

**FOURTH STUDY COMMISSION  
2006**

**QUESTIONNAIRE**

**Do we need special Labour Court procedures and alternative disputes methods**

This Questionnaire does not deal with settlement of collective interests i.e. between trade union and employers association to change tariffs or between works council and employer regarding new plant agreements. In most countries there exist specific procedures and institutions to handle this kind of collective disputes. The main objective of this questionnaire is the settlement of a specific points of law regarding claims of employees. This also involves the question how trade unions and statutory representative bodies may be involved in supporting this by supporting the individual employee or representing employees interest in specific procedures.

**I - Are there new initiatives to make Labour Court hearings more efficient?**

No labor court is established in Japan. Labor-related lawsuits are handled in ordinary courts.

1. Are there any pre-trial procedures?

In court proceedings, labor disputes are settled through mediation. If such disputes cannot be settled through mediation, they are submitted to labor tribunal proceedings, which have no binding power. The following responses are based on labor tribunal proceedings.

a. Are they mandatory?

Not necessary

b. In which way is the court involved?

A labor tribunal dispute can be filed by any party concerned to a court to resolve a civil dispute related to labor relationships between an individual worker and his/her employer. The court takes the labor dispute tribunal proceedings (with the labor tribunal panel comprised of one labor judge, who is a judge of the court, and two labor arbitrators).

c. How long may they go on?

The labor tribunals are required to render an official decision within three hearings, which usually take three to four months.

d. Who has to bear legal cost?

The cost of the proceedings is generally paid by the party who has brought the matter to the court. However, the other party shall pay all or part of the expenses incurred when such is deemed necessary by the court. The cost of the proceedings does not include attorney's fees.

- e. Which effect do they have on the time of prescription?

If an objection is filed against the officially rendered decision of the court, the labor tribunal decision is deemed null and void, and a lawsuit is deemed to have been filed at the time of filing of labor tribunal proceedings. In this case, the statute of limitation is temporarily suspended upon the filing for labor tribunal proceedings.

2. Are there specific ideas to give assistance to the plaintiff to raise his claim more effectively?

No items in particular

3. What interest has to be paid for remunerations, which are not paid at the date of maturity ?

If the business proprietor is a merchant, the worker may claim penalties for delays at the annual rate of six percent, as specified in the Commercial Code, together with his/her salary. For penalties applying to delays for retiree pensions, the relevant law specifies an annual rate of 14.6 percent.

4. Are there procedural regulations for mediation

As in the case of "1" above, the following responses address mediation through labor tribunal dispute resolution proceedings.

- a. Is mediation compulsory?

Not necessary

- b. How are the mediators selected? In which way is the court involved? Are judges different from trial judges?

The labor arbitrators are specialists with expertise in labor relations, appointed by the Supreme Court. The labor arbitrators comprising a labor tribunal panel are appointed by court for each case.

The judges who are in charge of the labor tribunal proceedings may not necessarily differ from those who under other circumstances may handle lawsuits.

- c. Is it confidential?

As a general rule, the labor tribunal is closed.

- d. How long may mediation go on? How is it finished?

The panel of the labor tribunal may allow the reaching agreement through mediation by the end of the labor tribunal proceedings. As stated in "1c" above, the labor tribunal proceedings must be concluded within three panel hearings, which generally take three to four months.

If the parties reach an agreement within this period, the proceedings are concluded. If no agreement is reached, the labor tribunal panel initiates labor tribunal proceedings.

e. Who has to bear the legal cost?

If an agreement is reached through mediation, the fees for the proceedings are specified in the agreed mediation documents. Items not specified are to be paid by each party. For cases in which no agreement is reached, please refer to “1d” above.

f. Which effect does mediation has on the time of prescription?

If no agreement is reached through mediation, the labor tribunal panel render an official decision. If an objection is filed against the decision of the labor tribunal, the decision is deemed null and void, and a lawsuit is deemed to have been filed at the time of filing of the labor tribunal proceedings. In this case, the statute of limitation is temporarily suspended upon filing for labor tribunal proceedings (1e).

g. What training in law and procedure is given to mediators?

The courts provide training to tribunal arbitrators in the basic knowledge required for case settlement, as well as in the roles and attitudes expected of labor tribunal arbitrators.

## **II - Collective (class) action.**

1. What kind of collective actions have You got?

Japan has no class-action system. Where multiple parties are involved, a lawsuit may be filed by the appointed parties. In conflicts involving many individuals sharing common interests, one or a few of these people are selected to be the party initiating the lawsuit.

2. Who are the Parties of these procedures?

The individual(s) selected will be one or a few of many sharing the common interest. Those selecting such individual(s) are not permitted to initiate the lawsuit.

3. Which courts are competent?

Usually undertaken at a court of law.

4. Which effects has their decision?

Possessing *res adjudicata* and executability, as in ordinary court judgments.

5. To whom is this decision binding?

The effects of the judgments of the lawsuit filed by the appointed parties shall also bind the selecting individuals.

6. Is it possible for a works council or trade union to sue or request for ascertainment of rights or legal relations, if some employees are involved? Do they have to specify these employees?

It is understood that a labor union cannot file a lawsuit for conflicts between an individual employee and his/her employer.

7. Who has to bear the cost?

The losing party has to bear the court costs.