

Asia Pacific – Japan

Small claims procedure: a user-friendly route to damages

Introduction

Under EU product liability law, a manufacturer is only liable where its defective product caused ‘harm’ to the consumer. Harm in this context includes material damage (exceeding €500) to the consumer’s personal property (other than the defective product itself).¹ By contrast, Japanese product liability legislation does not impose any such monetary threshold with monetary damages of ¥1 to ¥600,000 (approximately €4,900) being able to be claimed for using the small claims procedure.²

Similar to its European counterpart, the small claims procedure in Japan provides for the simple, speedy and affordable adjudication of low-value consumer and commercial claims. The procedure can therefore be used by consumers to bring small claims relating to product liability and it is important that manufacturers placing products on the Japanese market are aware of it.

Background

The small claims procedure was introduced in 1998 as part of the reforms to the Japanese Code of Civil Procedure. The objective of the reforms was to introduce a more user-friendly civil procedure process which enabled easier access to the courts.³ Initially, the maximum amount able to be claimed under the small claims procedure was ¥300,000 (approximately €2,400). The limit has since been increased (in 2004) to ¥600,000.

How does it work?

Under the small claims procedure, a claimant is able to file a claim in the summary courts. The summary courts are the courts that generally handle less complex civil cases (normal or small claims) not exceeding ¥1.4 million. The summary courts appointed judges can be qualified jurists as well as people qualified by their experience in judicial practice or academia. Laypersons designated by the courts may attend the trial and render an opinion on the case. These so-called “judicial commissioners” often assist in small claims proceedings.⁴

Legal representation is not precluded, but the small claims procedure has been specifically designed to be used by parties who have not appointed attorneys. To facilitate filings, service counters at the summary courts provide forms for the most common types of claims.⁵ Actions can also be filed orally.⁶ In small claims proceedings, legal service is provided by the court clerks, who provide neutral advice and instruct consumers on how to complete the relevant forms for filing.⁷

Fees generally range between 1% and 2% of the claimed amount, making small claims proceedings much more affordable than ordinary civil proceedings.⁸ However, only monetary claims can be litigated using the small claims procedure.⁹ This excludes, for example, claims for redelivery of goods or transfer of title in cases involving a breach of contract.

1 Article 9 (b) Directive 85/374/EEC.

2 Articles 368 ff. Japanese Code of Civil Procedure. See for an overview Masayuki Yoshida, Japanese Small Claims Procedure: How Does It Work?, [2004] MurUEJL 15.

3 Kakiuchi, “Access to justice in Japan”, JPLRes 1 (1 January 2007), 0.3.1.

4 See Court System of Japan, pp. 8 ff., available at http://www.courts.go.jp/english/vcms_lf/2018_Court_System_of_Japan.pdf.

5 Masayuki Yoshida, Japanese Small Claims Procedure: How Does It Work?, [2004] MurUEJL 15, para. 15.

6 Article 271 Japanese Code of Civil Procedure.

7 See Masayuki Yoshida, Japanese Small Claims Procedure: How Does It Work?, [2004] MurUEJL 15, para. 17.

8 Masayuki Yoshida, Japanese Small Claims Procedure: How Does It Work?, [2004] MurUEJL 15, para. 18.

9 Article 368 Japanese Code of Civil Procedure.

Small claims must not be lodged by the same claimant with the same summary court more than 10 times a year.¹⁰ The claimant has to report the number of previously filed actions in the relevant year when lodging the claim.¹¹ If the number is reported is incorrect, a fine up to ¥100,000 may be imposed.¹² Such penalties illustrate the purpose behind the procedure; to be used as an easy do-it-yourself litigation tool designed for laypersons and – in a similar vein to the EU threshold of €500 (discussed above) – intended to avoid excessive litigation.¹³

Generally, the procedure requires that the trial should be concluded on the first day set for the oral hearing.¹⁴ The parties are asked by the court to submit all evidence beforehand.¹⁵ Such evidence may be limited to evidence that can be examined immediately, which makes obtaining expert opinions or requesting examinations out of court almost impossible.¹⁶ For the oral hearing, the parties generally sit down at a round table where the dispute is settled on the spot.¹⁷

Small claims judgments cannot be appealed.¹⁸ However, parties have two weeks following the hearing to lodge objections with the summary court who heard the claim.¹⁹ Importantly, counter-claims are not permitted in small claims actions.²⁰



10 Art. 368 (1) Japanese Code of Civil Procedure; Art. 223 Japanese Court Rules of Civil Procedure; Masayuki Yoshida, Japanese Small Claims Procedure: How Does It Work?, [2004] MurUEJL 15, para. 8.

11 Article 368 (3) Japanese Code of Civil Procedure.

12 Article 381 Japanese Code of Civil Procedure.

13 Masayuki Yoshida, Japanese Small Claims Procedure: How Does It Work?, [2004] MurUEJL 15, para. 8.

14 Article 370 (1) Japanese Code of Civil Procedure.

15 Article 370 (2) Japanese Code of Civil Procedure.

16 Article 371 Japanese Code of Civil Procedure.

17 See the photo above.

18 Article 377 Japanese Code of Civil Procedure.

19 Article 378 Japanese Code of Civil Procedure.

20 Article 369 Japanese Code of Civil Procedure.

Comment

Following the introduction of the small claims procedure in 1998, the number of small claims filed more than doubled. In 2005 for example, 23,584 claims were lodged. However, since then, numbers have decreased with just 7,070 claims being brought in 2018.²¹

A reason for this may be that small claims have instead been diverted towards using alternative dispute resolution (ADR) or settled via one-to-one negotiations between consumers and company representations. ADR and consulting desks are provided by public organisations, such as the National Consumer Affairs Center of Japan (NCAC), the Association for Electric Home Appliances, and the Consumer Product Safety Association, which has established the Consumer Product PL Center.

Complex product liability litigation may not be handled in small claims proceedings due to the legal and technical issues that are likely to be involved. However, small warranty claims or claims for breach of contract relating to defective products tend to lend themselves as a suitable subject matter for the small claims process.

As just one example, the Yokosuka Summary Court recently ordered the seller of a collector's movie pamphlet to return an amount of ¥16,000 (approximately €130) to the consumer because it differed from the product description on the seller's website.²²

As such, despite the drop in proceedings since 2005, there is still every indication that the small claims procedure remains an attractive tool for the speedy settlement of straightforward cases. More importantly, consumers in Japan are well aware of its availability. It is therefore important manufacturers placing products on the Japanese market are aware of it too.



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²¹ See report of the Case Law Committee of National Consumer Affairs Center of Japan at http://www.kokusen.go.jp/wko/pdf/wko-201912_16.pdf.

²² Yokosuka Summary Court, Judgment of July 18th, 2018, not listed, see report at http://www.kokusen.go.jp/wko/pdf/wko-201912_16.pdf.

