge may specify a time frame for submitting a written answer or a brief detailing an allegation with regard to a specific matter or for offering evidence of a specific matter.

(Inquiry by a Party)

Article 163 While litigation is pending, a party may specify a reasonable time frame for response and direct a written inquiry to the adverse party, so as to elicit from that party a written response with regard to particulars that are necessary for preparing allegations or proof; provided, however, that this does not apply if the inquiry falls under any of the following items:

- (i) an inquiry that is non-concrete or non-specific;
- (ii) an inquiry that insults the adverse party or that inhibits a free choice of response;
- (iii) an inquiry that constitutes a repetition of any previous inquiry;
- (iv) an inquiry asking for an opinion;
- (v) an inquiry that would require unreasonable expense or time for the adverse party to respond to;
- (vi) an inquiry about the same kind of particulars as those regarding which a person may refuse to testify pursuant to the provisions of Article 196 or Article 197.

### **Section 3 Proceedings for Arranging Issues and Evidence**

#### **Subsection 1 Preliminary Oral Arguments**

(Commencement of Preliminary Oral Arguments)

Article 164 If the court finds it necessary in order to arrange issues and evidence, the court may hold preliminary oral arguments as provided for in this Subsection.

(Confirmation of the Facts That Will Be Proven)

Article 165 (1) In closing preliminary oral arguments, the court is to confirm with the parties the facts that will be proven through the subsequent

examination of evidence.

- (2) If the presiding judge finds it to be appropriate, in closing preliminary oral arguments, the judge may have a party submit a paper document summarizing the issues and evidence as arranged through the preliminary oral arguments.

(Closing of Proceedings Due to a Party's Non-Appearance)

Article 166 If a party does not appear for a court date or does not submit a brief or offer evidence within the time frame specified pursuant to the provision of Article 162, the court may close preliminary oral arguments.

(Presentation of Allegations and Evidence After the Close of Preliminary Oral Arguments)

Article 167 At the request of the adverse party, a party that has presented allegations or evidence after the close of preliminary oral arguments shall explain to the adverse party the reasons that the party was unable to present the allegations or evidence prior to the close of preliminary oral arguments.

## **Subsection 2 Preparatory Proceedings**

(Commencement of Preparatory Proceedings)

Article 168 If the court finds it to be necessary in order to arrange issues and evidence, the court may refer a case to preparatory proceedings, after hearing the opinions of the parties.

(Date for Preparatory Proceedings)

- Article 169 (1) Preparatory proceedings are conducted on a date that both parties are able to attend.
- (2) The court may permit the attendance of a person it considers appropriate; provided, however, that the court shall permit the attendance of any person a party requests, unless that person's attendance would be detrimental to the conduct of the proceedings.

(Procedural Acts in Preparatory Proceedings)

- Article 170 (1) The court may have a party submit a brief.
- (2) On a date for preparatory proceedings, the court may reach a judicial decision regarding the offering of evidence or any other judicial decision that may be reached on a date other than a date for oral arguments, and may examine written evidence (including objects prescribed in Article 231).
- (3) If a party resides in a distant location or the court finds it to be appropriate for any other reason, after hearing the opinions of the parties, the court, as provided by the Rules of the Supreme Court, may conduct the proceedings on a

date for preparatory proceedings in a way that enables the court and both parties to communicate with one another at the same time, through audio transmissions; provided, however, that this applies only if one of the parties appears on that date.

- (4) The party who has participated in the proceedings as referred to in the preceding paragraph without appearing on the date as referred to in that paragraph is deemed to have appeared on that date.
- (5) The provisions of Articles 148 to 151; Article 152, paragraph (1); Articles 153 to 159; Article 162; Article 165; and Article 166 apply mutatis mutandis to preparatory proceedings.

(Preparatory Proceedings by an Authorized Judge)

Article 171 (1) The court may have an authorized judge conduct preparatory proceedings.

- (2) When an authorized judge conducts preparatory proceedings, the court's and the presiding judge's duties under the provisions of the preceding two Articles (excluding the reaching of a judicial decision prescribed in paragraph (2) of the preceding Article) are performed by the authorized judge; provided, however, that a judicial decision on an objection under the provision of Article 150 as applied mutatis mutandis pursuant to paragraph (5) of that Article and a judicial decision on dismissal without prejudice under the provision of Article 157-2 as applied mutatis mutandis pursuant to that paragraph are reached by the court in charge of the case.
- (3) An authorized judge who conducts preparatory proceedings may reach a judicial decision to commission an examination under the provisions of Article 186 or to commission expert testimony, a judicial decision regarding the offering of documentary evidence following the submission of documents (including the objects prescribed in Article 231), or a judicial decision to commission the sending of documents (including the objects prescribed in Article 229, paragraph (2) and Article 231).

(Revocation of a Judicial Decision to Refer a Case to Preparatory Proceedings)

Article 172 If the court finds it to be appropriate, it may revoke a judicial decision to refer a case to preparatory proceedings, upon petition or sua sponte; provided, however, that the court shall revoke such a judicial decision if both parties so petition.

(Statement of the Outcome of Preparatory Proceedings)

Article 173 The parties, in oral arguments, shall state the outcome of preparatory proceedings.

(Presenting Allegations and Evidence After the Close of Preparatory Proceedings)

Article 174 The provision of Article 167 applies mutatis mutandis to a party that has presented allegations or evidence after the close of preparatory proceedings.

### **Subsection 3 Written Preparatory Proceedings**

(Commencement of Written Preparatory Proceedings)

Article 175 If a party resides in a distant location or if the court finds it to be appropriate for any other reason, the court may refer a case to Written Preparatory Proceedings (meaning proceedings for arranging issues and evidence through the submission of briefs, etc., without the appearance of the parties; the same applies hereinafter).

(Manner of Conducting Written Preparatory Proceedings)

Article 176 (1) Written Preparatory Proceedings are conducted by the presiding judge; provided, however, that a high court may have an authorized judge conduct that proceedings.

(2) The presiding judge or the authorized judge of the high court (hereinafter referred to as the "presiding judge, etc." in the following paragraph) shall set the time frame as referred to in Article 162.

(3) If the presiding judge, etc. finds it to be necessary, the judge, etc. may consult both parties with regard to particulars involved in the arrangement of issues and evidence or any other necessary particulars for oral arguments, as provided for by the Rules of the Supreme Court, in a way that enables the court and both parties to communicate with one another at the same time, through audio transmissions. To do so, the presiding judge, etc. may have the court clerk record the outcome of the consultation.

(4) The provisions of Article 149 (excluding paragraph (2)), Article 150, and Article 165, paragraph (2) apply mutatis mutandis to Written Preparatory Proceedings.

(Confirmation of Facts to Be Proven)

Article 177 On a date for oral arguments held after the close of Written Preparatory Proceedings, the court is to confirm with the parties the facts to be proven through the subsequent examination of evidence.

(Presenting Allegations and Evidence After the Close of Written Preparatory Proceedings)

Article 178 In a case for which Written Preparatory Proceedings have been closed, at the request of the adverse party, a party that presents allegations or

evidence on a date for oral arguments after statements have been entered on the particulars detailed in the paper document as referred to in Article 165, paragraph (2) as applied mutatis mutandis pursuant to Article 176, paragraph (4) or after a confirmation has been made pursuant to the provision of the preceding Article, shall explain to the adverse party the reason that the party was unable to present the allegations or evidence prior to the statements or confirmation being entered.

## **Chapter IV Evidence**

### **Section 1 General Provisions**

(Facts Not Required to Be Proven)

Article 179 Facts admitted by a party in court and obvious facts are not required to be proven.

(Offering of Evidence)

Article 180 (1) In offering evidence, the fact to be proven thereby shall be specified.

(2) Evidence may be offered prior to court dates.

(When Examination of Evidence Is Not Required)

Article 181 (1) The court is not required to examine evidence offered by a party which the court considers to be unnecessary.

(2) If there is any obstacle to the examination of evidence which will be present for an uncertain duration, the court may choose not to conduct an examination of evidence.

(Focused Examination of Witnesses and Parties)

Article 182 The examination of witnesses and the parties themselves shall be conducted in as focused a manner as possible after the arrangement of issues and evidence is completed.

(Handling When a Party Fails to Appear)

Article 183 The examination of evidence may be conducted even if neither party appears on a date for oral arguments.

(Examination of Evidence in a Foreign Country)

Article 184 (1) An examination of evidence that is to be conducted in a foreign country shall be conducted on commission to the competent government agency of that country or to the Japanese ambassador, minister, or consul stationed in that country.



- (2) Even if an examination of evidence conducted in a foreign country contravenes the laws of that country, it is still valid if it does not contravene this Code.

(Examination of Evidence Out of Court)

Article 185 (1) If the court finds it to be appropriate, it may examine evidence out of court. To do so, it may order a member of a panel of judges or commission the district court or summary court to examine evidence.

- (2) If a commissioned judge performing the duties of a judge based on the commission prescribed in the preceding paragraph finds it to be appropriate for another district court or summary court to examine the evidence, the judge may further commission it to examine the evidence.

(Commissioning of Examinations)

Article 186 The court may commission a government agency or public office, a foreign government agency or public office, or a school, chamber of commerce, exchange, or any other organization to conduct the necessary examinations.

(Hearing of Witnesses)

Article 187 (1) In a case to be concluded with a ruling, the court may hear the witnesses and the parties themselves; provided, however, that such witnesses are limited to those requested by a party.

- (2) In a case involving an adverse party, the hearing under the provisions of the preceding paragraph shall be held on a date for questioning that both parties are able to attend.

(Prima Facie Showings)

Article 188 Prima facie showings shall be made using evidence that can be examined immediately.

(Execution of a Judicial Decision for a Civil Fine)

Article 189 (1) A judicial decision for a civil fine under the provisions of this Chapter is executed by order of the public prosecutor. This order has the same effect as an enforceable title of obligation.

- (2) A judicial decision for a civil fine is enforced pursuant to the provisions of the Civil Execution Act (Act No. 4 of 1979) and other laws and regulations concerning procedures for compulsory execution; provided, however, that it is not necessary to serve a person with the judicial decision before executing it.
- (3) The provision of Article 507 of the Code of Penal Procedure (Act No. 131 of 1948) apply mutatis mutandis to the execution of a judicial decision for a civil fine.

(4) If an immediate appeal is filed against a judicial decision for a civil fine after said judicial decision (hereinafter referred to as a "original judicial decision" in this paragraph) is executed, and the court in charge of the appeal finds there to be grounds for immediate appeal, reverses the original judicial decision, and reaches another judicial decision for a civil fine, its judicial decision for said civil fine is deemed to have been executed to the extent of the amount of the original judicial decision. In such a case, if the amount obtained as a result of the execution of the original judicial decision exceeds the amount of said civil fine, the amount in excess shall be refunded.

## **Section 2 Examination of Witnesses**

(Witnesses' Obligation)

Article 190 Except as otherwise provided, the court may examine any person as a witness.

(Examination of a Public Officer)

Article 191 (1) If the court will examine a public officer or a person who was a public officer as a witness with regard to any confidential information connected with that person's duties, the court shall obtain the approval of the relevant supervisory government agency (in the case of a member of the House of Representatives or House of Councillors or a person who held such office, the relevant House; in the case of the Prime Minister or any other Minister of State or a person who held such post, the Cabinet).

(2) A supervisory government agency may not refuse to give the approval as referred to in the preceding paragraph, except if such approval is likely to harm the public interest or substantially hinder the performance of public duties.

(Civil Fines for Non-Appearance)

Article 192 (1) If a witness, without a legitimate reason for doing so, fails to appear, the court issues a ruling ordering the witness to bear any court costs incurred due to the witness's failure to appear, and sentences that witness to a civil fine of not more than 100,000 yen.

(2) An immediate appeal may be filed against the ruling as referred to in the preceding paragraph.

(Criminal Fines for Non-Appearance)

Article 193 (1) If a witness fails to appear without a legitimate reason, the witness is sentenced to a criminal fine of not more than 100,000 yen or misdemeanor imprisonment without work.

(2) Both a criminal fine and misdemeanor imprisonment without work may be imposed cumulatively on a person who has committed the crime as referred to in the preceding paragraph, depending on the circumstances.

(Subpoenas)

Article 194 (1) The court may subpoena a witness who fails to appear without a legitimate reason for failing to do so.

(2) The provisions of the Code of Criminal Procedure concerning subpoenas apply mutatis mutandis to a subpoena as referred to in the preceding paragraph.

(Examination of a Witness by an Authorized Judge)

Article 195 The court may have an authorized judge or a commissioned judge examine a witness out of court, but only in the following cases:

- (i) the witness has no obligation to appear before the court in charge of the case, or has a legitimate reason for being unable to appear before that court;
- (ii) it would require unreasonable expense or time for the witness to appear before the court in charge of the case;
- (iii) it is necessary to examine the witness at the scene of the dispute in order to discover a fact;
- (iv) neither party has any objection.

(Right to Refuse to Testify)

Article 196 If a witness's testimony relates to a matter for which the witness, personally, or a person related to the witness in any of the following ways, would likely be subject to criminal prosecution or conviction, the witness may refuse to testify. The same applies if a witness's testimony relates to a matter that would harm the reputation of such persons:

- (i) a person who is or was the witness's spouse, relative within the fourth degree of consanguinity, or relative within the third degree of affinity;
- (ii) the witness's guardian or a person under the guardianship of the witness.

Article 197 (1) In the following cases, a witness may refuse to testify:

- (i) a case as referred to in Article 191, paragraph (1)
- (ii) a person who is or was a doctor, dentist, pharmacist, pharmaceuticals distributor, birthing assistant, attorney at law (this includes registered foreign lawyers), patent attorney, defense counsel, notary, or person engaged in a religious occupation is examined with regard to any fact learned in the course of duty that shall remain confidential;
- (iii) the witness is examined with regard to a matter that involves a technical or professional secret.

(2) The provisions of the preceding paragraph do not apply if the witness has

been released from the duty of silence.

(Prima Facie Showing of Reasons for Refusal to Testify)

Article 198 A prima facie showing shall be made of the grounds for a witness' refusal to testify.

(Judicial Decision on Refusal to Testify)

Article 199 (1) Except in the case as referred to in Article 197, paragraph (1), item (i), the court in charge of the case hears the parties and reaches a judicial decision, in the form of a ruling, on the propriety of the refusal to testify.

(2) The party and the witness may file an immediate appeal against the judicial decision as referred to in the preceding paragraph.

(Sanctions for Refusal to Testify)

Article 200 The provisions of Articles 192 and 193 apply mutatis mutandis if, after a judicial decision finding no grounds for a witness' refusal to testify becomes final and binding, the witness still refuses to testify, without a legitimate reason for refusing to do so.

(Oath)

Article 201 (1) Except as otherwise provided, the court shall have a witness swear under oath.

(2) When examining a person under 16 years of age or person who is unable to understand the purpose of swearing under oath as a witness, the court may not make the witness swear under oath.

(3) When examining a witness who falls under the provisions of Article 196 and does not exercise the right to refuse to testify, the court may choose not to have the witness swear under oath.

(4) A witness may refuse to swear under oath when being examined with regard to matters in which the witness, personally, or a person to whom the witness is related in any of the ways listed in the items of Article 196, is deeply interested.

(5) The provisions of Articles 198 and 199 apply mutatis mutandis if a witness refuses to swear under oath, and the provisions of Articles 192 and 193 apply mutatis mutandis if, after a judicial decision finding no grounds for a refusal to testify becomes final and binding, the witness still refuses to testify, without a legitimate reason for refusing to do so.

(Order of Examination)

Article 202 (1) A witness is examined by the party requesting the examination, the other party, and the presiding judge, in that order.

- (2) When the presiding judge finds it to be appropriate, the judge may change the order as referred to in the preceding paragraph, after hearing the opinions of the parties.
- (3) If a party objects to a change under the provision of the preceding paragraph, the court reaches a judicial decision on the objection in the form of a ruling.

(Prohibition Against Statements Based Off of Documents)

Article 203 A witness may not enter a statement that is based off of a document; provided, however, that this does not apply if the witness obtains the permission of the presiding judge.

(Examination Based on Communication Through Audio and Visual Transmissions)

Article 204 When examining a witness who resides in a distant location, the court, as provided for by the Rules of the Supreme Court, may examine the witness in a way that enables persons at a distance to communicate with an awareness of one another's state of being, through audio and visual transmissions.

(Submission of Paper Documents in Lieu of Examination)

Article 205 If the court finds it to be appropriate and neither party objects, the court may have a witness submit a paper document in lieu of witness examination.

(Powers of an Authorized Judge)

Article 206 If an authorized judge or a commissioned judge examines a witness, the relevant judge performs the duties of the court and the presiding judge; provided, however, that a judicial decision on an objection under the provision of Article 202, paragraph (3) is reached by the court in charge of the case.

### **Section 3 Examination of the Parties**

(Examination of Parties Themselves)

- Article 207 (1) The court, upon petition or sua sponte, may examine the parties themselves. To do so, the court may have the party in question swear under oath.
- (2) If examining both a witness and one of the parties themselves, the court examines the witness first; provided, however, that when the court finds it appropriate, it may examine the party in question first, after hearing the opinions of the parties.

(Result of Non-Appearance)

Article 208 If one of the parties themselves is to be examined and that party, without a legitimate reason, fails to appear or refuses to swear under oath or enter a statement, the court may find that the opposing party's allegations concerning the matters for examination are true.

(Civil Fines for False Statements)

Article 209 (1) If a party who has sworn under oath has entered a false statement, the court issues a ruling sentencing the party to a civil fine of not more than 100,000 yen.

(2) An immediate appeal may be filed against the ruling as referred to in the preceding paragraph.

(3) In the case as referred to in paragraph (1), if the party who has entered the false statement admits that the statement is false while the litigation is pending, the court may revoke the ruling as referred to in that paragraph, depending on the circumstances.

(Mutatis Mutandis Application of Provisions on the Examination of Witnesses)

Article 210 The provisions of Article 195; Article 201, paragraph (2); Articles 202 to 204; and Article 206 apply mutatis mutandis to the examination of the parties themselves.

(Examination of Statutory Agents)

Article 211 The provisions of this Code concerning the examination of the parties themselves apply mutatis mutandis with regard to a statutory agent who represents a party in litigation; provided, however, that this does not preclude the examination of the parties themselves.

## **Section 4 Expert Testimony**

(Obligation to Give Expert Testimony)

Article 212 (1) A person who has the relevant knowledge and experience necessary to give expert testimony bears the obligation to give expert testimony.

(2) A person of the same status as a person who may refuse to testify or refuse to swear under oath pursuant to the provisions of Article 196 or Article 201, paragraph (4), or a person prescribed in Article 201, paragraph (2), may not serve as an expert.

(Designation of Experts)

Article 213 An expert is designated by the court in charge of the case, an

authorized judge or a commissioned judge.

(Challenge)

Article 214 (1) If there are circumstances in which an expert is involved that could prevent expert testimony from being given in good faith, a party may challenge the expert before the expert enters a statement about a matter involved in the expert testimony. The same applies if, after an expert enters a statement, any grounds for challenge occur or a party becomes aware of the existence of any grounds for challenge.

(2) A motion to challenge shall be filed with the court in charge of the case, an authorized judge or a commissioned judge.

(3) No appeal may be entered against a ruling finding grounds for challenge.

(4) An immediate appeal may be filed against a ruling finding no grounds for challenge.

(Formalities of Statements by Experts)

Article 215 (1) The presiding judge may have an expert state an opinion in writing or orally.

(2) If the court has an expert state an opinion and finds it to be necessary in order to clarify the content of the opinion or confirm its basis, the court, upon petition or sua sponte, may have the expert state further opinions.

(Asking Questions of an Expert)

Article 215-2 (1) If the court has an expert state an opinion orally, it may ask the expert questions after the expert has stated the opinion.

(2) The questions as referred to in the preceding paragraph are asked by the presiding judge, the party requesting the expert testimony, and the other party, in that order.

(3) If the presiding judge finds it to be appropriate, the judge may change the order as referred to in the preceding paragraph, after hearing the opinions of the parties.

(4) If a party objects to a change under the provision of the preceding paragraph, the court reaches a judicial decision on the objection in the form of a ruling.

(Statements Based on Communication Through Audio and Visual Transmissions)

Article 215-3 If the court has an expert state an opinion orally, and the expert resides in a distant location or the court finds it to be appropriate for any other reason, the court, as provided for by the Rules of the Supreme Court, may have the expert state an opinion in a way that enables persons at a distance to communicate with an awareness of one another's state of being, through audio

and visual transmissions.

(Powers of an Authorized Judge)

Article 215-4 If an authorized judge or a commissioned judge has an expert state an opinion, that judge performs the duties of the court and the presiding judge; provided, however, that a judicial decision on an objection under the provision of Article 215-2, paragraph (4) is reached by the court in charge of the case.

(Mutatis Mutandis Application of Provisions on the Examination of Witnesses)

Article 216 The provisions of Article 191 apply mutatis mutandis if the court has a public officer or person who was a public officer state an opinion as an expert with regard to any confidential information in connection with that person's duties, the provisions of Articles 197 to 199 apply mutatis mutandis if an expert refuses to give expert testimony, the provision of Article 201, paragraph (1) applies mutatis mutandis if the court has an expert swear under oath, and the provisions of Articles 192 and 193 apply mutatis mutandis if an expert fails to appear without a legitimate reason for failing to do so, if an expert refuses to swear under oath, and if, after a judicial decision finding no grounds for refusal to give expert testimony has become final and binding, the expert still refuses to give expert testimony, without a legitimate reason for refusing to do so.

(Expert Witness)

Article 217 An examination regarding facts that an expert has learned based on that expert's special knowledge and experience is governed by the provisions on the examination of a witness.

(Commissioning of Expert Testimony)

Article 218 (1) If the court finds it to be necessary, it may commission a government agency or public office, a foreign government agency or public office, or a corporation that has adequate equipment to give expert testimony. In such a case, the provisions of this Section, except for those concerning swearing under oath, apply mutatis mutandis.

(2) In the case as referred to in the preceding paragraph, when the court finds it to be necessary, it may have a person designated by the government agency, public office, or corporation give an explanation of written expert testimony.

## **Section 5 Documentary Evidence**

(Offering of Documentary Evidence)

Article 219 Documentary evidence shall be offered through the submission of a document or a request for the court to order the person in possession of a



document to submit that document.

(Obligation to Submit Documents)

Article 220 In the following cases, the person in possession of the document in question may not refuse to submit that document:

- (i) if a party is personally in possession of a document that the party has cited in litigation;
- (ii) if it is permissible for the party that will offer the evidence to request the person in possession of the document to deliver it or allow it to be inspected;
- (iii) if the document has been prepared in the interest of the party that will offer the evidence or with regard to the legal relationships between the party that will offer the evidence and the person in possession of the document;
- (iv) in cases other than those listed in the preceding three items, if the document does not fall under any of the following categories:
  - (a) a document detailing the particulars prescribed in Article 196 with regard to the person in possession of the document or a person who is related to the person in possession of the document in any of the ways set forth in the items of that Article;
  - (b) a document concerning confidential information in connection with a public officer's duties, which, if submitted, would likely harm the public interest or substantially hinder the performance of a public duty;
  - (c) a document detailing a fact prescribed in Article 197, paragraph (1), item (ii) or a particular prescribed in Article 197, paragraph (1), item (iii), neither or which are exempt from the duty of silence;
  - (d) a document prepared exclusively for the use of the person in possession (excluding a document held by the State or a local public entity, which is used by a public officer for an organizational purpose);
  - (e) documents related to the litigation of a criminal case, the case record in a juvenile protective case, or a document seized in these cases.

(Petition for an Order to Submit Documents)

Article 221 (1) In petitioning for an order to submit a document, the following particulars shall be made clear:

- (i) the indications of the document;
  - (ii) the purport of the document;
  - (iii) the person in possession of the document;
  - (iv) the facts to be proven by the document;
  - (v) the cause of the obligation to submit the document.
- (2) It is not permissible for a petition for an order to submit a document to be filed on the grounds that the document falls under any of the categories listed in item (iv) of the preceding Article, unless it is necessary to offer documentary

evidence by way of a petition for an order to submit a document.

(Procedures for Identifying a Document)

Article 222 (1) If a person files a petition for an order to submit a document and it is extremely difficult to clarify the particulars set forth in paragraph (1), item (i) or (ii) of the preceding Article, it is sufficient when filing the petition to clarify, in lieu of that particulars, any particulars by which the person in possession of the document can identify the document to which the petition pertains. In such a case, the petitioner shall motion the court to request the person in possession of the document to clarify the particulars set forth in item (i) or item (ii) of that paragraph.

(2) When a motion under the provision of the preceding paragraph is made, unless the petition for an order to submit the document is clearly groundless, the court may request the person in possession of the document to clarify the particulars as referred to in the second sentence of that paragraph.

(Order to Submit Documents)

Article 223 (1) If the court finds there to be grounds for a petition for an order to submit a document, it issues a ruling ordering the person in possession of the document to submit the document. In such a case, if the document contains any part that it is found unnecessary to examine or which cannot be found to be subject to the obligation to submit, the court may order the submission of the document excluding such part.

(2) Before seeking to order a third party to submit a document, the court shall hear the third party.

(3) If a petition for an order to submit a document has been filed with regard to a document concerning confidential information connected with a public officer's duties on the grounds that the document falls under any of the categories set forth in Article 220, item (iv), unless the petition is clearly groundless, the court shall hear the opinion of the supervisory government agency concerned (in the case of a member of the House of Representatives or House of Councillors or a person who held such office, the relevant House; in the case of the Prime Minister or any other Minister of State or a person who held such office, the Cabinet) as to whether the document in question falls under the category of document set forth in Article 220, item (iv), (b). In such a case, if the supervisory government agency states the opinion that the document falls under the category of document set forth in Article 220, item (iv), (b), it shall specify the reasons therefor.

(4) In the case as referred to in the preceding paragraph, if said supervisory government agency has stated the opinion that said document falls under the category of document set forth in Article 220, item (iv), (b) on the grounds that

submission of said document would cause any of the following risks, the court may order the person in possession of the document to submit the document only if it cannot find sufficient reasonable grounds for such opinion:

- (i) a risk that the document will impair national security, harm a relationship of trust with a foreign country or international organization, or give rise to a disadvantage in negotiations with a foreign country or international organization;
  - (ii) a risk that the document will hinder the prevention, suppression, or investigation of a crime, the continuation of prosecution, the execution of a sentence, or any other maintenance of public safety and order.
- (5) In the case as referred to in the first sentence of paragraph (3), if said supervisory government agency intends to state its opinion about a document that details particulars involving a technical or professional secret of a third party other than the person in possession of said document, it shall hear the opinion of said third party in advance of doing so, unless it intends to state the opinion that the document falls under the category of document set forth in Article 220, item (iv), (b).
- (6) If the court finds it to be necessary in order to determine which of the categories of documents set forth in Article 220, item (iv), (a) to (d) the document to which the petition for an order to submit a document pertains falls under, the court may have the person in possession of the document present the document. In such a case, no person may request the document so presented to be disclosed.
- (7) An immediate appeal may be filed against a ruling on a petition for an order to submit a document.

(Effect of a Party's Non-Compliance with an Order to Submit a Document)

Article 224 (1) If a party does not comply with an order to submit a document, the court may find the adverse party's allegations concerning the details of said document to be true.

- (2) The provisions of the preceding paragraph also apply if a party, for the purpose of preventing the adverse party from using it, has caused a document that there is an obligation to submit to be lost or otherwise unusable.
- (3) In the cases prescribed in the preceding two paragraphs, if it is extremely difficult for the adverse party to make specific allegations in connection with the details of said document and to prove, by other evidence, a fact that is to be proven by the document, the court may find that the adverse party's allegations concerning such fact are true.

(Civil Fine for a Third Party's Non-Compliance with an Order to Submit a Document)

Article 225 (1) If a third party does not comply with an order to submit a document, the court issues a ruling sentencing the third party to a civil fine of not more than 200,000 yen.

(2) An immediate appeal may be filed against the ruling as referred to in the preceding paragraph.

(Commissioning the Sending of a Document)

Article 226 Notwithstanding the provision of Article 219, documentary evidence may be offered by petitioning the court to commission the person in possession of the document to send the document; provided, however, that this does not apply if a party may request the issuance of an authenticated copy or transcript of the document pursuant to law or regulation.

(Retention of Documents)

Article 227 If the court finds it necessary, it may retain a document submitted or sent thereto.

(Provenance of Documents)

Article 228 (1) A document shall be proven to be of authentic provenance.

(2) If a document is found, in light of its form and purport, to have been prepared by a public officer in the course of duties, it is presumed to be an official document of authentic provenance.

(3) If there is any doubt about the authenticity of an official document's provenance, the court may inquire of the said government agency or public office *sua sponte*.

(4) If a private document has been signed by, or bears the seal of, the principal or an agent, it is presumed to be of authentic provenance.

(5) The provisions of paragraphs (2) and (3) apply *mutatis mutandis* to a document that is found to have been prepared by a foreign government agency or public office.

(Proof by Comparison of Handwriting)

Article 229 (1) The authenticity or inauthenticity of a document's provenance may be proven by a comparison of handwriting or seal impressions.

(2) The provisions of Article 219; Article 223; Article 224, paragraphs (1) and (2); Article 226; and Article 227 apply *mutatis mutandis* to the submission or sending of a document or any other object that contains the handwriting or seal impression to be used for comparison.

(3) If there is no sample of the adverse party's handwriting which is suitable for comparison, the court may order the adverse party to write graphic symbols to be used for comparison.

- (4) If the adverse party fails to comply with the ruling as referred to in the provision of the preceding paragraph without a legitimate reason for failing to do so, the court may find the allegations of the party that offers evidence concerning the authenticity or inauthenticity of the document's provenance to be true. The same applies if the adverse party writes the graphic symbols in a style of handwriting that is different from the adverse party's own.
- (5) If a third party fails to comply with a ruling to submit under the provisions of Article 223, paragraph (1) as applied mutatis mutandis pursuant to paragraph (2) without a legitimate reason for failing to do so, the court issues a ruling sentencing the third party to a civil fine of not more than 100,000 yen.
- (6) An immediate appeal may be filed against the ruling as referred to in the preceding paragraph.

(Civil Fines Against a Party Challenging the Authenticity of a Document's Provenance)

Article 230 (1) If a party or the agent thereof, intentionally or through gross negligence, is at variance with the truth in challenging the authenticity of a document's provenance, the court issues a ruling sentencing that person to a civil fine of not more than 100,000 yen.

- (2) An immediate appeal may be filed against the ruling as referred to in the preceding paragraph.
- (3) In the case as referred to in paragraph (1), if the party or agent that challenges the authenticity of a document's provenance admits, while litigation is pending, that the document is of authentic provenance the court may revoke the ruling as referred to in that paragraph, depending on the circumstances.

(Mutatis Mutandis Application to Objects Equivalent to Documents)

Article 231 The provisions of this Section apply mutatis mutandis to drawings, photographs, audiotapes, videotapes, and any other objects prepared for the purpose of indicating information, other than documents.

## **Section 6 Inspection of Evidence**

(Presentation of an Object for Inspection)

- Article 232 (1) The provisions of Articles 219, 223, 224, 226, and 227 apply mutatis mutandis to the presentation or sending of an object for inspection.
- (2) If a third party fails to comply with an order to submit under the provisions of Article 223, paragraph (1) as applied mutatis mutandis pursuant to the preceding paragraph without a legitimate reason for failing to do so, the court issues a ruling sentencing the third party to a civil fine of not more than 200,000 yen.

(3) An immediate appeal may be filed against the ruling as referred to in the preceding paragraph.

(Expert Testimony During the Inspection of Evidence)

Article 233 If the court or an authorized judge or a commissioned judge finds that it will be necessary in the inspection of evidence, the court or that judge may order expert testimony.

## **Section 7 Preservation of Evidence**

(Preservation of Evidence)

Article 234 If the court finds circumstances to be such that, unless the examination of evidence is conducted in advance, it will be difficult to use the evidence, the court, upon petition, may conduct an examination of the evidence under the provisions of this Chapter.

(Court of Jurisdiction)

Article 235 (1) A petition for the preservation of evidence that is filed after the filing of an action, shall be filed with the court of the instance in which the evidence is to be used; provided, however, that during the time from after the first date for oral arguments has been designated or from after the case is as referred to preparatory proceedings or written preparatory proceedings until oral arguments are concluded, such a petition shall be filed with the court in charge of the case.

(2) A petition for the preservation of evidence that is filed before the filing of an action, shall be filed with the district court or summary court that has jurisdiction over the residence of the person to be examined or person in possession of the document in question or the location of the object to be inspected.

(3) If there are pressing circumstances, a petition for the preservation of evidence may be filed with the district court or summary court as referred to in the preceding paragraph, even after the filing of an action.

(Handling When the Adverse Party Cannot Be Designated)

Article 236 A petition for the preservation of evidence may be filed even if the adverse party cannot be designated. In such a case, the court may appoint a special agent on behalf of the person that would be the adverse party.

(Preservation of Evidence by the Court Sua Sponte)

Article 237 If the court finds it to be necessary, while litigation is pending, it may issue a ruling to preserve evidence sua sponte.

(Non-Permission of Appeal)

Article 238 No appeal may be entered against a ruling to preserve evidence.

(Examination of Evidence by an Authorized Judge)

Article 239 In the case as referred to in the proviso to Article 235, paragraph (1), the court may have an authorized judge examine evidence.

(Summons to a Court Date)

Article 240 The petitioner and the adverse party shall be summoned to appear on a date for examination of evidence; provided, however, that this does not apply in a case requiring urgency.

(Expenses for the Preservation of Evidence)

Article 241 Expenses for the preservation of evidence constitute part of the court costs.

(Re-Examination During Oral Arguments)

Article 242 If a party has requested that a witness who was examined during proceedings for the preservation of evidence be examined during oral arguments, the court shall examine the witness.

## **Chapter V Judgment**

(Final Judgment)

Article 243 (1) When litigation has been sufficiently developed to allow the court to reach a judicial decision, the court enters a final judgment.

(2) If a part of litigation has been sufficiently developed to allow the court to reach a judicial decision, the court may enter a final judgment with regard to that part.

(3) The provision of the preceding paragraph apply mutatis mutandis if one of the several pieces of litigation for which the consolidation of oral arguments has been ordered, has been sufficiently developed to allow a judicial decision to be reached, or if the principal action or counterclaim has been sufficiently developed to allow a judicial decision to be reached.

Article 244 If one or both parties fails to appear or leaves court without presenting oral arguments on a date for oral arguments, and the court finds it to be appropriate in consideration of the current status of the trial and the status of each party's conduct of the litigation, it may reach a final judgment; provided, however, that if one of the parties fails to appear or leaves court

without presenting an oral argument on a date for oral arguments, this applies only at the request of the adverse party who appeared on that date.

(Interlocutory Judgment)

Article 245 If an independent allegation or piece of evidence or any other interlocutory dispute has been sufficiently developed for the court to reach a judicial decision on it, the court may enter an interlocutory judgment. The same applies with regard to the statement of the claims if the statement of the claims or the number or amount concerned is in dispute.

(Matters to Be Adjudicated)

Article 246 The court may not reach a judgment on any matter not raised by the parties.

(Principle of the Freedom of Personal Conviction)

Article 247 In reaching a judgment, the court decides whether to find allegations of fact to be true based on its freedom of personal conviction, in light of the entire import of oral arguments and the results of the examination of evidence.

(Finding the Amount of Damage)

Article 248 If damage is found to have occurred, but, due to the nature of the damage, it is extremely difficult to prove the amount of damage that occurred, the court may reach a finding on the amount of damage that is reasonable, based on the entire import of oral arguments and the results of the examination of evidence.

(Principle of Directness)

Article 249 (1) Judgment is rendered by a judge who has participated in the oral arguments that form the basis for that judgment.

(2) If a judge has been replaced, the parties shall state the results of prior oral arguments.

(3) If a single, independent judge or the majority of a panel of judges has been replaced and a party requests that a witness who was examined before the replacement be examined again, the court shall examine the witness.

(Entry Into Force of a Judgment)

Article 250 A judgment enters into force when it is rendered.

(Date for Rendition of Judgment)

Article 251 (1) The court shall render a judgment within two months of the date on which oral arguments conclude; provided, however, that this does not apply



if the case is complex or there are any other special circumstances.

(2) The court may render a judgment even if the parties are not present in court.

(Form of Rendition)

Article 252 The court renders its judgment based on the original judgment document.

(Judgment Document)

Article 253 (1) The following particulars shall be entered in a judgment document:

- (i) the main text of the judgment;
- (ii) the facts;
- (iii) the grounds;
- (iv) the date of conclusion of oral arguments;
- (v) the parties and statutory agents;
- (vi) the court.

(2) In entering the facts, the court shall clarify the claim and indicate the necessary allegations for showing that the main text is justified.

(Special Provisions on the Form of Rendition)

Article 254 (1) Notwithstanding the provision of Article 252, in the following cases, if the court upholds the plaintiff's claim, it may render a judgment that is not based on the original judgment document:

- (i) if the defendant does not deny the facts alleged by the plaintiff in oral arguments or does not advance any allegations or evidence;
- (ii) if the defendant, despite being summoned through service by publication, does not appear on a date for oral arguments (unless a brief submitted by the defendant is deemed to be the defendant's statement in oral arguments).

(2) If the court has rendered a judgment pursuant to the provisions of the preceding paragraph, in lieu of preparing a judgment document, the court shall have the court clerk enter the parties and statutory agents, the main text, the claims, and the gist of the grounds, in the record for the date for oral arguments on which the judgment is rendered.

(Service of Judgment Documents)

Article 255 (1) A judgment document or a record as referred to in paragraph (2) of the preceding Article shall be served on the parties.

(2) Service prescribed in the preceding paragraph is effected using an authenticated copy of the judgment document or a transcript of the record as referred to in paragraph (2) of the preceding Article.

(Judgment for Modification)

Article 256 (1) If the court finds a violation of law or regulation in a judgment, it may reach a judgment to modify it, but only within one week after the judgment's rendition; provided, however, that this does not apply if the judgment has become final and binding or additional oral arguments in the case are necessary in order to modify the judgment.

(2) A judgment for modification is reached without oral arguments being heard.

(3) Unless a summons to appear on the date for the rendition of the judgment as referred to in the preceding paragraph is served by publication, service is deemed to have been effected at the time that the writ of summons is sent to the place where service is to be effected.

(Corrective Ruling)

Article 257 (1) If there is a miscalculation, clerical error, or any other clear error similar to this in a judgment, the court may issue a corrective ruling at any time, upon petition or sua sponte.

(2) An immediate appeal may be filed against a corrective ruling; provided, however, that this does not apply if a lawful appeal to the court of second instance is filed against the judgment.

(Omission in a Judicial Decision)

Article 258 (1) If the court omits to address part of a claim in a judicial decision, litigation remains pending before that court with regard to such part of the claim.

(2) If there has been an omission in a judicial decision with regard to the burden of court costs, the court reaches a judicial decision on the burden of court costs in the form of a ruling, upon petition or sua sponte. In such a case, the provisions of Articles 61 to 66 apply *mutatis mutandis*.

(3) An immediate appeal may be filed against the ruling as referred to in the preceding paragraph.

(4) A judicial decision on the burden of court costs under the provisions of paragraph (2) ceases to be effective if a lawful appeal to the court of second instance is filed against a judgment on the merits. In such a case, the court of second instance reaches a judicial decision on the burden of the total costs of the litigation.

(Declaration of Provisional Execution)

Article 259 (1) In a judgment involving a claim on a property right, if the court finds it to be necessary, it may declare, upon petition or sua sponte, that a provisional execution may be effected if security is provided or that a provisional execution may be effected without security being provided.

- (2) With regard to a judgment on a claim for the payment of money for a bill, note, or check and an incidental claim for damages at the statutory interest rate, the court shall issue a sua sponte declaration that a provisional execution may be effected without security being provided; provided, however, that if the court finds it to be appropriate, it may require the provision of security for a provisional execution.
- (3) The court, upon petition or sua sponte, may declare that it is possible to avoid a provisional execution by providing security.
- (4) Any declaration of provisional execution shall be set forth in the main text of the judgment. The same applies to any declaration under the provisions of the preceding paragraph.
- (5) If the court has not reached a judicial decision on a petition for a declaration of provisional execution or has not issued a declaration of provisional execution that it should have issued sua sponte, it issues a supplemental ruling upon petition or sua sponte. The same applies if the court has not reached a judicial decision on the petition as referred to in paragraph (3).
- (6) The provisions of Articles 76, 77, 79 and 80 apply mutatis mutandis to security as referred to in paragraphs (1) to (3).

(Loss of Effect of a Declaration of Provisional Execution and Restoration)

- Article 260 (1) A declaration of provisional execution ceases to be valid to the extent of any modification, if a judgment is rendered modifying the declaration or the judgment on the merits.
- (2) When modifying a judgment on the merits, at the petition of the defendant, the court shall order the plaintiff to return what the defendant delivered based on a declaration of provisional execution, and to compensate for any damage the defendant has suffered due to a provisional execution or in order to avoid it, in its judgment.
  - (3) If only a declaration of provisional execution is modified, the provision of the preceding paragraph apply mutatis mutandis to a later judgment modifying a judgment on the merits.

## **Chapter VI Conclusion of Litigation Other Than by Judicial Decision**

(Withdrawal of an Action)

- Article 261 (1) An action may be withdrawn in whole or in part before a judgment becomes final and binding.
- (2) The withdrawal of an action after the adverse party has submitted a brief, entered a statement in preparatory proceedings, or conducted oral arguments on the merits, is invalid without the consent of the adverse party; provided, however, that this does not apply to the withdrawal of a counterclaim if the

principal action is withdrawn.

- (3) The withdrawal of an action shall be effected by means of a paper document; provided, however, that this does not preclude the oral withdrawal of an action on a date for oral arguments, preparatory proceedings, or settlement (hereinafter referred to as the "date for oral arguments, etc." in this Chapter).
- (4) In the case as referred to in the main clause of paragraph (2), if an action is withdrawn in writing, the written withdrawal shall be served on the adverse party, and if it is withdrawn orally on a date for oral arguments, etc. (unless the adverse party has appeared on that date), a transcript of the record for that date shall be served on the adverse party.
- (5) If the adverse party does not state an objection within two weeks from the day on which that party is served with the written withdrawal of an action, the adverse party is deemed to have consented to the withdrawal of the action. The same applies if an action is withdrawn orally on a date for oral arguments, etc. and the adverse party does not state an objection within two weeks from the day on which the action is withdrawn, if the adverse party appears on that date; or within two weeks from the day on which the transcript as referred to in the preceding paragraph is served, if the adverse party does not appear on that date.

#### (Result of the Withdrawal of an Action)

- Article 262 (1) The part of litigation for which an action is withdrawn is deemed to have never been pending before the court.
- (2) A person that withdraws an action after a final judgment on the merits has been reached may not file the same action.

#### (Constructive Withdrawal of an Action)

Article 263 If neither party appears on a date for oral arguments or preparatory proceedings or presents any oral arguments or enters any statements in preparatory proceedings before leaving the court or leaving their seats, and neither party files a petition for the designation of a court date within one month, the action is deemed to have been withdrawn. The same applies if, on two consecutive occasions, neither party appears on a date for oral arguments or preparatory proceedings or presents any oral arguments or enters any statements in preparatory proceedings before leaving the court or leaving their seats.

#### (Written Acceptance of Proposed Terms of Settlement)

Article 264 When it has been found difficult for a party to appear due to the party's residing in a distant location or any other circumstances, if the party submits a paper document indicating acceptance of the proposed terms of

settlement presented in advance by the court or by an authorized judge or a commissioned judge, and the other party appears on a date for oral arguments, etc. and accepts the proposed terms of settlement, a settlement is deemed to have been reached between the parties.

(Terms of Settlement Set by the Court)

Article 265 (1) At the joint petition of the parties, the court or an authorized judge or a commissioned judge may set the appropriate terms of settlement for resolving the case.

(2) The parties shall file the petition as referred to in the preceding paragraph by means of a paper document. To do so, they shall indicate in that paper document that they will abide by the terms of settlement as referred to in that paragraph.

(3) The terms of settlement under the provision of paragraph (1) are set by announcement on a date for oral arguments, etc. or otherwise by their announcement through a means that is found to be appropriate.

(4) A party may withdraw the petition as referred to in paragraph (1) only prior to the announcement as referred to in the preceding paragraph. To do so, the party is not required to obtain consent from the adverse party.

(5) When the announcement as referred to in paragraph (3) has been made to both parties, the parties are deemed to have reached a settlement.

(Waiver or Acknowledgment of a Claim)

Article 266 (1) A waiver or acknowledgement of a claim is made on a date for oral arguments, etc.

(2) If a party who has submitted a paper document waiving or acknowledging a claim does not appear on a date for oral arguments, etc., the court or an authorized judge or a commissioned judge may deem the party to have entered a statement to that effect.

(Effect of a Record of Settlement)

Article 267 When a settlement or a waiver or an acknowledgement of a claim is entered in the record, that entry has the same effect as a final and binding judgment.

## **Chapter VII Special Provisions on Large-Scale Litigation**

(Examination of Witnesses by an Authorized Judge in a Case Involving Large-Scale Litigation)

Article 268 In a case involving large-scale litigation (meaning litigation in which a significantly large number of parties are involved and a significantly large

number of witnesses or parties themselves are to be examined), the court may have an authorized judge examine witnesses or the parties themselves inside the court, if no objection is made by the parties.

(Composition of the Panel in a Case Involving Large-Scale Litigation)

Article 269 (1) In district court, a panel of five judges may rule that it will conduct a trial and reach a judicial decision on a case prescribed in the preceding Article.

(2) In the case as referred to in the preceding paragraph, the panel may not contain three or more assistant judges at any one time, and no assistant judge may serve as presiding judge.

(Composition of the Panel for a Case in an Action Involving a Patent Right, etc.)

Article 269-2 (1) In the courts specified in each item of Article 6, paragraph (1), a panel of five judges may rule that it will conduct a trial and reach a judicial decision on a case in an Action Involving a Patent Right, etc.; provided, however, that this does not apply to a case involving litigation that has been transferred pursuant to the provision of Article 20-2, paragraph (1).

(2) The provision of paragraph (2) of the preceding Article applies mutatis mutandis to the case as referred to in the preceding paragraph.

## **Chapter VIII Special Provisions on Litigation Proceedings in Summary Court**

(Characteristics of Proceedings)

Article 270 In summary court, disputes are to be resolved promptly through simplified proceedings.

(Oral Filing of an Action)

Article 271 An action may be filed orally.

(Matters That Must Be Clarified in the Filing of an Action)

Article 272 In filing of an action, it is sufficient to clarify the main points of the dispute, in lieu of providing a statement of the claims.

(Filing of an Action through Voluntary Appearance)

Article 273 It is permitted for both parties to voluntarily appear before the court and conduct oral arguments involving their litigation. To do so, the action is filed through an oral statement.

(Transfer Based on the Filing of a Counterclaim)

Article 274 (1) If the defendant makes a claim in a counterclaim that is subject to the jurisdiction of the district court, the summary court, at the petition of the adverse party, shall transfer the principal action and counterclaim to the district court in the form of a ruling. In such a case, the provisions of Article 22 apply mutatis mutandis.

(2) No appeal may be entered against the ruling set forth in the preceding paragraph.

(Settlement Prior to the Filing of an Action)

Article 275 (1) In a civil dispute, a party may file a petition for settlement with the summary court of jurisdiction in the locality that constitutes the general venue for an action involving the adverse party, indicating the object of the claim and providing a statement of the claims, as well as indicating the actual circumstances of the dispute.

(2) If the settlement as referred to in the preceding paragraph cannot be reached, the court, at the petition of both parties who have appeared on a date for settlement, immediately orders the parties to present oral arguments in litigation. In such a case, the party who has filed the petition for settlement is deemed to have filed an action at the time that party filed that petition, and settlement costs become a part of the court costs.

(3) If the petitioner or the adverse party does not appear on the date for settlement as referred to in paragraph (1), the court may deem that no settlement can be reached.

(4) The provisions of Articles 264 and 265 do not apply to the settlement as referred to in paragraph (1).

(Ruling in Lieu of Settlement)

Article 275-2 (1) In an action whose subject matter is a claim for the payment of money, if the defendant does not deny the facts alleged by the plaintiff in oral arguments or does not advance any allegations or evidence, and the court finds it to be appropriate in consideration of the defendant's financial resources and any other circumstances, after hearing the opinion of the plaintiff, the court may issue a ruling ordering the defendant to pay the money under that claim, stipulating the time frame for payment of the money under the claim or stipulating installment payments for the payment of such money, both of which shall be within five years from the expiration of the time frame set forth in paragraph (3), and may simultaneously stipulate that if the defendant pays in accordance with the stipulations on that time frame or pays without losing, pursuant to the stipulations provided for in the following paragraph, the benefit of time from the stipulation of installment payments, the defendant

will be exempted from the obligation to pay any default charges that accrued after the filing of the action.

- (2) If the court establishes the stipulation on installment payments as referred to in the preceding paragraph, it shall establish a stipulation on the forfeiture of the benefit of time in the event of the defendant's failure to pay.
- (3) A party may file an objection against a ruling as referred to in paragraph (1) with the court that has issued that ruling, within an inalterable time frame of two weeks from the day on which the party receives notice of that ruling.
- (4) If an objection is filed within the time frame as referred to in the preceding paragraph, the ruling as referred to in paragraph (1) ceases to be effective.
- (5) If no objection is filed within the time frame as referred to in paragraph (3), the ruling as referred to in paragraph (1) has the same effect as a judicial settlement.

#### (Omission of Briefs)

Article 276 (1) Oral arguments are not required to be prepared in writing.

- (2) Notwithstanding the provision of the preceding paragraph, written preparations shall be made or the adverse party shall be given direct notice prior to oral arguments with regard to any matter for which it would be found that the adverse party is unable to enter a statement without preparation.
- (3) During oral arguments for which the adverse party is not present in court, no matter prescribed in the preceding paragraph may be alleged other than what is stated in a brief (limited to one served upon the adverse party or one whose receipt the adverse party has indicated in a paper document submitted thereby) or conveyed in the notice under the provision of that paragraph.

#### (Constructive Statements on Further Dates)

Article 277 The provision of Article 158 applies mutatis mutandis if the plaintiff or the defendant does not appear on a further date for oral arguments or appears on that date but does not present any oral arguments on the merits.

#### (Submission of Documents in Lieu of Examination)

Article 278 If the court finds it to be appropriate, it may allow the submission of a paper document in lieu of examining a witness or one of the parties themselves or instead of having an expert state an opinion.

#### (Judicial Commissioners)

Article 279 (1) If the court finds it to be necessary, it may have a judicial commissioner assist in the attempt to arrange a settlement or have a judicial commissioner attend the trial so that it may hear the commissioner's opinion on the case.



- (2) The number of judicial commissioners is one or more for each case.
- (3) A judicial commissioner is designated by the court for each case, from among persons appointed in advance by the district court each year.
- (4) The status of persons appointed pursuant to the provision of the preceding paragraph, their number, and particulars that are otherwise necessary in connection with the appointment as referred to in that paragraph are specified by the Rules of the Supreme Court.
- (5) A judicial commissioner is paid travel expenses, a daily allowance, and lodging expenses in the amounts specified by the Rules of the Supreme Court.

(Particulars That Must Be Entered in Judgment Documents)

Article 280 In entering facts and reasons in a judgment document, it is sufficient to indicate the important points of the object of the claim and of the statement of the claims, the existence or nonexistence of cause, and the important points of any defense which is the grounds for rejecting the claim.

### **Part III Appeals**

#### **Chapter I Appeals to the Court of Second Instance**

(Judgments That Are Appealable to the Court of Second Instance)

Article 281 (1) An appeal to the court of second instance may be filed against a final judgment that a district court has entered as the court of first instance, or against a final judgment entered by a summary court; provided, however, that this does not apply if, after the final judgment is entered, both parties agree not to appeal to the court of second instance, though reserving the right to file a final appeal.

- (2) The provisions of Article 11, paragraphs (2) and (3) apply mutatis mutandis to the agreement as referred to in the preceding paragraph.

(Restriction on Filing Appeals to the Court of Second Instance Against Judicial Decisions on the Burden of Court Costs)

Article 282 No appeal to the court of second instance may be filed against a judicial decision on the burden of court costs alone.

(Judicial Decisions Subject to Judgment by the Court of Second Instance)

Article 283 Any judicial decision reached prior to a final judgment is subject to the judgment of the court of second instance; provided, however, that this does not apply to a judicial decision against which no appeal may be filed, nor to a judicial decision against which an appeal may be filed in the form of an appeal against a ruling.

(Waiver of the Right to Appeal to the Court of Second Instance)

Article 284 The right to appeal to the court of second instance may be waived.

(Time Frame for Filing Appeals to the Court of Second Instance)

Article 285 An appeal to the court of second instance shall be filed within an inalterable time frame of two weeks from the day on which the written judgment document or record as referred to in Article 254, paragraph (2) is served; provided, however, that this does not preclude the validity of an appeal to the court of second instance filed prior to that time frame.

(Formalities for Filing Appeals to the Court of Second Instance)

Article 286 (1) An appeal to the court of second instance shall be filed through the submission of a petition for appeal to the court of first instance.

(2) The following particulars shall be entered in a petition for appeal:

- (i) the parties and statutory agents;
- (ii) an identification of the judgment in the first instance and an indication that this is the judgment against which the appeal is being filed.

(Dismissal of Appeals Without Prejudice by the Court of First Instance)

Article 287 (1) If an appeal to the court of second instance is not in accordance with the law and this defect clearly cannot be corrected, the court of first instance shall rule to dismiss the appeal without prejudice, in the form of a ruling.

(2) An immediate appeal may be filed against the ruling as referred to in the preceding paragraph.

(Presiding Judge's Authority to Examine a Petition for Appeal)

Article 288 The provisions of Article 137 apply mutatis mutandis if a petition for appeal to the court of second instance is in violation of Article 286, paragraph (2) or if the fees for filing an appeal to the court of second instance, in accordance with the provisions of the Act on the Costs of Civil Procedure, have not been paid.

(Service of a Petition for Appeal)

Article 289 (1) A petition for appeal shall be served upon the appellee.

(2) The provisions of Article 137 apply mutatis mutandis if it is impossible to serve a petition for appeal (including if the necessary expenses for serving a petition for appeal have not been prepaid).

(Dismissal of Appeals Without Prejudice, Without Hearing Oral Arguments)

Article 290 If an appeal to the court of second instance is not in accordance with

the law and this defect cannot be corrected, the court of second instance may enter a judgment dismissing the appeal without prejudice, without hearing oral arguments.

(Dismissal of Appeals Without Prejudice When Expenses for Summonses Have Not Been Prepaid)

Article 291 (1) If the court of second instance has specified a reasonable time frame and ordered the appellant to prepay the necessary expenses for summoning the parties to appear for a court date in accordance with the provisions of the Act on the Costs of Civil Procedure, but such expenses have not been prepaid, the court may rule to dismiss the appeal without prejudice, in the form of a ruling.

(2) An immediate appeal may be filed against the ruling as referred to in the preceding paragraph.

(Withdrawal of Appeals to the Court of Second Instance)

Article 292 (1) An appeal to the court of second instance may be withdrawn before the court of second instance enters a final judgment.

(2) The provisions of Article 261, paragraph (3); Article 262, paragraph (1); and Article 263 apply mutatis mutandis to the withdrawal of appeals to the court of second instance.

(Incidental Appeals)

Article 293 (1) An appellee may file an incidental appeal until such time as oral arguments are concluded, even if this is after the right to appeal to the court of second instance has expired.

(2) An incidental appeal expires if the appeal to the court of second instance is withdrawn or if the appeal to the court of second instance is dismissed without prejudice as unlawful; provided, however, that an incidental appeal that meets the requirements for an appeal to the court of second instance is deemed to be an independent appeal to the court of second instance.

(3) Incidental appeals are governed by the provisions on appeals to the court of second instance; provided, however, that an incidental appeal may be filed through the submission of a petition for incidental appeal with the court of second instance.

(Declaration of Provisional Execution for the Judgment in the First Instance)

Article 294 Upon petition, the court of second instance may rule to issue a declaration of provisional execution, in the form of a ruling, but only with regard to the part of the judgment in the first instance against which no objection has been entered.

(Appeals Against a Judicial Decision Involving a Provisional Execution)

Article 295 No objection may be entered against a judicial decision by the court of second instance involving a provisional execution; provided, however, that an immediate appeal may be filed against a ruling to dismiss the petition as referred to in the preceding Article without prejudice.

(Scope of Oral Arguments)

Article 296 (1) Oral arguments are conducted only within the bounds of the modification of the judgment in the first instance that the party seeks.  
(2) The parties shall state the results of the oral arguments in the first instance.

(Mutatis Mutandis Application of Provisions on Litigation Proceedings in the First Instance)

Article 297 The provisions of Part II, Chapters I to VII, except as otherwise provided, apply mutatis mutandis to litigation proceedings in the second instance; provided, however, that this does not apply to Article 269.

(Effect of Procedural Acts from the First Instance)

Article 298 (1) Any procedural act performed in the first instance is also in effect in the second instance.  
(2) The provision of Article 167 applies mutatis mutandis to a party that advances allegations and evidence in the second instance with regard to a case for which preliminary oral arguments or preparatory proceedings in the first instance have been closed, and the provision of Article 178 applies mutatis mutandis to a party that advances allegations and evidence in the second instance if the statements or confirmation set forth in that Article has been entered in a case for which written preparatory proceedings in the first instance have been closed.

(Restrictions on Arguing Lack of Jurisdiction of the Court of First Instance)

Article 299 (1) In the second instance, the parties may not argue that the court of first instance was without jurisdiction; provided, however, that this does not apply with regard to exclusive jurisdiction (excluding that which is determined by agreement between the parties pursuant to the provisions of Article 11).  
(2) If the court of first instance as referred to in the preceding paragraph is the court specified in any of the items of Article 6, paragraph (1), and the litigation is subject to the exclusive jurisdiction of another court pursuant to the provisions of Article 6, paragraph (1), the provision of the proviso to the preceding paragraph does not apply.

(Filing of a Counterclaim)

Article 300 (1) In the second instance, a counterclaim may be filed only with the consent of the adverse party.

(2) If the adverse party presents an oral argument on the merits of a counterclaim without stating an objection to it, the adverse party is deemed to have consented to the filing of the counterclaim.

(3) The provisions of the preceding two paragraphs apply mutatis mutandis to the addition of a claim involving an appointer.

(Time Frame for Presenting Allegations and Evidence)

Article 301 (1) The presiding judge, after hearing the opinions of the parties, may specify the time frames for presenting allegations and evidence, amend the claim or of the statement of the claims, filing a counterclaim, or adding a claim involving an appointer.

(2) A party that performs any of the procedural acts prescribed in the preceding paragraph after a time frame specified pursuant to the provisions of that paragraph has passed, shall explain to the court the reasons that the party was unable to perform the act within that time frame.

(Dismissal of an Appeal with Prejudice)

Article 302 (1) If the court of second instance finds the judgment in the first instance to be appropriate, it shall dismiss the appeal with prejudice.

(2) Even if the reasons supplied do not justify the judgment in the first instance, if there is any other reason that does justify that judgment, the court of second instance shall dismiss the appeal with prejudice.

(Sanction Against the Abuse of the Right to Appeal to the Court of Second Instance)

Article 303 (1) If the court of second instance dismisses an appeal with prejudice pursuant to the provision of paragraph (1) of the preceding Article, and it finds that the appellant has filed the appeal exclusively for the purpose of delaying the conclusion of the litigation, it may order the appellant to pay up to ten times the amount of fees that shall be paid for filing an appeal with the court of second instance.

(2) A judicial decision under the provision of the preceding paragraph shall be indicated in the main text of the judgment.

(3) A judicial decision under the provision of paragraph (1) ceases to be valid if a judgment is rendered modifying the judgment on the merits.

(4) Even if the final appellate court dismisses a final appeal with prejudice, it may modify a judicial decision under the provision of paragraph (1).

(5) The provisions of Article 189 apply mutatis mutandis to a judicial decision

under the provision of paragraph (1).

(Scope of Reversal and Modification of a Judgment in the First Instance)

Article 304 A judgment in the first instance may be reversed or modified only within the bounds of the objection entered against it.

(Reversal in the Event of an Unjustified Judgment in the First Instance)

Article 305 The court of second instance shall reverse a judgment in the first instance if it finds that judgment to be unjustified.

(Reversal in the Event of a Judgment by the Court of First Instance Made Upon Unlawful Procedure)

Article 306 If the procedure upon which the judgment in the first instance is made is in violation of the law, the court of second instance shall reverse the judgment in the first instance.

(Remanding of a Case)

Article 307 If the court of second instance reverses a judgment in the first instance that has dismissed the action without prejudice as unlawful, it shall remand the case to the court of first instance; provided, however, that this does not apply if additional oral arguments in the case are unnecessary.

Article 308 (1) In a case other than that which is prescribed in the main clause of the preceding Article, in which the court of second instance reverses a judgment in the first instance, if additional oral arguments in the case are necessary, it may remand the case to the court of first instance.

(2) If a case is remanded on the grounds that litigation proceedings in the court of first instance is in violation of the law, that litigation proceedings are deemed to have been reversed by the remand.

(Transfer on the Grounds of Lack of Jurisdiction of the Court of First Instance)

Article 309 If the court of second instance reverses the judgment in the first instance on the grounds of lack of jurisdiction over the case, it shall transfer the case to the court of jurisdiction.

(Declaration of Provisional Execution in a Judgment by the Court of Second Instance)

Article 310 For a judgment involving a claim for the payment of money (excluding a claim set forth in Article 259, paragraph (2)), the court of second instance, upon petition, shall declare that a provisional execution may be effected without security being provided, unless it finds such a declaration to

be unnecessary; provided, however, that if the court of second instance finds appropriate, it may require the provision of security for a provisional execution.

(Composition of the Panel for the Appellate Case in an Action Involving a Patent Right, etc.)

Article 310-2 In the Tokyo High Court, if an appeal is filed against a final judgment that any of the courts specified in the items of Article 6, paragraph (1) enters as the court of first instance in an Action Involving a Patent Right, etc., a panel of five judges may rule for the panel to conduct a trial and reach a judicial decision on that case; provided, however, that this does not apply to a case that involves an appeal to the court of second instance, against a final judgment in an action for litigation that has been transferred pursuant to the provision of Article 20-2, paragraph (1).

## **Chapter II Final Appeals**

(Final Appellate Court)

Article 311 (1) A final appeal may be filed with the Supreme Court against a final judgment that the high court enters as the court of second instance or as the court of first instance, or may be filed with the high court against a final judgment that the district court enters as the court of second instance.

(2) In the case as referred to in the proviso to Article 281, paragraph (1), a final appeal may be filed directly with the Supreme Court against a district court judgment, and may be filed directly with a high court against a summary court judgment.

(Grounds for Final Appeal)

Article 312 (1) A final appeal may be filed on the grounds that the judgment reflects an error in the interpretation of the Constitution or that it is otherwise unconstitutional.

(2) A final appeal may also be filed on the grounds that any of the following circumstances are present; provided, however, that this does not apply to the circumstances set forth in item (iv) if the ratification under the provision of Article 34, paragraph (2) has taken place (including as applied mutatis mutandis pursuant to Article 59):

(i) the court that pronounced judgment was not composed in accordance with the law;

(ii) a judge who, by law, is not permitted to participate in the judgment, has participated in the judgment;

(ii)-2 provisions on the exclusive jurisdiction of the Japanese courts have been violated;

- (iii) provisions on exclusive jurisdiction have been violated (unless one of the courts specified in the items of Article 6, paragraph (1) has entered the final judgment in the first instance, and said litigation is subject to the exclusive jurisdiction of another court pursuant to the provisions of Article 6, paragraph (1));
  - (iv) statutory representative authority, authority for representation in litigation, or the delegation of powers that a representative needs in order to perform procedural acts, was lacking;
  - (v) provisions on the opening of oral arguments to the public have been violated;
  - (vi) no reason has been given for the judgment, or the reasons given for the judgment conflict with each other.
- (3) A final appeal to the high court may also be filed on the grounds of a violation of law or regulation that has clearly influenced the judgment.

(Mutatis Mutandis Application of Provisions on Appeals to the Court of Second Instance)

Article 313 The provisions of the preceding Chapter, except as otherwise provided, apply mutatis mutandis to a final appeal and to litigation proceedings in the final appellate instance.

(Formalities for the Filing of Final Appeal)

- Article 314 (1) A final appeal shall be filed through the submission of a petition for a final appeal with the court of prior instance.
- (2) The authority of the presiding judge under the provisions of Article 288 and Article 289, paragraph (2) as applied mutatis mutandis pursuant to the preceding Article is exercised by the presiding judge of the court of prior instance.

(Entry of Grounds for Final Appeal)

- Article 315 (1) If the grounds for final appeal are not entered in a petition for final appeal, a statement of the grounds for final appeal shall be submitted to the court of prior instance within the time frame specified by the Rules of the Supreme Court.
- (2) Grounds for final appeal shall be entered in the format specified by the Rules of the Supreme Court.

(Dismissal of a Final Appeal Without Prejudice by the Court of Prior Instance)

- Article 316 (1) If circumstances clearly fall under any of the following items, the court of prior instance shall rule to dismiss the final appeal without prejudice:
- (i) the final appeal is not in accordance with the law and this defect cannot be



corrected;

- (ii) a statement of grounds for final appeal has not been submitted, constituting a violation of the provision of paragraph (1) of the preceding Article; or the stated grounds for final appeal are in violation of paragraph (2) of that Article.
- (2) An immediate appeal may be filed against the ruling as referred to in the preceding paragraph.

(Dismissal of a Final Appeal Without Prejudice by the Final Appellate Court)  
Article 317 (1) In the cases set forth in the items of paragraph (1) of the preceding Article, the final appellate court may rule to dismiss a final appeal without prejudice.

- (2) The Supreme Court, as the final appellate court, may rule to dismiss a final appeal with prejudice if the grounds for final appeal clearly do not fall under the circumstances prescribed in Article 312, paragraph (1) or (2).

(Petition for the Acceptance of a Final Appeal)

Article 318 (1) If the Supreme Court is the court with which the final appeal should be filed, it may rule, upon petition, to accept as the final appellate court, a case in which a prior instance judgment reflects a determination that conflicts with Supreme Court precedent (or, if there is no Supreme Court precedent, conflicts with precedent of the former Great Court of Cassation or precedent of the high court acting as the final appellate court or the court of second instance) or to accept any other case that is found to involve matters of material import in the interpretation of laws and regulations.

- (2) The petition as referred to in the preceding paragraph (hereinafter referred to as a "Petition for the Acceptance of a Final Appeal") may not give circumstances prescribed in Article 312, paragraphs (1) and (2) as the grounds for petition.
- (3) In the case as referred to in paragraph (1), the Supreme Court may exclude any grounds for Petition for the Acceptance of a Final Appeal that it finds to be immaterial.
- (4) If the ruling as referred to paragraph (1) is issued, a final appeal is deemed to have been filed. In such a case, for the purpose of application of the provision of Article 320, grounds for Petition for the Acceptance of a Final Appeal other than those excluded pursuant to the provision of the preceding paragraph are deemed to be the grounds for the final appeal.
- (5) The provisions of Articles 313 to 315 and Article 316, paragraph (1) apply mutatis mutandis to a Petition for the Acceptance of a Final Appeal.

(Dismissal of a Final Appeal With Prejudice, Without Oral Arguments Being

Heard)

Article 319 If the final appellate court finds that a final appeal is without grounds based on the petition for final appeal, statement of grounds for final appeal, written answer, or any other documents, it may enter a judgment to dismiss the final appeal with prejudice, without hearing oral arguments.

(Scope of Examination)

Article 320 The final appellate court shall conduct its examination based on the grounds for final appeal, only within the bounds of the objection that has been entered.

(Binding Force of Facts Found in a Prior Instance Judgment)

Article 321 (1) Lawful findings of fact in a prior instance judgment are binding on the final appellate court.

(2) If a final appeal under the provision of Article 311, paragraph (2) is filed, the final appellate court may not reverse the prior instance judgment on the grounds that the findings of fact in the judgment are in violation of the law.

(Exclusion from Application of Matters to Be Examined by the Court Sua Sponte)

Article 322 The provisions of the preceding two Articles do not apply to matters that shall be examined by the court sua sponte.

(Declaration of Provisional Execution)

Article 323 Upon petition, the final appellate court may rule to issue a declaration of provisional execution, but only with regard to the part of the judgment in the prior instance against which no objection has been entered.

(Transfer to the Supreme Court)

Article 324 The high court, as the final appellate court, shall rule to transfer a case to the Supreme Court if the circumstances specified by the Rules of the Supreme Court are present.

(Reversal and Remand)

Article 325 (1) If there are circumstances prescribed in Article 312, paragraph (1) or (2), the final appellate court shall reverse the prior instance judgment, and, except in the cases as referred to in the following Article, it shall remand the case to the court of prior instance or transfer the case to another court equivalent thereto. The same applies if the high court is the final appellate court and a violation of law or regulation has clearly influenced the judgment.

(2) Even without the circumstances prescribed in Article 312, paragraph (1) or (2),

the Supreme Court, as the final appellate court, may reverse a prior instance judgment if a violation of law or regulation has clearly influenced the judgment, and, except in the cases as referred to in the following Article, it may remand the case to the court of prior instance or transfer the case to another court equivalent thereto.

- (3) The court to which a case is remanded or transferred pursuant to the provisions of the preceding two paragraphs shall reach a judicial decision based on additional oral arguments. In such a case, the factual or legal finding based on which the final appellate court has reversed the judgment is binding on the court to which the case is remanded or transferred.
- (4) A judge who has participated in the prior instance judgment may not participate in the judicial decision as referred to in the preceding paragraph.

(Reversal and Decision by the Final Appellate Court)

Article 326 In the following cases, the final appellate court shall reach a judicial decision on the case:

- (i) the final appellate court reverses a judgment on the grounds that there has been an error in the application of the Constitution or any other law or regulation to the facts that have been found, and the case has been sufficiently developed to allow a judicial decision to be reached based on such facts;
- (ii) the final appellate court reverses a judgment on the grounds that the case is not subject to the jurisdiction of the court.

(Special Appeal to the Court of Last Resort)

Article 327 (1) A further appeal may be filed with the Supreme Court against a final judgment entered by the high court as the final appellate court, but only on the grounds that the judgment involves an error in the interpretation of the Constitution or that it is otherwise unconstitutional.

- (2) In the final appeal as referred to in the preceding paragraph and litigation proceedings in the final appellate instance, unless contrary to the nature thereof, provisions concerning a final appeal and litigation proceedings in the final appellate instance against a final judgment by the court of second instance or the court of first instance apply *mutatis mutandis*. This being the case, the phrase "a prior instance judgment" in Article 321, paragraph (1) is deemed to be replaced with "the final judgment entered by the district court as the court of second instance (or the final judgment entered by the summary court, if a final appeal under the provision of Article 311, paragraph (2) is filed)".

### **Chapter III Appeal Against a Ruling**

(Judicial Decision Subject to Appeal Against a Ruling)

Article 328 (1) An appeal against a ruling may be filed against a ruling or order to dismiss a petition involved in the litigation proceedings without prejudice, without oral arguments being heard.

(2) An appeal against a ruling may be filed against a ruling or order if this has been issued in a matter that may not be decided through a ruling or order.

(Objection to a Judicial Decision by an Authorized Judge)

Article 329 (1) A party who disagrees with the judicial decision of an authorized judge or a commissioned judge may file an objection with the court in charge of the case; provided, however, that this applies only if the judicial decision is one that it would be possible to appeal in the form of an appeal against a ruling, if it were the judicial decision of the court in charge of the case.

(2) An appeal against a ruling may be filed against a judicial decision on the objection as referred to in the preceding paragraph.

(3) For the purpose of application of the provision of paragraph (1) if the Supreme Court or a high court is the court in charge of the case, the phrase "the court in charge of the case" in the proviso to that paragraph is deemed to be replaced with "the district court".

(Re-appeal from Appeal against Ruling)

Article 330 A further appeal may be filed against the ruling of the court in charge of an appeal against a ruling, but only on the grounds that the ruling reflects an error in the interpretation of the Constitution or is otherwise unconstitutional, or that a violation of law or regulation has clearly influenced the ruling.

(Mutatis Mutandis Application of Provisions on Appeals to the Court of Second Instance and Final Appeals)

Article 331 The provisions of Chapter I, unless contrary to the nature thereof, apply mutatis mutandis to an appeal against a ruling and to litigation proceedings in the court in charge of an appeal against a ruling; provided, however, that with regard to the appeal against a ruling as referred to in the preceding Article and litigation proceedings for such appeal, the provisions of the preceding Chapter concerning a final appeal against the final judgment of the court of second instance or the court of first instance and concerning litigation proceedings in the final appellate instance apply mutatis mutandis.

(Time Frame for Filing an Immediate Appeal)

Article 332 An immediate appeal shall be filed within an inalterable time frame

of one week from the day on which notice of a judicial decision is received.

(Correction by the Court of Prior Instance)

Article 333 If the court or presiding judge that has made the judicial decision in the prior instance finds that there are grounds for an appeal against a ruling, the court or the presiding judge shall correct that judicial decision.

(Stay of Execution of a Judicial Decision in the Prior Instance)

Article 334 (1) An appeal against a ruling has the effect of a stay of execution, but only if it is filed as an immediate appeal.

(2) The court in charge of an appeal against a ruling or the court or judge that has made the judicial decision in the prior instance may order a stay of execution of the judicial decision in the prior instance or any other necessary disposition until such time as a ruling is issued on the appeal against the ruling.

(Hearing in Lieu of Oral Arguments)

Article 335 If the court in charge of an appeal against a ruling does not hold oral arguments on in the appeal against the ruling, it may hear the appellant and any other interested party.

(Special Appeal Against Ruling to the Supreme Court)

Article 336 (1) A special appeal against a ruling may be filed with the Supreme Court against any ruling or order of a district court or summary court against which no objection may be entered or with regard to the ruling or order of the high court, on the grounds that the ruling or order reflects an error in the interpretation of the Constitution or that it is otherwise unconstitutional.

(2) The appeal against a ruling as referred to in the preceding paragraph shall be filed within an inalterable time frame of five days from the day on which notice of the judicial decision is received.

(3) The provisions on the final appeal as referred to in Article 327, paragraph (1) and litigation proceedings in the final appellate instance, as well as the provision of Article 334, paragraph (2), unless contrary to the nature thereof, apply mutatis mutandis to an appeal against a ruling as referred to in paragraph (1) and litigation proceedings for such appeal.

(Appeal with Permission)

Article 337 (1) An appeal may be specially filed with the Supreme Court against the ruling or order of the high court (excluding a ruling or order on the appeal against a ruling as referred to in Article 330 or on the petition as referred to in the following paragraph) other than in the case under the provision of

paragraph (1) of the preceding Article, but only if the high court permits it pursuant to the provision of the following paragraph; provided, however, that this applies only if the judicial decision in question is one that it would be possible to appeal in the form of an appeal against a ruling, if it were the judicial decision of the district court.

- (2) Upon petition, the high court as referred to in the preceding paragraph shall rule to permit an appeal against a ruling in respect of the judicial decision as referred to in the preceding paragraph, if it reflects a determination that is inconsistent with Supreme Court precedent (or, if there is no Supreme Court precedent, conflicts with precedent of the former Great Court of Cassation or precedent of the high court as the final appellate court or the court in charge of the appeal against the ruling) or if it is otherwise found to involve matters of material import involving the interpretation of laws and regulations.
- (3) The petition as referred to in the preceding paragraph may not give the circumstances prescribed in paragraph (1) of the preceding Article as the grounds for petition.
- (4) If permission under the provisions of paragraph (2) is granted, the appeal against a ruling as referred to in paragraph (1) is deemed to have been filed.
- (5) The Supreme Court may reverse the judicial decision of the prior instance if a violation of law or regulation has clearly influenced the judicial decision.
- (6) The provisions of Article 313; Article 315; and paragraph (2) of the preceding Article apply *mutatis mutandis* to the petition as referred to in paragraph (2); the provisions of Article 318, paragraph (3) apply *mutatis mutandis* if the court grants the permission under the provisions of paragraph (2); and the provisions of the second sentence of Article 318, paragraph (4) and paragraph (3) of the preceding Article apply *mutatis mutandis* if the permission under the provisions of paragraph (2) is granted.

#### **Part IV Retrial**

(Grounds for Retrial)

- Article 338 (1) If any of the following circumstances are present, a party may protest a final judgment that has become final and binding through a demand for a retrial; provided, however, that this does not apply if a party, when filing the appeal to the court of second instance or the final appeal, alleged those circumstances or knew of them but did not allege them:
- (i) the court that pronounced judgment was not composed in accordance with the law;
  - (ii) a judge who, by law, is not permitted to participate in the judgment, has participated in the judgment;
  - (iii) statutory representative authority, authority for representation in

- litigation, or the delegation of powers that a representative needs in order to perform procedural acts, was lacking;
- (iv) a judge who participated in the judgment has committed a crime in connection with that judge's duties in the case;
  - (v) another person's criminally punishable act has caused the party to make an admission or prevented the party from advancing allegations or evidence that would have influenced the judgment;
  - (vi) the documents or any other objects used as evidence toward the judgment were forged or altered;
  - (vii) false statements by a witness, expert, or interpreter, or by a party or statutory agent who had been sworn in, were used as evidence toward the judgment;
  - (viii) the civil or criminal judgment or other judicial decision, or the administrative disposition, on which the judgment in question was based has been modified by a subsequent judicial decision or administrative disposition;
  - (ix) there has been an omission involving a determination with regard to a matter of material import that would have influenced the judgment;
  - (x) the judgment to which the protest pertains conflicts with a previous judgment that has become final and binding.
- (2) If any of the circumstances set forth in items (iv) to (vii) of the preceding paragraph are present, a party may demand a retrial only if a guilty verdict or decision imposing a civil fine for the relevant criminally punishable act has become final and binding, or if the reason that it is not possible to obtain a final and binding guilty verdict or final and binding decision imposing a civil fine for the relevant criminally punishable act is something other than the lack of evidence.
- (3) If the court of second instance has reached a judgment on the merits of a case, it is not permissible to demand a retrial over the judgment of the court of first instance.

Article 339 If the circumstances prescribed in paragraph (1) of the preceding Article are present with regard to the judicial decision based on which a judgment is made (limited to the case prescribed in paragraph (2) of said Article if any of the circumstances set forth in items (iv) to (vii) of said paragraph are present), such circumstances may be given as grounds for retrial in connection with the judgment, even if the means of filing an independent protest against such judicial decision have been specified.

(Court of Jurisdiction)

Article 340 (1) A demand for a retrial is under the exclusive jurisdiction of the

court that has reached the judgment to which the protest pertains.

- (2) Demands for a retrial over judgments entered by courts of different instances with regard to the same case are collectively subject to the jurisdiction of their superior court.

(Litigation Proceedings in a Retrial)

Article 341 Provisions on litigation proceedings in their respective instances, unless contrary to the nature thereof, apply mutatis mutandis to litigation proceedings in a retrial.

(Time Frame for a Retrial)

Article 342 (1) A retrial shall be demanded within an inalterable time frame of 30 days from the day on which a party has become aware of the grounds for retrial, after the judgment has become final and binding.

- (2) It is not permissible to demand a retrial once five years have elapsed from the day on which the judgment becomes final and binding (or, if grounds for retrial occur after the judgment becomes final and binding, the day on which the grounds for retrial occur).

- (3) The provisions of the preceding two paragraphs do not apply to a demand for a retrial filed on the grounds of a lack of representative authority, which is among the circumstances set forth in Article 338, paragraph (1), item (iii), nor do they apply to the circumstances set forth in Article 338, paragraph (1), item (x).

(Particulars That Shall Be Entered in a Complaint Demanding a Retrial)

Article 343 The following particulars shall be entered in the complaint demanding the retrial:

- (i) the parties and statutory agents;
- (ii) a representation of the judgment to which the protest pertains, and an indication that this is the judgment over which the retrial is being demanded;
- (iii) the grounds for protest.

(Amendment of Grounds for Protest)

Article 344 The party that has demanded a retrial may amend the grounds for protest.

(Dismissal of a Demand for a Retrial)

Article 345 (1) If a demand for a retrial is not in accordance with the law, the court shall rule to dismiss it without prejudice.

- (2) If there are no grounds for retrial, the court shall rule to dismiss the claims



for retrial with prejudice.

- (3) Once a ruling as referred to in the preceding paragraph becomes final and binding, it is not permissible to further demand a retrial with the same circumstances as grounds for protest.

(Ruling to Commence Retrial)

Article 346 (1) If there are grounds for a retrial, the court shall rule to commence the retrial.

- (2) Before issuing the ruling as referred to in the preceding paragraph, the court shall hear the adverse party.

(Immediate Appeal)

Article 347 An immediate appeal may be filed against the ruling as referred to in Article 345, paragraph (1) or (2) and paragraph (1) of the preceding Article.

(Trial and Judicial Decision on the Merits)

Article 348 (1) When a ruling to commence a retrial becomes final and binding, the court conducts a trial and reaches a judicial decision on the merits, within the bounds of the party's protest.

- (2) In the case as referred to in the preceding paragraph, if the court finds that the judgment in question is just, it shall dismiss the claims for retrial with prejudice.
- (3) Except in the case as referred to in the preceding paragraph, the court shall reverse the judgment and reach another judicial decision.

(Retrial over a Ruling or Order)

Article 349 (1) A party may demand a retrial over a ruling or order that has become final and binding and against which a protest may be entered through the filing of an immediate appeal.

- (2) The provisions of Article 338 to the preceding Article apply mutatis mutandis to the demand as referred to in the preceding paragraph.

## **Part V Special Provisions on Actions on Bills or Notes and Actions on Checks**

(Requirements for an Action on Bills or Notes)

Article 350 (1) A trial and judicial decision may be sought through an action on bills or notes in respect of a claim for the payment of money based on a bill or note and any incidental claim for damages at the statutory interest rate.

- (2) A statement indicating that a trial and judicial decision are sought through an action on bills or notes shall be entered in the complaint.

(Prohibition of Counterclaims)

Article 351 It is not permissible to file a counterclaim in an action on bills or notes.

(Limiting the Examination of Evidence)

Article 352 (1) In an action on bills or notes, the examination of evidence may be limited to an examination of documentary evidence.

- (2) It is not permissible to order a person to submit a document or commission a person to send a document. The same applies to ordering a person to submit an object that contains handwriting or a seal impression to be used for comparison or to commissioning a person to send such object.
- (3) It is permissible, upon petition, for one of the parties themselves to be examined with regard to a fact that concerns the authenticity or inauthenticity of a document's provenance or the presentation of a bill or note.
- (4) It is not permissible to commission the examination of evidence. The same applies to the commissioning of an examination under the provision of Article 186.
- (5) The provisions of the preceding paragraphs do not apply to matters that are to be examined by the court *sua sponte*.

(Transfer to Ordinary Proceedings)

Article 353 (1) The plaintiff, without the consent of the defendant, may enter a statement requesting that litigation be transferred to ordinary proceedings, until such time as oral arguments are concluded.

- (2) Litigation is transferred to ordinary proceedings upon the entry of the statement as referred to in the preceding paragraph.
- (3) In the case as referred to in the preceding paragraph, the court shall immediately send the defendant a paper document stating that litigation has been transferred to ordinary proceedings; provided, however, that sending this is not required if the statement as referred to in paragraph (1) is entered orally on a court date at which the defendant has appeared.
- (4) In the case as referred to in paragraph (2), the court dates already designated for the action on bills or notes is deemed to have been designated for ordinary proceedings.

(Conclusion of Oral Arguments)

Article 354 If the defendant does not deny the facts alleged by the plaintiff in oral arguments or does not submit any manner of defense, the court may conclude oral arguments even before sending the paper document under the provision of paragraph (3) of the preceding Article.

(Dismissal of an Action Without Prejudice, Without Oral Arguments Being Heard)

Article 355 (1) If the whole or part of a claim is not eligible for a trial and judicial decision by way of an action on bills and notes, the court may enter a judgment dismissing the whole or part of the action without prejudice, without hearing oral arguments.

(2) In the case as referred to in the preceding paragraph, if the plaintiff files an action through ordinary proceedings on the claim as referred to in that paragraph within two weeks from the day of being served with a written judgment, for the purpose of application of the provision of Article 147, such action is deemed to have been filed at the time of the filing of the previous action.

(Prohibition of Appeal)

Article 356 It is not permissible to appeal to the court of second instance against the final judgment in an action on bills or notes; provided, however, that this does not apply to a judgment dismissing an action without prejudice, other than the judgment as referred to in paragraph (1) of the preceding Article.

(Objection)

Article 357 An objection to the final judgment in an action on bills or notes, other than a judgment dismissing the action without prejudice, may be lodged with the court that enters that judgment, within an inalterable time frame of two weeks from the day on which the judgment document or record as referred to in Article 254, paragraph (2) is served; provided, however, that this does not preclude the validity of an objection lodged prior to that time.

(Waiver of Right to Object)

Article 358 A person may only waive the right to an objection before that objection is lodged.

(Dismissal of an Objection Without Prejudice, Without Oral Arguments Being Heard)

Article 359 If an objection is not in accordance with the law and this defect cannot be corrected, the court may enter a judgment to dismiss the objection without prejudice, without hearing oral arguments.

(Withdrawal of an Objection)

Article 360 (1) An objection may be withdrawn until such time as the court of first instance reaches a final judgment through ordinary proceedings.

(2) The withdrawal of an objection is not valid unless the opposing party consents.

(3) The provisions of Article 261, paragraphs (3) to (5); Article 262, paragraph (1); and Article 263 apply mutatis mutandis to the withdrawal of an objection.

(Proceedings after Objection)

Article 361 If a lawful objection is lodged, litigation returns to the stage it was at before the conclusion of oral arguments. In such a case, the trial is conducted and the judicial decision is reached through ordinary proceedings.

(Judgment after Objection)

Article 362 (1) If a judgment that is to be reached in accordance with the provision of the preceding Article is consistent with the judgment from the action on bills or notes, the court shall approve the judgment from the action on bills or notes; provided, however, that this does not apply if the procedure upon which the judgment in the action on bills or notes is made is in violation of the law.

(2) Unless the court approves the judgment from an action on bills or notes pursuant to the provision of the preceding paragraph, in a judgment that is to be reached in accordance with the provision of the preceding Article, the court shall reverse the judgment from the action on bills or notes.

(Court Costs in a Judgment after Objection)

Article 363 (1) Whenever the court dismisses an objection without prejudice or approves a judicial decision on the burden of court costs from an action on bills or notes, the court shall enter a judicial decision on the burden of court costs incurred after the objection was lodged.

(2) The provision of Article 258, paragraph (4) apply mutatis mutandis when a lawful objection is lodged against the judgment in an action on bills or notes.

(Remand of a Case)

Article 364 If the court of second instance reverses the judgment in the first instance dismissing an objection without prejudice as unlawful, it shall remand the case to the court of first instance; provided, however, that this does not apply if additional oral arguments in the case are unnecessary.

(Transfer from Pre-Filing Settlement Proceedings to an Action on Bills or Notes)

Article 365 In an action that is deemed to have been filed pursuant to the provision of the second sentence of Article 275, paragraph (2), any statement indicating that a trial and judicial decision are sought through an action on bills or notes shall be entered at the time the petition as referred to in the first sentence of Article 275, paragraph (2) is filed.

(Transfer from Demand Procedures to an Action on Bills or Notes)

Article 366 (1) In an action that is deemed to have been filed pursuant to the provisions of Article 395 or Article 398, paragraph (1) (including as applied mutatis mutandis pursuant to Article 402, paragraph (2)), any statement indicating that a trial and judicial decision are sought through an action on bills or notes shall be entered at the time the application is filed for a demand for payment.

(2) If a declaration of provisional execution under the provision of Article 391, paragraph (1) is issued, the statement as referred to in the preceding paragraph is deemed not to have been made.

(Action on Checks)

Article 367 (1) A trial and judicial decision may be sought through an action on checks in respect of a claim for the payment of money based on a check and any incidental claim for damages at the statutory interest rate.

(2) The provisions of Article 350, paragraph (2) and Article 351 to the preceding Article apply mutatis mutandis to an action on checks.

## **Part VI Special Provisions on Small Claims Actions**

(Requirements for Small Claims Actions)

Article 368 (1) In summary court, a trial and judicial decision may be sought through a small claims action in respect of a claim for the payment of money, if the value of the subject matter of litigation is not more than 600,000 yen; provided, however, that a person may not file such actions with the same summary court more frequently than the number of times specified by the Rules of the Supreme Court in the same year.

(2) A statement indicating that a trial and judicial decision are sought through a small claims action shall be entered at the time the action is filed.

(3) In entering the statement as referred to in the preceding paragraph, the plaintiff shall report the number of times in the relevant year that the plaintiff has sought trials and judicial decisions through small claims actions in the summary court where the plaintiff is filing the action.

(Prohibition of Counterclaim)

Article 369 It is not permissible to file a counterclaim in a small claims action.

(The Single-Day Trial Principle)

Article 370 (1) In a small claims action, unless there are special circumstances, the trial shall be completed on the first date for oral arguments.

- (2) The parties shall advance all allegations and evidence prior to the date as referred to in the preceding paragraph or on that date; provided, however, that this does not apply if oral arguments are continued.

(Restriction on the Examination of Evidence)

Article 371 It is permissible to limit the examination of evidence to evidence that can be examined immediately.

(Examination of Witnesses)

Article 372 (1) It is permissible to examine a witness without having the witness swear under oath.

- (2) The witnesses and the parties themselves are examined in the order that the judge finds appropriate.
- (3) If the court finds it to be appropriate, it may examine a witness, as provided for by the Rules of the Supreme Court, in a way that enables the court, the parties, and the witness to communicate with one another at the same time, through audio transmissions.

(Transfer to Ordinary Proceedings)

Article 373 (1) The defendant may enter a statement requesting that litigation be transferred to ordinary proceedings; provided, however, that this does not apply after the defendant has presented oral arguments on the first date for oral arguments or if that court date has been completed.

- (2) Litigation is transferred to ordinary proceedings upon the entry of the statement as referred to in the preceding paragraph.
- (3) In the following cases, the court shall rule to conduct a trial and reach a judicial decision in litigation through ordinary proceedings:
- (i) the plaintiff has sought a trial and judicial decision through a small claims action in violation of the provision of Article 368, paragraph (1);
  - (ii) the court has specified a reasonable time frame and ordered a report in accordance with the provision of Article 368, paragraph (3), but that report is not given;
  - (iii) it is impossible to summon the defendant to the first date for oral arguments by any means other than service by publication;
  - (iv) the court finds it inappropriate to conduct a trial and reach a judicial decision through a small claims action.
- (4) It is not permissible to enter a protest against the ruling as referred to in the preceding paragraph.
- (5) If litigation is transferred to ordinary proceedings, any date already designated for the small claims action is deemed to have been designated for ordinary proceedings.

(Rendition of Judgment)

Article 374 (1) Unless the court finds it to be inappropriate, the court renders a judgment immediately after the conclusion of oral arguments.

(2) In the case as referred to in the preceding paragraph, the court may render its judgment without basing this on the original judgment document. In such a case, the provisions of Article 254, paragraph (2) and Article 255 apply *mutatis mutandis*.

(Payment Grace Period Pursuant to Judgment)

Article 375 (1) If the court enters a judgment upholding a claim and finds it to be particularly necessary in consideration of the defendant's financial resources and any other circumstances, it may stipulate the time frame for payment of money under the claim being upheld or stipulate installment payments for the payment of such money, both of which shall be within three years from the date on which it renders the judgment, and may simultaneously stipulate that if the defendant pays in accordance with the stipulations on that time frame or pays without losing, pursuant to the provision of the following paragraph, the benefit of time from the stipulation of installment payments, the defendant will be exempted from the obligation to pay any default charges that accrued after the filing of the action.

(2) If the court establishes the stipulation on installment payments which is referred to in the preceding paragraph, it shall establish a stipulation on the forfeiture of the benefit of time in the event of the defendant's failure to pay.

(3) It is not permissible to enter a protest against a judicial decision involving the stipulations under the provisions of the preceding two paragraphs.

(Declaration of Provisional Execution)

Article 376 (1) In a judgment upholding a claim, the court shall issue a *sua sponte* declaration that a provisional execution may be effected if security is provided or that a provisional execution may be effected without security being provided.

(2) The provisions of Articles 76, 77, 79, and 80 apply *mutatis mutandis* to the security as referred to in the preceding paragraph.

(Prohibition of Appeals to the Court of Second Instance)

Article 377 It is not permissible to file an appeal to the court of second instance against the final judgment in a small claims action.

(Objections)

Article 378 (1) An objection against the final judgment in a small claims action

may be lodged with the court that has entered that judgment, within an inalterable time frame of two weeks from the day on which a written judgment or a record as referred to in Article 254, paragraph (2) (including as applied mutatis mutandis pursuant to Article 374, paragraph (2)) is served; provided, however, that this does not preclude the validity of an objection lodged prior to that time frame.

(2) The provisions of Articles 358 to 360 apply mutatis mutandis to the objection referred to in the preceding paragraph.

#### (Trial and Judicial Decision after Objection)

Article 379 (1) If a lawful objection is lodged, litigation returns to the stage it was at before the conclusion of oral arguments. In such a case, the trial is conducted and a judicial decision is reached through ordinary proceedings.

(2) The provisions of Article 362; Article 363; Article 369; Article 372, paragraph (2); and Article 375 apply mutatis mutandis to the trial and judicial decision as referred to in the preceding paragraph.

#### (Appeal Against a Judgment after Objection)

Article 380 (1) It is not permissible to appeal to the court of second instance against a final judgment entered in accordance with the provision of Article 359, as applied mutatis mutandis pursuant to Article 378, paragraph (2), and the provision of paragraph (1) of the preceding Article.

(2) The provisions of Article 327 apply mutatis mutandis to the final judgment as referred to in the preceding paragraph.

#### (Civil Fines)

Article 381 (1) If a person seeking a trial and judicial decision through a small claims action falsely reports the number of times as referred to in Article 368, paragraph (3), the court issues a ruling sentencing that person to a civil fine of not more than 100,000 yen.

(2) An immediate appeal may be filed against the ruling as referred to in the preceding paragraph.

(3) The provisions of Article 189 apply mutatis mutandis to a judicial decision imposing a civil fine under the provision of paragraph (1).

## **Part VII Demand Procedures**

### **Chapter I General Provisions**

#### (Requirements for a Demand for Payment)

Article 382 Upon the application of the creditor, the court clerk may issue a demand for the payment of a claim whose object is the payment of a certain



amount of money or other fungible or securities; provided, however, that this applies only if it is possible to serve the demand in Japan, by a means other than service by publication.

(Application for a Demand for Payment)

Article 383 (1) An application for a demand for the payment is filed with the court clerk of the summary court of jurisdiction in the locality that constitutes the general venue for an action involving the debtor.

(2) An application for a demand for the payment of the claim set forth in each of the following items may also be filed with the court clerk of the summary court of jurisdiction in the place set forth in said item:

(i) a claim against a person with an office or a business office, which is filed in connection with the business conducted at the person's office or business office: the location of said office or business office;

(ii) a claim for the payment of monies for a bill or note or for a check, and any claim incidental thereto: the place for payment of the bill or note or for the check.

(Mutatis Mutandis Application of Provisions on Actions)

Article 384 Unless contrary to the nature thereof, the provisions on actions apply mutatis mutandis to an application for a demand for the payment.

(Rejection of an Application, Without Prejudice)

Article 385 (1) If an application for a demand for the payment is not in accordance with the provisions of Article 382 or Article 383 or if it is obvious, from the object of the application, that the claim is without grounds, the application shall be rejected, without prejudice. The same applies to any part of a claim for which it is not permissible to issue a demand for the payment.

(2) The disposition under the provision of the preceding paragraph comes into effect by notice being given by a means that is considered appropriate.

(3) Any objection to the disposition as referred to in the preceding paragraph shall be lodged within an inalterable time frame of one week from the day on which the notice is received.

(4) It is not permissible to enter a protest against a judicial decision on the objection as referred to in the preceding paragraph.

(Issuance of a Demand for Payment)

Article 386 (1) A demand for the payment is issued without the debtor being heard.

(2) A debtor may lodge an objection to a demand for the payment with the summary court to which the court clerk that issues the demand belongs.

(Particulars That Shall Be Entered in a Demand for Payment)

Article 387 The following particulars shall be entered in a demand for the payment, and the demand for the payment shall be accompanied by a supplementary note indicating that if the debtor does not lodge an objection to the demand within two weeks from the day on which the debtor is served with the demand for the payment, a declaration of provisional execution will be issued at the petition of the creditor:

- (i) an indication that the debtor is being ordered to make a payment as referred to in Article 382;
- (ii) the object of the claim and a statement of the claims;
- (iii) the parties and statutory agents.

(Service of a Demand for Payment)

Article 388 (1) A demand for the payment shall be served on the debtor.

(2) A demand for the payment becomes valid at the time it is served on the debtor.

(3) If it is impossible to serve a demand for the payment due to the non-existence of the debtor's domicile, residence, business office or other office, or Workplace at the place proposed by the creditor, the court clerk shall notify the creditor to that effect. In such a case, if, within an inalterable time frame of two weeks from the day on which the creditor receives that notice, the creditor does not propose a place where service is to be effected other than the place previously proposed, the creditor is deemed to have withdrawn the application for the demand for the payment.

(Correction of a Demand for Payment)

Article 389 (1) The provisions of Article 74, paragraphs (1) and (2) apply mutatis mutandis to a demand for the payment.

(2) If a lawful objection to a demand for the payment is lodged after a declaration of provisional execution, it is not permissible to lodge an objection to a disposition for a correction under the provision of Article 74, paragraph (1) as applied mutatis mutandis pursuant to the preceding paragraph.

(Objection to a Demand Prior to a Declaration of Provisional Execution)

Article 390 If a lawful objection to a demand for the payment is lodged prior to a declaration of provisional execution, the demand for the payment ceases to be valid, to the extent of the objection to the demand.

(Declaration of Provisional Execution)

Article 391 (1) If a debtor does not lodge an objection to a demand for the payment within two weeks from the day on which the debtor is served with

that demand for the payment, the court clerk, at the petition of the creditor, shall issue a declaration of provisional execution, attaching a supplementary note of the amount of expenses for demand procedures to the demand for the payment; provided, however, that this does not apply if an objection to the demand is lodged prior to that declaration.

- (2) Any declaration of provisional execution shall be entered in a demand for the payment, and the demand for the payment shall be served on the parties; provided, however, that with the consent of the creditor, a demand for the payment in which this is entered may be sent to the creditor, in lieu of service.
- (3) The provisions of Article 385, paragraphs (2) and (3) apply mutatis mutandis to a disposition denying, without prejudice, the petition as referred to in paragraph (1) and to the lodging of an objection against such a disposition.
- (4) An immediate appeal may be filed against a judicial decision on the objection as referred to in the preceding paragraph.
- (5) The provisions of Article 260 and Article 388, paragraph (2) apply mutatis mutandis to the declaration of provisional execution as referred to in paragraph (1).

(Loss of Validity of a Demand for Payment upon the Expiration of a Time Frame)

Article 392 If a creditor does not file a petition for a declaration of provisional execution within 30 days from the time at which it becomes permissible for the creditor to file that petition, the demand for the payment ceases to be valid.

(Objection to a Demand After a Declaration of Provisional Execution)

Article 393 If an inalterable time frame of two weeks has expired after the day on which the debtor has been served with a demand for the payment bearing a declaration of provisional execution, the debtor may not lodge an objection to a demand in respect of that demand for the payment.

(Dismissal of an Objection to a Demand, Without Prejudice)

Article 394 (1) If the summary court finds that an objection to a demand is unlawful, it shall rule to dismiss the objection to the demand without prejudice, even if the claim to which the objection to the demand pertains is subject to the jurisdiction of the district court.

- (2) An immediate appeal may be filed against the ruling as referred to in the preceding paragraph.

(Transfer to Litigation Based on an Objection to a Demand)

Article 395 If a lawful objection to a demand is lodged, an action is deemed to have been filed, at the time that the application for the demand for the

payment was filed and for the claim to which the objection to the demand pertains, with the summary court to which the court clerk issuing the demand for the payment belongs or with the district court of jurisdiction for that locality, depending on the value of the subject matter of the claim. In such a case, expenses for the demand procedures constitute part of the court costs.

(Validity of a Demand for Payment)

Article 396 If no objection to a demand is lodged in respect of a demand for the payment bearing a declaration of provisional execution, or if a ruling dismissing an objection to a demand without prejudice becomes final and binding, the demand for the payment has the same effect as a final and binding judgment.

## **Chapter II Special Provisions on Demand Procedures That Are Handled Using Electronic Data Processing Systems**

(Applying for a Demand for Payment Using Electronic Data Processing Systems)

Article 397 An electronic data processing system may be used as provided by the Rules of the Supreme Court to file an application for a demand for the payment with the court clerk of a summary court specified by the Rules of the Supreme Court as a court that handles demand procedures using an electronic data processing system (hereinafter referred to as a "designated summary court" in this Chapter), not only in a case as prescribed in Article 383, but also if the summary court prescribed in that Article is a summary court separately provided for by the Rules of the Supreme Court.

Article 398 (1) If, in demand procedures involving an application for a demand for the payment that is filed, pursuant to the provisions of the main clause of Article 132-10, paragraph (1), using an electronic data processing systems, a lawful objection to a demand is lodged against the relevant demand for the payment, an action is deemed to have been filed, at the time that the application for the demand for the payment was filed and for the claim to which the objection to the demand pertains, with the summary court as provided for in Article 383, to which the court clerk issuing the demand for payment belongs, or the summary court separately provided for by the Rules of the Supreme Court as referred to in the preceding Article, or with the district court of jurisdiction in the locality of either such summary court, depending on the value of the subject matter of the claim.

(2) In the case as referred to in the preceding paragraph, if there are two or more applicable summary or district courts as prescribed in that paragraph, and the

summary court as provided for in Article 383, paragraph (1) or the district court of jurisdiction in that locality is among them, the action for the claim to which the objection to the demand pertains is deemed to have been filed there, and if neither of such courts is among them, the action for that claim is deemed to have been filed with the summary court of jurisdiction in the place specified in paragraph (2), item (i) of that Article or the district court of jurisdiction for that locality.

- (3) Notwithstanding the provision of the preceding paragraph, if the creditor, as provided for by the Rules of the Supreme Court, has designated a summary court or district court from among the summary courts or district courts as provided for in paragraph (1), the action is deemed to have been filed with that court.

(Issuing Notice of a Disposition Using Electronic Data Processing Systems)

Article 399 (1) Notwithstanding the provisions of the relevant laws and regulations , electronic data processing systems may be used pursuant to the Rules of the Supreme Court to issue notice of a disposition that the court clerk of a designated summary court reaches with respect to demand procedures involving an application for a demand for the payment that has been filed, pursuant to the provision of the main clause of Article 132-10, paragraph (1), using electronic data processing systems, if pursuant to the provisions of this Code or of other laws and regulations respecting notice of such a disposition, the notice is to be issued in the form of Paper Documents, etc.

- (2) The provisions of Article 132-10, paragraphs (2) to (4) apply mutatis mutandis to the notice of a disposition that the court clerk of a designated summary court issues pursuant to the provision of the preceding paragraph.

- (3) Notwithstanding the provision of Article 132-10, paragraph (3) as applied mutatis mutandis pursuant to the provision of the preceding paragraph, with the consent of the creditor that is to receive the notice of a disposition under the provision of paragraph (1), notice of the disposition is deemed to have arrived with the creditor when information pertaining to the relevant disposition is been recorded, pursuant to the Rules of the Supreme Court, onto a file stored on a Computer used by the court, and notice of such record is issued to the creditor.

(Creation of Documents in the Form of Electronic or Magnetic Records)

Article 400 (1) Notwithstanding the provisions of the relevant laws and regulations, in lieu of creating, etc. (meaning creating or retaining; hereinafter the same applies in this Article and paragraph (1) of the following Article) )Paper Documents, etc. that, pursuant to the provisions of this Code or of other laws and regulations, the court clerk is to create, etc. Paper

Documents, etc. in connection with demand procedures involving an application for a demand for the payment that has been filed, pursuant to the provision of the main clause of Article 132-10, paragraph (1), using an electronic data processing systems, the court clerk of a designated summary court may create, etc. an Electronic or Magnetic Record for said Paper Document, etc. pursuant to the Rules of the Supreme Court.

- (2) The provisions of Article 132-10, paragraphs (2) and (4) apply mutatis mutandis to the creation, etc. of an Electronic or Magnetic Record by the court clerk of a designated summary court pursuant to the provision of the preceding paragraph.

(Treatment of Case Records in the Form of Electronic or Magnetic Records)

Article 401 (1) If a person has filed a request for inspection, etc. of a case record under the provisions of Article 91, paragraph (1) or (3), and this involves part of the inspection, etc. of a case record that is connected with demand procedures and that pertains to an Petition, etc. that has been filed, pursuant to the main clause of Article 132-10, paragraph (1), using electronic data processing systems, or involves part of the inspection, etc. of a case record that is connected with demand procedures and that has been created, etc., pursuant to paragraph (1) of the preceding Article, as an Electronic or Magnetic Record (hereinafter such parts are collectively referred to as the "electronically or magnetically recorded parts" of a case record in this Article), the court clerk of a designated summary court, after outputting, in the form of a paper document, the contents of the electronically or magnetically recorded parts of the case record that have been recorded into a file maintained on a Computer used by the designated summary court, is to use said paper document for the inspection, etc. of the case record. The same applies to the service or sending of a document created, etc. as an Electronic or Magnetic Record.

- (2) If a lawful objection to a demand is lodged against a demand for the payment in demand procedures involving an application for a demand for the payment that has been filed, pursuant to the provisions of the main clause of Article 132-10, paragraph (1), using electronic data processing systems, the court with which an action is deemed to have been filed pursuant to the provisions of Article 398, after outputting, in the form of a paper document, the contents of the parts comprising Electronic or Magnetic Records, is to use said paper document for the inspection, etc. of the case record.

(Applying for a Demand for Payment Using a Designated Format of Paper Document, in Demand Procedures That Are Handled Using Electronic Data Processing Systems)

Article 402 (1) A paper document prepared in a format that complies with the

format specified by the Rules of the Supreme Court may be used to file an application for a demand for the payment with the court clerk of a summary court specified by the Rules of the Supreme Court as a court that handles demand procedures using electronic data processing systems (meaning electronic data processing systems that connects multiple Computers used by the court to one another over telecommunication lines), not only in a case as prescribed in Article 383, but also if the summary court prescribed in that Article is a summary court separately provided for by the Rules of the Supreme Court.

- (2) The provisions of Article 398 apply *mutatis mutandis* if a lawful objection to a demand is lodged against a demand for the payment in demand procedures that involve an application for a demand for the payment filed by means of a paper document that has been prepared in the format prescribed in the preceding paragraph.

### **Part VIII Stays of Execution**

(Judicial Decision for a Stay of Execution)

Article 403 (1) In the following cases, the court, upon petition, may issue a ruling ordering a temporary stay of compulsory execution, with or without requiring a person to provide security, and simultaneously ordering the provision of security and the commencement or continuance of a compulsory execution, or simultaneously ordering a revocation of executive measures already taken while requiring a person to provide security; provided, however, that the court may only issue an order to commence or continue a compulsory execution in the cases set forth in items (iii) to (vi):

- (i) an appeal as referred to in Article 327, paragraph (1) (including as applied *mutatis mutandis* pursuant to Article 380, paragraph (2); the same applies in the following Article) or a demand for a retrial is filed, there appear to be legal grounds for the circumstances being alleged to be used as grounds for protest and the party makes a *prima facie* showing in respect of a point of fact involving those circumstances, and the party makes a *prima facie* showing that execution risks causing damage that it would not be possible to compensate;
- (ii) a final appeal or a Petition for the Acceptance of a Final Appeal is filed against a judgment bearing a declaration of provisional execution, and the party makes a *prima facie* showing in respect of circumstances under which the judgment in prior instance would be reversed and a *prima facie* showing that execution risks causing damage that it would not be possible to compensate;
- (iii) an appeal to the court of second instance is filed against a judgment

- bearing a declaration of provisional execution, or an objection to a demand is filed against a demand for the payment bearing a declaration of provisional execution (other than an appeal to the court of second instance and an objection to a demand as referred to in the following item), and the party makes a prima facie showing that it is impossible to assert that no circumstances exist that would constitute cause to reverse or change the judgment in the prior instance or the demand for the payment, or makes a prima facie showing that execution risks causing substantial damage;
- (iv) an appeal to the court of second instance is filed against a judgment bearing a declaration of provisional execution, or an objection to a demand is filed against a demand for the payment bearing a declaration of provisional execution, on a claim for the payment of money for a bill or note or for a check and any on incidental claim for damages at the statutory interest rate, and the party makes a prima facie showing in respect of circumstances that would constitute cause to reverse or change the judgment in the prior instance or the demand for the payment;
  - (v) an objection is filed against a judgment in an action on a bill or note or action on a check bearing a declaration of provisional execution, or an objection is filed against a judgment in a small claims action bearing a declaration of provisional execution, and the party makes a prima facie showing in respect of circumstances that would constitute cause to reverse or change the judgment in the prior instance;
  - (vi) an action as referred to in Article 117, paragraph (1) is filed, there appear to be legal grounds for the circumstances being alleged to be used for a modification, and the party makes a prima facie showing in respect of a point of fact involving those circumstances.
- (2) No protest may be entered against a judicial decision on a petition prescribed in the preceding paragraph.

(Judicial Decision by the Court of Prior Instance)

- Article 404 (1) If the appeal as referred to in Article 327, paragraph (1) is filed, a final appeal or a Petition for the Acceptance of Final Appeal is filed against a judgment bearing a declaration of provisional execution, or an appeal to the court of second instance is filed against a judgment bearing a declaration of provisional execution, and the case record is stored at the court of prior instance, that court reaches a judicial decision on the petition prescribed in paragraph (1) of the preceding Article.
- (2) The provision of the preceding paragraph applies mutatis mutandis if an objection to a demand is filed against a demand for the payment bearing a declaration of provisional execution.



(Provision of Security)

Article 405 (1) If a party provides security pursuant to the provisions of this Part, in depositing it, the party shall use the official depository located in the territorial jurisdiction of the district court of jurisdiction in the locality of the court that has ordered the party to provide the security or of the execution court.

(2) The provisions of Articles 76, 77, 79, and 80 apply *mutatis mutandis* to the security as referred to in the preceding paragraph.