

The Foundation of the International Association of Defense Counsel
SURVEY OF INTERNATIONAL LITIGATION PROCEDURES: A REFERENCE GUIDE

*This document is a resource tool only. The information was compiled in 2014.
Please verify all current laws and regulations before proceeding as items could have changed since the time of publication.*

JAPAN

Responses submitted by:

Name: Noriko Higashizawa

Law Firm/Company: City-Yuwa Partners

Location: Tokyo, Japan

1. Would your jurisdiction be described as a common law or civil code jurisdiction?

Japan's legal system is a civil code jurisdiction.

2. What method of adjudication is used (adversarial, inquisitorial, other or hybrid)?

The method of adjudication is adversarial. At trial, it is adversarial because both plaintiff and defendant have the right to counsel, and both sides argue their case to the court. The court is actively involved, however, in determining the facts of a case and may participate in the fact finding inquiry by supplementally questioning witnesses.

3. What are the qualifications of the adjudicator (judge – elected, appointed; jury; other)?

Basically, The Cabinet appoints judges from among those individuals passing the bar examination and completing training at the Legal Training and Research Institute. Japan does not have a civil jury system. A new quasi-jury system was implemented in 2009, however, requiring selected citizens to participate as judges (and not jurors) in trials for certain severe crimes. Citizens chosen for such service, called (*saiban-in* or lay judge), are randomly selected out of the electoral register and, together with professional judges, conduct a public investigation of the evidence in order to determine guilt and sentencing in criminal proceedings.

4. Are there any procedures available for specialized courts (i.e. commercial court, employment, environmental)?

Summary courts handle, in principle, civil litigation cases involving claims which do not exceed ¥1.4 million. The summary courts also handle civil conciliation cases, demands for payment and certain minor criminal cases.

Family Courts have, in the first place, jurisdiction over all disputes within the family, as well as all domestic relations cases of legal significance. Typical examples of domestic relations cases are listed as follows: guardianship of adults, permission to adopt a minor, request for the expenses of bringing up a child, designation of the person who has parental authority and alteration thereof, division of estate, marital relationship disputes, and divorce. The family court also handles cases involving juvenile delinquents under 20 years of age who have committed a crime or are prone to commit crimes (14-19 years old) or who have violated penal provisions or are prone to violate them (under 14 years old).

In April 2006, a labor mediation process (*rodo-shinpan*) was introduced in the district courts to settle labor disputes,

The Foundation of the International Association of Defense Counsel
SURVEY OF INTERNATIONAL LITIGATION PROCEDURES: A REFERENCE GUIDE

*This document is a resource tool only. The information was compiled in 2014.
Please verify all current laws and regulations before proceeding as items could have changed since the time of publication.*

JAPAN

especially between individual workers and companies. Under this system, a mediator from management, another from labor and a judge convene to hear cases. The process, in principle, consists of three sessions with arguments mainly presented orally and with written submission of briefs.

The Intellectual Property High Court is a special branch of the Tokyo High Court in the judicial system of Japan, and was established on April 1, 2005, in order to accelerate and reduce the costs of patent litigation in Japan. The IP High Court hears appeals from district courts in Japan on intellectual property (including patents and copyrights) actions and suits against appeal/trial decisions made by the Japan Patent Office.

5. Is arbitration an option and when? If so, what rules are typically used?

Yes, if litigants are parties to a written agreement containing an arbitration clause or if the parties otherwise agree to submit their dispute to arbitration. The rules depend upon the provider of the arbitration (e.g., Japan Commercial Arbitration Association will observe its own Commercial Arbitration Rules).

6. Will the Courts enforce an arbitration agreement to preclude other forms of litigation?

Yes.

7. For Court proceedings, is mediation mandatory, either before or after filing of a claim or complaint?

No. However, mediation is mandatory for disputes falling under the jurisdiction of the Family courts (e.g., marital dissolution and division of estates and inheritance), and in tenancy disputes where a landlord and tenant have a dispute over the amount of rent.

8. What is the process for pre-hearing fact discovery (if any)?

None. The procedures by which attorneys collect evidence and elicit testimony as practiced in the Japanese legal system are fundamentally different from that of the American legal system, especially the absence of equivalent discovery procedures such as depositions and production of documents. Unlike American pretrial discovery, the pleading stage and discovery stage are not clearly separated in Japanese civil proceedings, and unlike a typical civil trial in the U.S., a trial in Japan generally commences shortly after a filing of a complaint and comprises of a series of court proceedings once every few months. Approximately one week before each court proceeding, attorneys for each side file with the court additional preparatory documents (i.e., briefs) and copies of documentary evidence to supplement the previously filed allegations and evidence (especially because both the complaint and answer typically fail to provide sufficient information for the court to render a decision). Both parties also provide a narrative and chronological description of the dispute in the preparatory documents. When the court proceeding is held, both attorneys have an opportunity to orally explain the content of the preparatory documents filed with the court and to discuss issues with the judge. As there are no mandatory disclosures or depositions, the judge may encourage the parties to disclose more information, especially to clarify a party's allegations

The Foundation of the International Association of Defense Counsel
SURVEY OF INTERNATIONAL LITIGATION PROCEDURES: A REFERENCE GUIDE

*This document is a resource tool only. The information was compiled in 2014.
Please verify all current laws and regulations before proceeding as items could have changed since the time of publication.*

JAPAN

(a) *Are there provisions for mandatory document disclosures?*

Not Applicable.

(b) *Is there provision for oral examinations of the parties or others?*

Not Applicable.

(c) *Are there limits on the length of oral examinations?*

Not Applicable.

(d) *Are witness statements or summaries to be provided before the hearing?*

Not Applicable.

9. What is the process for pre-hearing expert disclosure (if any)?

Not Applicable.

(a) *Are expert reports or written summaries required to be exchanged?*

Not Applicable.

(b) *Are the parties entitled to conduct a pre-hearing oral examination of opposing experts?*

Not Applicable.

(c) *Are there provisions requiring experts to meet and narrow issues before the hearing?*

Not Applicable.

10. Are there other notable discovery rules?

Not Applicable.

The Foundation of the International Association of Defense Counsel
SURVEY OF INTERNATIONAL LITIGATION PROCEDURES: A REFERENCE GUIDE

*This document is a resource tool only. The information was compiled in 2014.
Please verify all current laws and regulations before proceeding as items could have changed since the time of publication.*

JAPAN

11. Is there a prehearing conference (for trial management, settlement or other purposes)? Who conducts it? How long before the hearing?

Not Applicable.

12. Can a prehearing motion for judgment be brought? If so, what is the threshold test for judgment?

No.

13. Is there a process for obtaining pre-hearing rulings with respect to evidence admissibility including admissibility of expert testimony? What is the process and when does it occur?

No.

14. What is the standard for admissibility of expert evidence?

Generally speaking, there is no civil standard. Namely, each party can submit expert evidence even if the said evidence is not reliable. The judge will then determine whether the evidence is reliable.

15. Does the Court have the power to appoint its own experts? Under what circumstances and what type?

Appointments including, among others, the following three (3) areas:

(i) Technical advisor: Technical advisors may be involved, by decision of the court, to assist judges by providing explanations of technical knowledge in cases where their expertise is necessary to clarify issues of the case or to facilitate progress in the proceedings. For example, the Supreme Court appoints technical advisors as *ad hoc* officials from among experts such as university professors and researchers at public research institutes who have expertise in various scientific fields. A court usually appoints a technical advisor in complicated cases, such as IP, complex construction, and medical litigation.

(ii) Research law clerk: Research law clerks are assigned to the Supreme Court, High Courts and District Courts. Judges may assign research law clerks with the task of conducting research (this is limited to cases involving intellectual property or tax matters in the District Courts) and other duties provided under other applicable laws. In IP cases, a research law clerk often has broader authority, among others, to question the parties and witnesses and to take part in settlement discussions.

(iii) Expert witness: An expert witness shall be designated by the court from persons who have relevant knowledge and experience necessary to give expert testimony. Judges may appoint an expert in matters where the subject matter of a dispute involves, among others, valuation of stock and real estate or authentication of handwriting.

The Foundation of the International Association of Defense Counsel
SURVEY OF INTERNATIONAL LITIGATION PROCEDURES: A REFERENCE GUIDE

*This document is a resource tool only. The information was compiled in 2014.
Please verify all current laws and regulations before proceeding as items could have changed since the time of publication.*

JAPAN

16. Does your jurisdiction protect privilege? If so, what privileges are protected from disclosure (attorney client / legal advice; documents prepared in anticipation of litigation; settlement discussions; other)?

No.

17. If privilege is not protected, are there other protections from disclosure (i.e. privacy) that could prevent disclosure of otherwise privileged information, and what is the basis for those protections?

In general, an attorney or a person who was formerly an attorney shall have a right and duty to maintain the secrecy (or confidentiality) of any facts which he or she obtained during the course of his or her professional duties. This duty of confidentiality is regarded as one of the most important duties imposed on attorneys, and is regarded as a fundamental prerequisite for attorneys to properly represent clients and provide legal services in Japan. Although the attorney-client privilege recognized in U.S. jurisprudence has limited significance in Japan, there are other statutory protections and requirements available to protect attorney-client communications as well as to protect the confidentiality of documents from disclosure at trial as described in 18 below.

18. Who determines privilege disputes, or disputes with respect to other forms of protection described in 17 above?

(i) Attorney-client communications: Attorney has a duty to protect against disclosure of “facts” contained in a communication from a client. The statutory law is clear that an attorney may refuse to testify about a fact obtained in confidence from a client.

(ii) Client Documents: Attorneys seeking evidence from an opposing party or third parties must seek the assistance of the court by filing a petition to produce documents (*Bunsho Teishutsu Meirei*) (“Document Production Order”). There is no obligation to produce requested documents, however, if those documents fall within one of five excepted categories under Japanese law including certain documents containing attorney-client communications. In the event of a dispute, however, courts often employ an *in camera* review to determine whether a document containing attorney-client communications or other matters should be exempted from disclosure.

19. Briefly describe the trial process?

(a) *Are there opening submissions, in what form and of what length?*

Yes. The plaintiff’s attorney files a complaint with copies of documentary evidence related to the key facts. The complaint must state the claim (e.g., damages or specific relief) and the grounds for the claim. The grounds for the claim must be supported by concrete facts essential to establishing the cause of action and the claim must also be supported by documentary evidence. The defendant lawyer then files an answer, which outlines the judgment that the defendant seeks along with attached copies of relevant documentary evidence. Where the issues in dispute are not clear and the allegations

The Foundation of the International Association of Defense Counsel
SURVEY OF INTERNATIONAL LITIGATION PROCEDURES: A REFERENCE GUIDE

*This document is a resource tool only. The information was compiled in 2014.
Please verify all current laws and regulations before proceeding as items could have changed since the time of publication.*

JAPAN

and evidence are insufficient for the judge to render a judgment, a series of court proceedings will be scheduled once every few months and at each court proceeding, attorneys for each side discuss the issues with the judge to formulate and to simplify the issues.

(b) What is the order of presentation of witnesses?

Generally speaking, the parties meet and confer and then suggest the order of presentation of witnesses to the judge, but if there is a dispute as to the order of presentation of witnesses or a witness is not available on a certain date, the judge will determine the order of presentation of witnesses in consultation with both parties.

(c) Who conducts examination and in what order?

The party calling the witness conducts a direct examination that is followed by cross-examination. A redirect examination is then permitted to rebut inferences raised on cross-examination. Before the witness is dismissed, the judge will have the option to examine (e.g., supplemental questions) the witness.

(d) What is the process for closing submissions?

Once the lawyers and the judge have narrowed the key issues based on what they have learned from the exchange of briefs and documentary evidence, confirmed the issues to be resolved and completed the examination of the witnesses and parties, the judge will render a judgment unless the parties have earlier reached a settlement.

20. Please identify any other notable trial procedures.

Lawyers who seek to gather evidence from another party can seek the assistance of the court by filing for a Document Production Order. Invariably, the court has the sole discretion to either grant or deny a request. In general, a petition for a Document Production Order shall be filed by specifying the (i) identification of the document; (ii) purpose of the document; (iii) holder of the document; (iv) facts to be proven by the document; and (v) grounds for the obligation to produce the document.

21. Who bears the burden of proof of liability? Causation? Damages? What is the standard of proof for each?

The plaintiff sets forth its allegations in a complaint with copies of documentary evidence related to the key facts. The complaint must state the claim (e.g., damages or specific relief) and the grounds for the claim. In a car accident case, for example, the plaintiff must plead the cause of action, causation and damages. The defendant is then required to file a responsive pleading denying some or all of the allegations and setting forth any affirmative facts in defense.

The Foundation of the International Association of Defense Counsel
SURVEY OF INTERNATIONAL LITIGATION PROCEDURES: A REFERENCE GUIDE

*This document is a resource tool only. The information was compiled in 2014.
Please verify all current laws and regulations before proceeding as items could have changed since the time of publication.*

JAPAN

In Japanese litigation, there are two (2) standards of proof: (i) *Shoumei*, and (ii) *Somei*. *Shoumei* is a higher burden of proof than the *Somei* standard. The *Shoumei* standard is met when a party verifies the facts to the extent that an ordinary person does not have a reasonable doubt regarding the existence of the facts. In contrast, the *Somei* standard is met when a party verifies the facts to the extent that an ordinary person thinks that the facts probably exist or existed.

Shoumei is the standard required in most Japanese civil cases. On the other hand, *Somei* is the standard employed in limited situations, among others, request for protective orders and in secondary matters (e.g., refusal to testify).

22. What heads of damage are recoverable (compensatory, pre-judgment interest, punitive damages, other)?

Compensatory damages and pre-judgment interest are recoverable in civil cases. The court does not have discretion over the rate of pre-judgment interest. The rate is defined under Japanese law unless a different rate was otherwise agreed upon by the parties. There are no punitive damages in civil cases.

23. If punitive damages are available, what is the threshold for recovery, and range of awards?

Not applicable.

24. Are there time limits for bringing claims? Responding to claims? Please describe.

Yes. A statute of limitations dictates the period of time during which a party must bring a claim. The Court sets a specific period of time for filing an answer.

For common claims involving contracts, claims shall be barred if not exercised within ten (10) years. For common tort claims, claims shall be barred if not exercised within three (3) years from the dated when the aggrieved party (plaintiff) becomes aware of damages and the identity of the tortfeasor. (There is an absolute statute of limitations of twenty (20) years from the tortious act).

25. What are the requirements to establish jurisdiction over foreign defendant in your court? Can a foreign defendant request that the court decline jurisdiction on the basis that there is a more convenient forum?

In general, jurisdiction over a foreign defendant is established in cases where, among others: (i) the place of performance of the obligation set forth in the contract is in Japan; (ii) the subject matter of the claim (e.g., registration of real estate) is located in Japan; (iii) seizure of the defendant's property is located in Japan for claims involving property rights or money; (iv) the business office or other office is located in Japan for claims related to the business conduct at such business office or

The Foundation of the International Association of Defense Counsel
SURVEY OF INTERNATIONAL LITIGATION PROCEDURES: A REFERENCE GUIDE

*This document is a resource tool only. The information was compiled in 2014.
Please verify all current laws and regulations before proceeding as items could have changed since the time of publication.*

JAPAN

other office; (v) claims against an entity carrying out continuous business in Japan (even in the absence of a business office in Japan) and; (vi) tortious act took place in Japan or the effect of the tortious act resulted in harm suffered in Japan (except where it was commonly unforeseeable that the effect of the tortious act conducted in a foreign country would be suffered in Japan.)

Even if a Japanese court has jurisdiction over a foreign defendant, the court may dismiss the action in cases where fairness between the parties or the appropriateness and promptness of the judicial procedures would be impaired taking into consideration the various circumstances involved in each case, among others, the nature of the case, the degree of burden on the defendant and the location of evidence.

26. Are there procedures for a defendant to bring other potentially responsible parties into the proceeding? Briefly describe.

While a suit is pending, a party may give a notice of the suit to a third party who may intervene in the suit. This notice does not require a third party to intervene in the suit. Even where a third party has not intervened in the suit, however, the judicial decision in the suit shall also be binding and enforceable against this third party.

27. Are legal costs recoverable by either party? If so, under what circumstances, and how is the amount calculated? (i.e. is it a loser pays costs system).

Yes. In litigation, court fees and miscellaneous expenses are usually borne by the losing party. Attorneys' fees are not compensated in contractual disputes but may be awarded in tort cases and workplace occupational health and safety matters. The amount of recoverable attorneys' fees in these cases is ten percent (10%) of the amount recovered or awarded.

28. Are contingency fees allowed?

Contingent fee litigation is permitted in Japan.

29. Is third party funding of claims permitted? Under what circumstances?

There is no binding regulation relating to attorneys' fees except for a Bar Association rule setting out information and disclosure requirements.

The Foundation of the International Association of Defense Counsel
SURVEY OF INTERNATIONAL LITIGATION PROCEDURES: A REFERENCE GUIDE

*This document is a resource tool only. The information was compiled in 2014.
Please verify all current laws and regulations before proceeding as items could have changed since the time of publication.*

JAPAN

30. Are class or multi-party actions allowed? Under what circumstances? For what types of claims?

There is no class action system in Japan. However, the procedure of joinder of claims is available. Joinder of claims is a procedure for consolidation of litigation between several parties into one single action, and parties are joined as a result of the intentions of the plaintiffs or the court. In particular, if rights or obligations that are the subject matter of the suits are common to two or more persons or are based on the same factual and statutory cause, these persons may sue or be sued as co-parties. The same shall apply where rights or obligations that are the subject matter of the suits are of the same kind and based on the same kind of causes in fact and by law. Normally, this procedure is used for joining actions with a relative small number of parties such as, for example, the joining of two or more joint debtors. The benefit is to have one uniform judgment for similar types of cases, especially since the litigation proceedings are not separate litigations in practice, but are cases where a few lawyers are jointly retained to handle the proceedings. The weaknesses of joinder are that the group characteristic of this kind of procedure is only *de facto* and the court will have ultimate discretion to allow or deny it. For example, where evidence among the plaintiffs is different, the court can resolve them in separate litigation proceedings. Further, each party in principle is free to settle, and there are no particular restrictions preventing a party from withdrawing its claims. When this procedure is adopted, the lawyers retained in the litigation must obtain authorization from each individual party.

To improve consumer protection, the Japanese government has enacted legislation in December 11, 2013 (which will be implemented within three (3) years from this enactment date) to introduce a new class action system with two tiers and an opt-in procedure. The new system would only allow a qualified organization called *Tokutei tekikaku shouhisha dantai* (or Specified Qualified Consumer Organization (SQCO)) to file an action on behalf of consumers. The class action-like system will consist of two stages. In the first stage, the SQCO brings a lawsuit for monetary damages on behalf of consumers. The district court will examine whether the business entity owes a monetary obligation to a class of consumers on the basis of factual and legal causes which are common to all consumers who suffered harm. If a court finds that the business entity is liable for damages, the SQCO gives notice to each individual consumer to join the lawsuit and the case commences to the second stage. Consumers with claims will then delegate authority to recover their claims to the SQCO. The second stage is a summary procedure to determine the claims of each consumer.

Claims are defined as *Kyotsuu gimu* (Common Claims), and only these Common Claims by consumers against business entities may be the subject under this new system:

- (a) performance of obligation based on consumer contract;
- (b) unjust enrichment;
- (c) damages arising from defaults under a consumer contract;
- (d) damages arising from product defect liability; and
- (e) damages caused by tortious acts (*Fuhoukoui*).

31. Can claims be commenced by a consumers association or other representative organization? Under what circumstances?

Yes. Where a business operator, for example, engages in or is likely to engage in unjustified soliciting, or in executing a contract containing an unjustified clause, a Qualified Consumer Organizations may demand an injunction.

The Foundation of the International Association of Defense Counsel
SURVEY OF INTERNATIONAL LITIGATION PROCEDURES: A REFERENCE GUIDE

*This document is a resource tool only. The information was compiled in 2014.
Please verify all current laws and regulations before proceeding as items could have changed since the time of publication.*

JAPAN

32. On average, how long does it take to get to trial/final hearing, and what factors can affect that?

Approximately 12-18 months to the final court proceeding depending upon the complexity of the underlying issues of the dispute, the willingness of the parties to settle and the extent of the evidence that the judge must review before rendering a decision.

33. Is an appeal process available (distinguish between final and interlocutory/procedural orders as needed)? Who hears the appeal? How are they appointed? What are their qualifications?

Japan's court system is basically a three trial system in which parties to a dispute--- following a court hearing and decision (i.e., District Court)---have the right to undergo two additional court hearings and decisions, as stipulated by the procedures for appeal (i.e., High Court) and, ultimately, final appeal (i.e., Supreme Court).

A judge on the High Court shall be appointed by the Cabinet from a list of persons nominated by the Supreme Court.

The Emperor shall appoint the Chief Justice of the Supreme Court as designated by the Cabinet, and the other Associate Justices shall be appointed by the Cabinet.

Basically, judges are appointed from those individuals who have completed their training as legal apprentices. Attorneys, prosecutors, bureaucrats and scholars may also be appointed as a judge, but the ratio of judges from this group is quite low.

34. Are hearing rooms available for electronic trials or appeals (i.e. where documents and transcripts are presented on computer monitors; witnesses can testify by video conference)?

Yes. The court may examine a witness in a courtroom via video conference in cases where witnesses reside in remote locations. The court may also allow the parties to present their claims using a projector and a screen in complex trials such as patent litigation.

35. What is the practice regarding the use of graphics, computer animation, power point and the like, in trials? In appeals?

In Japan, the use of graphics, computer animation and power point during trials and appeals is not prohibited. The use of electric devices is common, especially in IP litigation where a technical presentation is usually held at the last court proceeding. During the presentation, attorneys for each side typically use graphics, computer animation and/or power point to assist them in persuading the judge to decide in favor of their client.

The Foundation of the International Association of Defense Counsel
SURVEY OF INTERNATIONAL LITIGATION PROCEDURES: A REFERENCE GUIDE

*This document is a resource tool only. The information was compiled in 2014.
Please verify all current laws and regulations before proceeding as items could have changed since the time of publication.*

JAPAN

36. Will the lawyer at trial be the same as the one responsible for pre-trial procedures? Is there a solicitor / barrister distinction?

Yes. Unlike American pretrial discovery, the pleading stage and discovery stage are not clearly separated in Japanese civil proceedings. There is no solicitor / barrister distinction in Japan.

37. What are the contributory negligence laws in your jurisdiction? Is there a comparative fault assessment, joint and several or proportionate liability among tortfeasors? Does a plaintiff's negligence reduce or eliminate liability of defendants named in the litigation?

There is no concept of contributory negligence in Japan. There is comparative fault assessment, joint and several or proportionate liability among tortfeasors in Japan. A plaintiff's negligence will reduce liability of defendants named in litigation.

38. Is service of a complaint issued outside your country permitted in your country by "informal" means, or must the Hague Convention be followed?

Service of process must observe the procedures of the Hague Convention.

39. Do your laws prohibit export of relevant documents from your jurisdiction for the purposes of litigation outside your jurisdiction? (Consider privacy rules)

No, unless these relevant documents contain "personal information" as defined in the Act on the Protection of Personal Information (the "Act"). In the Act, "personal information" is defined as "information about a living individual which can identify the specific individual by name, date of birth, or other description contained in such information (including such information as will allow easy reference to other information and will thereby enable the identification of the specific individual) Under the Act, the general rule is that an entity shall not transfer "personal information" to any third party without the prior consent of the person. Export would be allowed if an entity has (i) obtained the prior consent of such person; and (ii) the purpose of use of the "personal information" is within the scope approved by such person.

40. Please point out any litigation Best Practices employed by Courts in your jurisdiction but not yet referenced in the survey.

Where the issues in dispute are not clear and the allegations and evidence are insufficient for the judge to render a judgment

The Foundation of the International Association of Defense Counsel
SURVEY OF INTERNATIONAL LITIGATION PROCEDURES: A REFERENCE GUIDE

*This document is a resource tool only. The information was compiled in 2014.
Please verify all current laws and regulations before proceeding as items could have changed since the time of publication.*

JAPAN

(especially because both the complaint and answer typically fail to provide sufficient information for the court to render a decision), a series of court proceedings will be scheduled once every few months and at each court proceeding, attorneys for each side discuss the issues with the judge to formulate and to simplify the issues. During the latter stages of the court proceedings, attorneys for each side and the judge will further narrow the key issues based on what they have learned from the shared information and evidence gathered during the examination of witnesses and parties. One advantage of these court proceedings is that the judge will have the information necessary to identify the issues and render a decision in a reasonable time.

41. Are there any significant areas in which you believe the playing field between plaintiff and defendant is not level that you think need to be addressed?

There is no concept of “at-will” employment in Japan and termination of employees must be for “cause.” The main point to keep in mind for employers in Japan is that it is very difficult to terminate employees. Behavior and performance that would clearly be “cause” for dismissal in many jurisdictions would not be considered to warrant termination in Japan. While employers do have a right to dismiss employees, a dismissal will be regarded as an “abuse of right” under Japanese law and therefore invalid, if a court determines that the dismissal lacks “reasonable grounds” and is not “socially acceptable.” In general, this is a very high standard to meet, and employers often find it very difficult to prevail in wrongful dismissal lawsuits.

42. Are there legislative efforts under way that address any of the litigation practices in your country?

Currently, only one party may participate in a preliminary hearing via a telephone conference call so long as the other party is participating in-person. A proposal is under consideration which would allow both parties to participate in a preliminary hearing via telephone conference call.

Another proposal under consideration is to introduce a procedure in which (i) both parties owe obligations to exchange information on documents underlying their claims/defenses at the early stage of trial; (ii) both parties shall exchange a list of the documents, including those that the parties do not intend to submit to court as evidence; and (iii) a party found to be in violation of the foregoing shall be subject to a sanction, an administrative penalty or payment of the opposing party’s attorneys’ fees.