

Judicial System and Finance for Civil Litigation in Japan

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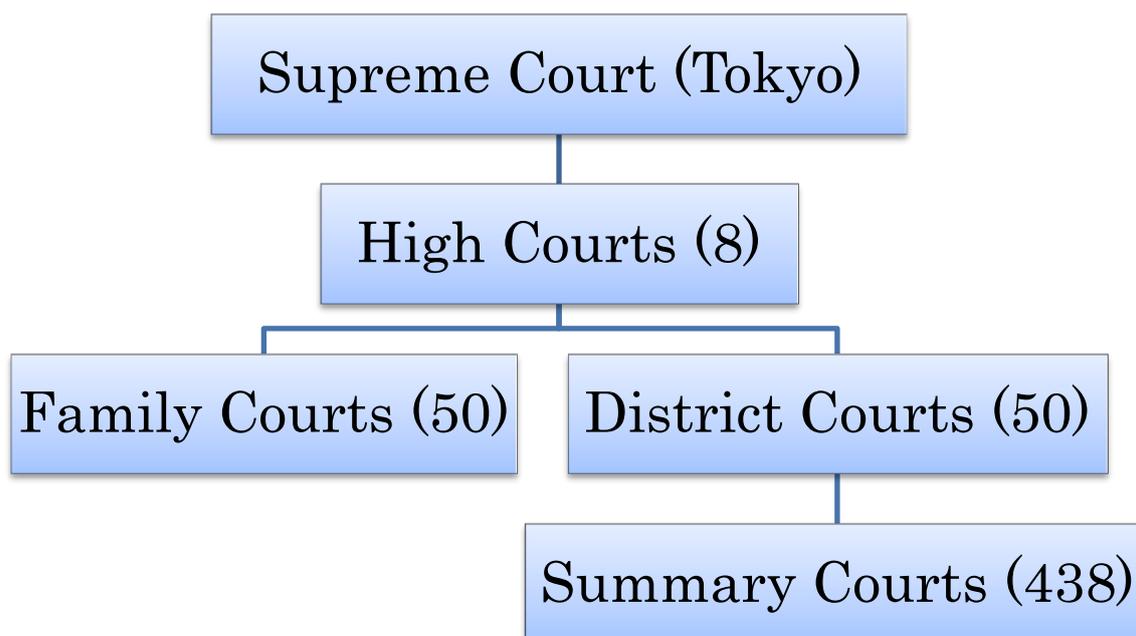
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1. Judicial System

(1) Court Structure

According to the Constitution, the whole judicial power is vested in the Supreme Court and lower courts established by law. As shown in the chart below, the judicial system of Japan is composed of the following five types of courts: the Supreme Court, high courts, district courts, family courts, and summary courts. Japan adopts a three-tiered judicial system and a summary, family, or district court will be the court of first instance depending on the nature of the matter.



The **summary courts** handle, in principle, civil litigation cases involving claims which do not exceed ¥1.4 million. They handle criminal cases related to relatively light offenses. There are 438 summary courts throughout the country. 355,776 civil litigation cases and 9,842 criminal litigation cases were commenced before summary courts in 2013¹.

The **district courts** handle the first instance of most types of civil, criminal, and administrative cases. There are 50 district courts in Japan having territorial

¹ The website of the Supreme Court of Japan (http://www.courts.go.jp/english/vcms_lf/20140909stastical.pdf).

jurisdiction over their respective districts, the area of which is identical to that of each prefecture (except Hokkaido, which is divided into four districts). 174,945 civil litigation cases and 71,771 criminal litigation cases were commenced before district courts in 2013². In Japan, the lay judges (Saiban-in) system started in May 2009 under which, lay judges chosen from citizens serve alongside professional judges in examining cases involving certain crimes at district courts.

The **family courts** handle lawsuits related to personal status, adjudications and conciliations for domestic relations cases, adjudications for juvenile cases, etc. Family courts are located at the same places of the district courts. 916,398 domestic relations cases and 123,088 juvenile cases were commenced before family courts in 2013³.

The **high courts** handle appeals filed against judgments rendered by district courts, family courts or summary courts, or certain decisions by administrative agencies. High courts are located in eight major cities in Japan: Tokyo, Osaka, Nagoya, Hiroshima, Fukuoka, Sendai, Sapporo, and Takamatsu. 26,003 civil litigation cases and 6,091 criminal litigation cases were commenced before high courts in 2013⁴. On April 1, 2005 the Intellectual Property High Court, which specializes in intellectual property cases, was established as a special separate branch of the Tokyo High Court.

The **Supreme Court** is the highest and final court that handles appeals against judgments rendered by high courts and appeals against a ruling as provided specifically in the procedural laws. It is composed of the Chief Justice and 14 Justices, with a Grand Bench comprised of all 15 Justices and three petty benches each comprised of 5 Justices. 6,110 civil litigation cases and 1,968 criminal litigation cases were commenced before the Supreme Court in 2013⁵.

(2) Legal Personnel

The legal professions in Japan are separated into the following three career paths: attorney, judge and public prosecutor. To become qualified to practice as an attorney, judge, or public prosecutor, one must complete a law school curriculum, pass the national bar examination, and complete a one-year apprenticeship at the Legal Training and Research Institute of the Supreme Court.

Attorneys participate in judicial proceedings as the counsels of parties in civil cases and as defense counsels in criminal cases. Every attorney must belong to one of the local bar associations and at the same time to the Japan Federation of Bar Associations (JFBA), which is composed of local bar associations and all individual attorneys. Representation

² *ibid.*

³ *ibid.*

⁴ *ibid.*

⁵ *ibid.*

before court by an attorney is not compulsory (self-representation is allowed); however, a person who is not a qualified attorney is not allowed to represent other person before courts in principle. The Attorney Act (Art. 72) prohibits unqualified persons from providing legal services including legal advices and out-of court representations. The law also defines unauthorized practice of law as a criminal activity. The population of attorneys is 33,264 at the end of March 2013⁶.

Attorney Act

(Prohibition of the provision of legal services by non-attorneys)

Article 72 No person other than an attorney or a Legal Professional Corporation may, for the purpose of obtaining compensation, engage in the business of providing legal advice or representation, handling arbitration matters, aiding in conciliation, or providing other legal services in connection with any lawsuits, non-contentious cases, or objections, requesting for re-examination, appeals and other petitions against administrative agencies, etc., or other general legal services, or acting as an intermediary in such matters; provided, however, that the foregoing shall not apply if otherwise specified in this Act or other laws.

Judges of the lower courts are categorized into presidents of high courts, judges, assistant judges, and summary court judges. In number as of 2013, there are 2,912 judges excluding summary court judges⁷.

Public prosecutors are public officers who institute prosecution, request to the courts the proper application of the law, and supervise the execution of criminal judgments. In number as of 2013, there are 1,822 public prosecutors excluding assistant prosecutors⁸. Apart from legal professions mentioned above, there are several neighboring occupations which deal with the law; patent attorney, certified public tax accountant, certified public accountant, judicial scrivener, administrative scrivener, public consultant on social and labor insurance, land and house investigator.

2. Finance for Civil Litigation

(1) Cost Regime

Costs for Civil Litigations are mainly divided into two categories; court costs and attorney's costs.

Court costs include fees for filing an action and other expenses, such as postal charges, and travel expense and daily allowances to be paid to witnesses. Attorney's fees are not

⁶ Japan Federation of Bar Associations, *White Paper on Attorneys 2013 (english version)*, p1.

⁷ *ibid*, p10.

⁸ *ibid*, p10.

included in the court costs. The defeated party shall generally bear the court costs (Art. 61, Code of Civil Procedure). Fees for filing an action are determined by reference to statutory scales. Such fees rise on the scale depending on the value of the claim regressively. For example, a subject value of ¥ 1 million would attract a court fee of ¥ 10,000 in the first instance, ¥ 10 million, ¥50,000 and ¥ 100 million, ¥ 320,000 (Art. 3, Act on Costs of Civil Procedure and Appended Table 1 to the Act).

Attorney's costs include attorney's fees and expenses (disbursements). Since 2003, when the Attorney Act was amended and the Attorneys Remuneration Standards formulated by bar associations were abolished, attorney's fees, including those for representation before courts, have been completely liberalized. The so called "initial fees and success fees formula" is commonly used in civil litigation cases as remuneration scheme for representation before or out of courts. In such formula, the client shall, on the commencement of the case, pay the initial fee calculated based on the amount of the economic interest of the subject matter and by the end of the case, the success fee calculated based on the amount of the achieved economic interest. In practice, for the calculation of initial and success fees, a considerable number of attorneys use tables similar to that shown below, which is equivalent to the table attached to the abolished Attorneys Remuneration Standards mentioned above.

Economic Interest	Initial Fee (excl. tax)	Initial Fee (excl. tax)
less than ¥ 1.25 M	¥100,000	16% of Economic Interest
¥ 1.25 M - ¥ 3 M	8% of Economic Interest	
¥ 3 M - ¥ 30 M	5% of Economic Interest + ¥ 90,000	10% of Economic Interest + ¥ 180,000
¥ 30 M - ¥ 300 M	3% of Economic Interest + ¥ 690,000	6% of Economic Interest + ¥ 1,380,000
¥ 300 M or more	1% of Economic Interest + ¥ 3,690,000	2% of Economic Interest + ¥ 7,380,000

Hourly fees are used in out-of-court preventive legal services such as drafting of contracts or M & A legal due diligence for relatively large corporate clients; they are not, however, commonly used in civil litigation cases. Although contingency fees are not prohibited in Japan, they are extremely rare in practice.

Since attorney's costs are not included in court costs and there are no such rules or regulations as to who shall bear the attorney's costs in civil litigation cases, each party, regardless of the outcome of the case, shall bear their own attorney's costs. In some tort cases such as traffic accidents, though, one may claim as a part of compensation for damages certain level of attorney's fees (usually 10% of the whole damage).

(2) Options for Finance

Other than self-finance, practically three options are available as finance for civil litigation in Japan; judicial aid, civil legal aid and legal expenses insurance.

A person may request the court to grant a grace period for expenses and costs to be paid to the court (**judicial aid**) when he/she lacks the financial resources to pay the expenses necessary to prepare for and conduct a suit or suffers substantial detriment in his/her standard of living by paying such expenses. However, a grace of payment is not granted to parties unlikely to win the case.

Civil legal aid will be available when a person is involved in a civil dispute, including domestic cases, and needs assistance of legal experts but has limited financial resources. Such aid could be granted by the Japan Legal Support Center (Houterasu), which was established by the Government of Japan in the framework of incorporated administrative agency. Civil legal aid consists of three types of support; aid for legal consultation (free legal counseling), aid for representation (loans for attorney's fee) and aid for preparation of legal documents (loans for the costs of making legal documents). Since aid for representation and aid for preparation of legal documents are loans for legal costs, they shall in principle be reimbursed by the recipients thereof; however, the recipients on governmental welfares may be exempted from the reimbursement. To be eligible to receive these supports, it is required to meet all the following conditions.

a) The financial resources of the applicant fall below a certain amount;

aa) Base monthly income (except for such large cities as Tokyo or Osaka, etc.)

Single person household	Family of 2	Family of 3	Family of 4
Below ¥182,000	Below ¥251,000	Below ¥272,000	Below ¥299,000

bb) Cash - Savings

Single person household	Family of 2	Family of 3	Family of 4 or more
Below ¥1,800,000	Below ¥2,500,000	Below ¥2,700,000	Below ¥3,000,000

b) Possibility of successful result

c) Consistency with the purpose of civil legal aid

Civil legal aid is designed to cover 20 % of the population of lower income. In number as of 2012, there are 271,554 cases, in which aid for legal consultation is granted, 105,019 cases, aid for representation and 5,441 cases, aid for preparation of legal documents⁹.

⁹ The Japan Legal Support Center, *the Business Results Report 2012* (<http://www.houterasu.or.jp/cont/100536318.pdf>), p30, 32.

¥ 17,200 million has been spent for the provision of the civil legal aid in 2012¹⁰.

Legal expenses insurance (LEI) is available for its policy holders or the insureds according to the coverage of their policy when they get involved in legal disputes. The first LEI coverage in Japan was appeared in the middle of 1990s. Most of the non-life insurance companies provide legal expenses coverages in the form of add-on (special clauses) to such insurance products as automobile insurance, fire insurance or personal accident insurance. The scope of such coverage is usually limited to claims for compensation to personal injuries or property damages caused by traffic accidents or other accidents in their daily lives. In 2013, however, there emerged an insurance company, which provides LEI policies covering wide range of civil disputes, including disputes over contracts, individual labor disputes and even disputes over domestic relations such as divorce or inheritance, - Prevent Small Amount & Short Term Insurance Co., Ltd.-.

As mentioned above, because the provision of legal services by non-attorneys is prohibited by the Attorney Act, legal expenses insurers cannot provide legal services by themselves. In addition, acting commercially as an intermediary in legal services is prohibited by the same act. Therefore, it could violate the law and thus be punished as a crime, if legal expenses insurers refer their policy holders or insureds to certain attorneys. As a variety of non-life insurance, the Insurance Act shall be applicable to legal expenses insurance contracts. Also, The Insurance Business Act shall be applicable to LEI business and thus it is under the supervision of the Financial Services Agency (FSA). However, there exist no such special rules or regulations for LEI as those in the EU Directive (87/344/EEC).

(3) “Rights Protection Insurance (Attorney Insurance)” of JFBA Legal Access Center
JFBA in 2000 established the JFBA Legal Access Center (JBFA-LAC), which in collaboration with insurance companies etc. is operating the “Rights Protection Insurance (Attorney Insurance)” (“kenrihogo-hoken (bengoshi-hoken)”) scheme. Kenrihogo-hoken is a registered trademark of JFBA. As of September 1, 2014, the following 12 insurance companies etc., including 2 of the 3 largest non-life insurance groups (“3 Mega-Sonpo”), participate in this scheme.

- Aioi Nissay Dowa Insurance Co., Ltd.
- au Insurance Co., Ltd.
- The Fuji Fire & Marine Insurance Co., Ltd.

¹⁰ The Japan Legal Support Center, *the Financial Report 2012* (<http://www.moj.go.jp/content/000114090.pdf>), p1.

- The Kyoei Fire & Marine Insurance Co., Ltd.
- Mitsui Direct General Insurance Co., Ltd.
- Mitsui Sumitomo Insurance Co., Ltd.
- Sompo Japan Nipponkoa Insurance Inc.
- Sonpo 24 Insurance Co., Ltd.
- Sony Assurance Inc.
- ACE Insurance
- National Federation of Motor Insurance Cooperatives
- National Mutual Insurance Federation of Agricultural Cooperatives

In the “Rights Protection Insurance (Attorney Insurance)”, each member insurance company etc. according to the conditions of its applicable legal expenses insurance coverage bears such costs as court costs or attorney’s costs which incurred when an insured gets involved in legal dispute, while JFBA-LAC has local bar association introduce an attorney to such insured upon his/ her request.

“Rights Protection Insurance (Attorney Insurance)”, as shown in charts below, has grown rapidly over the last decade. In 2012, the number of the contracts has reached 20 million and the number is of the cases is well over 20 thousand. “Rights Protection Insurance (Attorney Insurance)” is indeed contributing to improving access to justice for citizens in Japan.



The Number of Cases in “Rights Protection Insurance (Attorney Insurance)”

