

この民事訴訟法の翻訳は、平成十八年法律第百九号までの改正（平成19年9月30日施行）（平成十六年法律第八十八号による改正を除く。）について、「法令用語日英標準対訳辞書」（平成20年3月版）に準拠して作成したものです。なお、この法令の翻訳は公定訳ではありません。法的効力を有するのは日本語の法令自体であり、翻訳はあくまでその理解を助けるための参考資料です。この翻訳の利用に伴って発生した問題について、一切の責任を負いかねますので、法律上の問題に関しては、官報に掲載された日本語の法令を参照してください。

This English translation of the Code of Civil Procedure has been prepared (up to the revisions of Act No. 109 of 2006 (Effective September 30, 2007) (excluding the revision by Act No. 88 of 2004)) in compliance with the Standard Bilingual Dictionary (March 2008 edition). This is an unofficial translation. Only the original Japanese texts of laws and regulations have legal effect, and translations are to be used solely as reference material to aid in the understanding of Japanese laws and regulations. The Government of Japan will not be responsible for the accuracy, reliability or currency of the legislative material provided on this Website, or for any consequence resulting from use of the information on this Website. For all purposes of interpreting and applying the law to any legal issue or dispute, users should consult the original Japanese texts published in the Official Gazette.

## Code of Civil Procedure (Act No. 109 of June 26, 1996)

### Part I General Provisions

#### Chapter I General Rules (Article 1 to Article 3)

#### Chapter II Court

##### Section 1 Jurisdiction (Article 4 to Article 22)

##### Section 2 Disqualification of and Challenge to Court Officials (Article 23 to Article 27)

#### Chapter III Parties

##### Section 1 Capacity to Be Party and Capacity to Sue or Be Sued (Article 28 to Article 37)

##### Section 2 Joint Suit (Article 38 to Article 41)

##### Section 3 Intervention (Article 42 to Article 53)

##### Section 4 Counsel and Assistant in Court (Article 54 to Article 60)

#### Chapter IV Court Costs

##### Section 1 Burden of Court Costs (Article 61 to Article 74)

##### Section 2 Security for Court Costs (Article 75 to Article 81)

##### Section 3 Judicial Aid (Article 82 to Article 86)

#### Chapter V Court Proceedings

##### Section 1 Proceedings of Suit, etc. (Article 87 to Article 92)

##### Section 2 Technical Adviser, etc.

###### Subsection 1 Technical Adviser (Article 92-2 to 92-7)

###### Subsection 2 Affairs of Judicial Research Official in Cases Relating to Intellectual Property (Article 92-8 and Article 92-9)

##### Section 3 Date and Period (Article 93 to Article 97)

##### Section 4 Service (Article 98 to Article 113)

Section 5 Judicial Decision (Article 114 to Article 123)	
Section 6 Discontinuation of Action and Suspension of Court Proceedings (Article 124 to Article 132)	
Chapter VI Disposition of Collection of Evidence prior to Filing of Action, etc. (Article 132-2 to Article 132-9)	
Chapter VII Petition, etc. by Means of Electronic Data Processing System (Article 132-10)	
Part II Court Proceedings in First Instance	
Chapter I Action (Article 133 to Article 147)	
Chapter II Well-Organized Proceedings (Article 147-2 and Article 147-3)	
Chapter III Oral Argument and Preparation Thereof	
Section 1 Oral Argument (Article 148 to Article 160)	
Section 2 Brief, etc. (Article 161 to Article 163)	
Section 3 Proceedings to Arrange Issues and Evidence	
Subsection 1 Preliminary Oral Arguments (Article 164 to Article 167)	
Subsection 2 Preparatory Proceedings (Article 168 to Article 174)	
Subsection 3 Preparatory Proceedings by Means of Documents (Article 175 to Article 178)	
Chapter IV Evidence	
Section 1 General Provisions (Article 179 to Article 189)	
Section 2 Examination of Witness (Article 190 to Article 206)	
Section 3 Examination of Parties (Article 207 to Article 211)	
Section 4 Expert Testimony (Article 212 to Article 218)	
Section 5 Examination of Documentary Evidence (Article 219 to Article 231)	
Section 6 Observation (Article 232 and Article 233)	
Section 7 Preservation of Evidence (Article 234 to Article 242)	
Chapter V Judgment (Article 243 to Article 260)	
Chapter VI Conclusion of Suit Not by Judicial Decision (Article 261 to Article 267)	
Chapter VII Special Provisions Concerning Large-Scale Suit, etc. (Article 268 to Article 269-2)	
Chapter VIII Special Provisions Concerning Court Proceedings in Summary Court (Article 270 to Article 280)	
Part III Appeal	
Chapter 1 Appeal to Court of Second Instance (Article 281 to Article 310-2)	
Chapter II Final Appeal (Article 311 to Article 327)	
Chapter III Appeal against Ruling (Article 328 to Article 337)	
Part IV Retrial (Article 338 to Article 349)	
Part V Special Provisions on Actions on Bills and Notes and Actions on Checks (Article 350 to Article 367)	

Part VI Special Provisions Concerning Actions on Small Claims (Article 368 to Article 381)

Part VII Demand Procedure

Chapter I General Provisions (Article 382 to Article 396)

Chapter II Special Provisions for Demand Procedure by Means of Electronic Data Processing System (Article 397 to Article 402)

Part VIII Stay of Execution (Article 403 to Article 405)

Supplementary Provisions

## **Part I General Provisions**

### **Chapter I General Rules**

Article 1 (Purpose)

Procedures for civil suits shall be governed by the provisions of this Code, in addition to the provisions of other laws and regulations.

Article 2 (Responsibilities of Courts and Parties)

Courts shall endeavor to ensure that civil suits are carried out fairly and expeditiously, and parties shall conduct civil suits in good faith.

Article 3 (Rules of the Supreme Court)

In addition to what is provided for in this Code, the necessary matters concerning procedures for civil suits shall be prescribed by the Rules of the Supreme Court.

## **Chapter II Court**

### **Section 1 Jurisdiction**

Article 4 (Jurisdiction by General Venue)

- (1) An action shall be subject to the jurisdiction of the court that has jurisdiction over the location of the general venue of the defendant.
- (2) The general venue of a person shall be determined by his/her domicile, by his/her residence if he/she has no domicile in Japan or his/her domicile is unknown, or by his/her last domicile if he/she has no residence in Japan or his/her residence is unknown.
- (3) If an ambassador, minister or any other Japanese national in a foreign state who enjoys immunity from the jurisdiction of that state has no general venue pursuant to the provision of the preceding paragraph, his/her general venue shall be deemed to be located in the place specified by the Rules of the Supreme Court.

- (4) The general venue of a juridical person or any other association or foundation shall be determined by 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) The general venue of a foreign association or foundation, notwithstanding the provision of the preceding paragraph, shall be determined by 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 assigned in Japan if it has no business office or other office in Japan.
- (6) The general venue of a state shall be determined by the location of a government agency that represents the state in a suit.

Article 5 (Jurisdiction over Action on Property Right, etc.)

Actions listed in the following items may be filed with the court that has jurisdiction over the place specified in the respective items:

- (i) An action on a property right  
The place of performance of the obligation
- (ii) An action to claim payment of money for a bill or note or a check  
The place of payment of the bill or note or the check
- (iii) An action on a property right against a mariner  
The location of the registry of the ship
- (iv) An action on a property right against a person who has no domicile (in the case of a juridical person, business office or other office; hereinafter the same shall apply in this item) in Japan or whose domicile is unknown  
The location of the subject matter of the claim or security thereof or of any seizable property of the defendant
- (v) An action against a person who has a business office or other office, which relates to the business conducted at such business office or other office  
The location of the business office or other office in question
- (vi) An action relating to a ship or voyage, which is against the shipowner or any other person who uses the ship  
The location of the registry of the ship
- (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 relating to a company or any other association or foundation:  
The location of the general venue of the association or foundation:
  - (a) An action brought by a company or any other association against its member or a person who was its member, an action brought by a member against another member or a person who was a member or an action brought by a

- person who was a member against a member, which is based on his/her status as a member
- (b) An action brought by an association or foundation against its officer or a person who was its officer, which is based on the status as an officer
  - (c) An action brought by a company against its incorporator or a person who was its incorporator or against its inspector or a person who was its inspector, which is based on the status as an incorporator or inspector
  - (d) An action brought by a creditor of a company or any other association against its member or a person who was its member, which is based on his/her status as a member
  - (ix) An action relating to a tort  
The place where the tort was committed
  - (x) An action for damages due to ship collision or any other accident at sea  
The first place where the damaged ship docked
  - (xi) An action relating to salvage  
The place where the salvage was performed or first place where the salvaged ship docked
  - (xii) An action relating to real property  
The location of the real property
  - (xiii) An action relating to a registration  
The place where the registration should be made
  - (xiv) An action relating to a right of inheritance or statutory reserved share or an action relating to a testamentary gift or any other act that shall become effective upon death  
The location of the general venue of the decedent at the time of commencement of inheritance
  - (xv) An action relating to a claim on the decedent or other burden on inherited property, which does not fall under the category of action set forth in the preceding item (limited to cases where the whole or part of the inherited property is located within the jurisdictional district of the court that has jurisdiction over the place specified in said item)  
The place specified in said item

Article 6 (Jurisdiction over Action, etc. Relating to Patent Right, etc.)

- (1) With regard to an action relating to a patent right, utility model right, right of layout-designs of integrated circuits or an author's right over a computer program (hereinafter referred to as an "action relating to a patent right, etc."), if any of the courts listed in the following items shall have jurisdiction pursuant to the provisions of the preceding two Articles, such action shall be subject exclusively to the jurisdiction of the court specified in the respective items:

- (i) A district court located within the jurisdictional district 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 jurisdictional district of the Osaka High Court, the Hiroshima High Court, the Fukuoka High Court or the Takamatsu High Court

The Osaka District Court

- (2) With regard to an action relating to a patent right, etc., if a summary court located within the jurisdictional district of any of the courts listed in the items of the preceding paragraph shall have jurisdiction pursuant to the provisions of the preceding two Articles, such action may also be filed with the court specified in the respective items.
- (3) An appeal to the court of second instance against the final judgment on an action relating to a patent right, etc. that is made by the court specified in paragraph (1) (ii) as the court of first instance shall be subject exclusively to the jurisdiction of the Tokyo High Court; provided, however, that this shall not apply to an appeal to the court of second instance against the final judgment on an action pertaining to a suit transferred pursuant to the provision of Article 20-2(1).

#### Article 6-2 (Jurisdiction over Action Relating to Design Right, etc.)

With regard to an action relating to a design right, trademark right, author's right (excluding an author's right over a computer program), right of publication, neighboring right or breeder's right or an action pertaining to the infringement of business interests by unfair competition (meaning unfair competition prescribed in Article 2(1) of the Unfair Competition Prevention Act (Act No. 47 of 1993)), if any of the courts listed in the following items shall have jurisdiction pursuant to the provisions of Article 4 or Article 5, such action may also be filed with the court specified in the respective items:

- (i) The court set forth in paragraph (1) (i) of the preceding Article (excluding the Tokyo District Court): The Tokyo District Court
- (ii) The court set forth in paragraph (1) (ii) of the preceding Article (excluding the Osaka District Court): The Osaka District Court

#### Article 7 (Jurisdiction over Joint Claim)

Where two or more claims are to be made by a single action, such action may be filed with the court which shall have jurisdiction over one of those claims pursuant to the provisions of Article 4 to the preceding Article (excluding Article 6(3)); provided, however, that with regard to an action brought by two or more persons or an action brought against two or more persons, this shall apply only in the case specified in the

first sentence of Article 38.

Article 8 (Calculation of Value of Subject Matter of Suit)

- (1) If the jurisdiction shall be determined, as provided for in the Court Act (Act No. 59 of 1947), by the value of the subject matter of the suit, such value shall be calculated on the basis of the interest alleged in the action.
- (2) If it is impossible or extremely difficult to calculate the value set forth in the preceding paragraph, the value shall be deemed to exceed 1,400,000 yen.

Article 9 (Calculation of Value in the case of Joint Claim)

- (1) Where two or more claims are to be made by a single action, the total value of those claims shall be the value of the subject matter of the suit; provided, however, that this shall not apply to each claim where the interest alleged in such action is common to those claims.
- (2) If a claim for fruits, damages, penalties or expenses is the incidental subject matter of the suit, the value thereof shall not be included in the value of the subject matter of suit.

Article 10 (Designation of Court with Jurisdiction)

- (1) If the court with jurisdiction is unable to exercise its jurisdiction by law or in fact, its immediate upper instance court, upon petition, by an order, shall designate a court with jurisdiction.
- (2) If a court with jurisdiction is not determined due to ill-defined jurisdictional districts of courts, the immediate upper instance court common to the relevant courts, upon petition, by an order, shall designate a court with jurisdiction.
- (3) No appeal may be entered against the order set forth in the preceding two paragraphs.

Article 11 (Agreement on Jurisdiction)

- (1) The parties may determine a court with jurisdiction by an agreement only in the first instance.
- (2) The agreement set forth in the preceding paragraph shall not become effective unless it is made with respect to an action based on certain legal relationships and made in writing.
- (3) If the agreement set forth in paragraph (1) is made by means of an electromagnetic record (meaning a record made in an electronic form, a magnetic form or any other form not recognizable to human perception, which is used in information processing by computers; the same shall apply hereinafter), the provision of the preceding paragraph shall be applied by deeming such agreement to have been made in writing.

Article 12 (Jurisdiction by Appearance)

If a defendant, before the court of first instance, without filing a defense of lack of jurisdiction, has presented oral arguments on the merits or made statements in preparatory proceedings, that court shall have jurisdiction.

Article 13 (Exclusion from Application in the case of Exclusive Jurisdiction, etc.)

- (1) The provisions of Article 4(1), Article 5, Article 6(2), Article 6-2, Article 7 and the preceding two Articles shall not apply where exclusive jurisdiction over an action in question is provided for in laws or regulations.
- (2) With regard to an action relating to a patent right, etc., if any of the courts listed in the items of Article 6(1) shall have jurisdiction pursuant to the provisions of Article 7 or the preceding two Articles, the respective court, notwithstanding the provision of the preceding paragraph, shall have jurisdiction over such action pursuant to the provisions of Article 7 or the preceding two Articles.

Article 14 (Examination of Evidence by Court's Own Authority)

The court may conduct examination of evidence by its own authority with regard to the matters concerning jurisdiction.

Article 15 (Base Time for Determining Jurisdiction)

The jurisdiction of a court shall be determined on the basis of the time of the filing of an action.

Article 16 (Lack of Jurisdiction)

- (1) The court, when it finds that the whole or part of a suit is not subject to its jurisdiction, upon petition or by its own authority, shall transfer the suit to a court with jurisdiction.
- (2) A district court, even where a suit is subject to a summary court located within its jurisdiction, notwithstanding the provision of the preceding paragraph, upon petition or by its own authority, may conduct a trial and make a judicial decision by itself with regard to the whole or part of the suit, when it finds it appropriate; provided, however, that this shall not apply where the suit is subject to the exclusive jurisdiction of such summary court (excluding one determined by an agreement between the parties pursuant to the provision of Article 11).

Article 17 (Transfer to Avoid Delay, etc.)

The court of first instance, even where a suit is subject to its jurisdiction, upon petition or by its own authority, may transfer the whole or part of the suit to another



court with jurisdiction, when it finds it necessary in order to avoid substantial delay in the suit or ensure equity between the parties, while taking into consideration the domicile of each party and witness to be examined, the location of any subject of a observation to be used and any other circumstances concerned.

#### Article 18 (Discretionary Transfer by Summary Court)

A summary court, even where a suit is subject to its jurisdiction, upon petition or by its own authority, may transfer the whole or part of the suit to the district court that has jurisdiction over the location of such summary court when it finds it appropriate.

#### Article 19 (Mandatory Transfer)

- (1) The court of first instance, even where a suit is subject to its jurisdiction, upon the petition of a party and with the consent of the opponent, shall transfer the whole or part of the suit to the district court or summary court pertaining to the petition; provided, however, that this shall not apply where the transfer would substantially delay the court proceedings or where the petition is other than a petition for transfer from a summary court to the district court that has jurisdiction over the location thereof and it is filed after the defendant has presented oral arguments on the merits or made statements in preparatory proceedings.
- (2) A summary court, upon the petition of a defendant on a suit relating to real property which is subject to its jurisdiction, shall transfer the whole or part of the suit to the district court that has jurisdiction over the location thereof; provided, however, that this shall not apply where the defendant has presented oral arguments on the merits before making such request.

#### Article 20 (Restriction on Transfer in the case of Exclusive Jurisdiction)

- (1) The provisions of the preceding three Articles shall not apply where a suit is subject to the exclusive jurisdiction of the court before which it is pending (except one determined by an agreement between the parties pursuant to the provision of Article 11).
- (2) With regard to a suit pertaining to an action relating to a patent right, etc., if the suit shall be transferred to any of the courts specified in the items of Article 6 (1) pursuant to the provisions of Article 17 or paragraph (1) of the preceding Article, notwithstanding the provision of the preceding paragraph, the provisions of Article 17 or paragraph (1) of the preceding Article shall apply.

#### Article 20-2 (Transfer of Suit Pertaining to Action Relating to Patent Right, etc.)

- (1) A court specified in each item of Article 6(1), even where a suit pertaining to an

action relating to a patent right, etc. is subject exclusively to its jurisdiction pursuant to the provision of Article 6(1), upon petition or by its own authority, may transfer the whole or part of the suit to the district court which shall have jurisdiction pursuant to the provisions of Article 4, Article 5 or Article 11 or the district court which shall accept a suit transferred thereto pursuant to the provision of Article 19(1), when it finds it necessary in order to avoid substantial detriment or delay due to the lack of a capability to examine specialized and technical matters to be examined in the suit or other circumstances.

- (2) Where an appeal to the court of second instance set forth in Article 6(3) is filed, the Tokyo High Court, upon petition or by its own authority, may transfer the whole or part of the suit to the Osaka High Court, when it finds it necessary in order to avoid substantial detriment or delay due to the lack of a capability to examine specialized and technical matters to be examined in the second instance or other circumstances.

#### Article 21 (Immediate Appeal)

An immediate appeal may be filed against an order of transfer and an order dismissing without prejudice a petition for transfer.

#### Article 22 (Binding Effect of Judicial Decision of Transfer, etc.)

- (1) A judicial decision of transfer that has become final and binding shall be binding on the court that has accepted the suit transferred thereto.
- (2) The court that has accepted a case transferred thereto may not transfer the case to another court.
- (3) When a judicial decision of transfer becomes final and binding, the transferred suit shall be deemed to have been pending before the court to which it has been transferred since it was first brought to the initial court.

### **Section 2 Disqualification of and Challenge to Court Officials**

#### Article 23 (Disqualification of Judge)

- (1) In the following cases, a judge shall be disqualified from performing his/her duties; provided, however, that in the case set forth in item (vi), this shall not preclude a judge from performing his/her duties as a commissioned judge based on the commission from another court:
  - (i) Where a judge or his/her spouse or person who was his/her spouse is a party to the case, or is related to a party in the case as a joint obligee, joint obligor or obligor for redemption.
  - (ii) Where a judge is or was a party's relative by blood within the fourth degree, relative through marriage within the third degree or relative living together.

- (iii) Where a judge is, in relation to a party, a guardian, supervisor of a guardian, curator, supervisor of a curator, assistant or a supervisor of an assistant.
  - (iv) Where a judge has served as a witness or expert witness in the case.
  - (v) Where a judge is or was a party's agent or assistant in court in the case.
  - (vi) Where a judge has participated in making an arbitral award in the case or participated in making a judicial decision in the prior instance against which an appeal is entered.
- (2) If any of the grounds for disqualification prescribed in the preceding paragraph exist, the court, upon petition or by its own authority, shall make a judicial decision of disqualification.

#### Article 24 (Challenge to Judge)

- (1) If there are circumstances with regard to a judge that would prejudice the impartiality of a judicial decision, a party may challenge such judge.
- (2) A party, if he/she, in the presence of a judge, has presented oral arguments or made statements in preparatory proceedings, may not challenge the judge; provided, however, that this shall not apply where the party did not know of the existence of any grounds for challenge or where any grounds for challenge occurred thereafter.

#### Article 25 (Judicial Decision of Disqualification or Challenge)

- (1) A judicial decision of the disqualification of or a challenge to a judge who is a member of a panel or a single judge of a district court shall be made by an order of the court to which the judge belongs, and a judicial decision of the disqualification of or a challenge to a judge of a summary court shall be made by an order of the district court that has jurisdiction over the location of the summary court.
- (2) In a district court, the judicial decision set forth in the preceding paragraph shall be made by a panel.
- (3) A judge may not participate in making a judicial decision on the disqualification of or a challenge to him/herself.
- (4) No appeal may be entered against an order finding that the disqualification or challenge is well-grounded.
- (5) An immediate appeal may be filed against an order finding that the disqualification or challenge is groundless.

#### Article 26 (Stay of Court Proceedings)

When a petition for disqualification or challenge is filed, court proceedings shall be stayed until an order on the petition becomes final and binding; provided, however, that this shall not apply to any urgent act.

#### Article 27 (Application Mutatis Mutandis to Court Clerk)

The provisions of this Section shall apply mutatis mutandis to a court clerk. In this case, a judicial decision shall be made by the court to which a court clerk in question belongs.

### **Chapter III Parties**

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

##### Article 28 (Principle)

The capacity to be a party, capacity to sue or be sued, and the statutory representation for a person without the capacity to sue or be sued, except as otherwise provided for in this Code, shall be governed by the Civil Code (Act No. 89 of 1896) and other laws and regulations. The same shall apply to the delegation of powers necessary for performing procedural acts.

##### Article 29 (Capacity to Be Party of Association or Foundation That Is Not Juridical Person)

An association or foundation which is not a juridical person and for which a representative or administrator is designated may sue or be sued in its name.

##### Article 30 (Appointed Party)

- (1) A number of persons who share common interests and do not fall under the provision of the preceding Article may appoint, from among them, one or more persons as parties to stand as plaintiffs or defendants on behalf of all.
- (2) If, after a suit becomes pending before the court, a party to stand as a plaintiff or defendant is appointed pursuant to the provision of the preceding paragraph, parties other than the one appointed shall automatically withdraw from the suit.
- (3) A person who shares common interests with a plaintiff or defendant of a pending suit but who is not a party to the suit may appoint that plaintiff or defendant as a party to stand as a plaintiff or defendant on his/her behalf as well.
- (4) Persons who have appointed a party to stand as a plaintiff or defendant pursuant to the provisions of paragraph (1) or the preceding paragraph (hereinafter referred to as "appointers") may rescind the appointment or change the party thus appointed (hereinafter referred to as the "appointed party").
- (5) If any of the appointed parties has lost his/her status due to death or on any other grounds, other appointed party(ies) may perform procedural acts on behalf of all.

##### Article 31 (Capacity to Sue or Be Sued of Minor and Adult Ward)

A minor and an adult ward may not perform any procedural acts unless by a statutory agent; provided, however, that this shall not apply where a minor may perform juridical acts independently.

Article 32 (Special Provisions on Procedural Acts by Person under Curatorship, Person under Assistance and Statutory Agent)

- (1) In order for a person under curatorship, person under assistance (limited to one who is required to obtain consent from his/her assistant to perform procedural acts; the same shall apply in the following paragraph and Article 40(4)) or guardian or any other statutory agent to perform any procedural acts with regard to an action or appeal filed by the opponent, he/she shall not be 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.
- (2) In order for a person under curatorship, person under assistance or guardian or any other statutory agent to perform any of the following procedural acts, he/she shall be required to obtain a special delegation of powers:
  - (i) Withdrawing an action, entering into a settlement, waiving or acknowledging a claim, or withdrawing from a suit under the provision of Article 48 (including cases where applied *mutatis mutandis* pursuant to Article 50(3) and Article 51)
  - (ii) Filing an appeal to the court of second instance or final appeal, or withdrawing a petition set forth in Article 318(1)
  - (iii) Withdrawing an objection under the provision of Article 360 (including cases where applied *mutatis mutandis* pursuant to Article 367(2) and Article 378(2)) or giving consent to such withdrawal

Article 33 (Special Provisions on Capacity to Sue or Be Sued of Foreign National)

A foreign national, even where he/she does not have the capacity to sue or be sued under his/her national law, shall be deemed to be capable of suing or being sued if he/she shall have the capacity to sue or be sued under Japanese law.

Article 34 (Measures for Lack of Capacity to Sue or Be Sued, etc.)

- (1) If a person lacks the capacity to sue or be sued, the authority of statutory representation or delegation of powers necessary for performing procedural acts, the court shall specify a period and order the correction of such defect. In this case, if there is a risk of causing damage due to delay, the court may have such person perform a procedural act on a temporary basis.
- (2) Any procedural act performed by a person who lacks the capacity to sue or be sued, the authority of statutory representation or delegation of powers necessary for performing procedural acts shall become effective retroactively as of the time of the act, if ratified by the party or statutory agent who has acquired any of these

requirements.

- (3) The provisions of the preceding two paragraphs shall apply *mutatis mutandis* where an appointed party performs procedural acts.

#### Article 35 (Special Agent)

- (1) Where there is no statutory agent or where a statutory agent is unable to exercise the authority of representation, a person who intends 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 of suffering damage due to delay.
- (2) The court may replace a special agent at any time.
- (3) In order for a special agent to perform procedural acts, he/she shall be required to obtain the same delegation of powers as a guardian.

#### Article 36 (Notice of Extinction of Authority of Statutory Representation)

- (1) The extinction of the authority of statutory representation shall not become effective unless the principal or his/her agent notifies the other party to that effect.
- (2) The provision of the preceding paragraph shall apply *mutatis mutandis* to the rescission of the appointment of an appointed party or a change of the appointed party.

#### Article 37 (Application *Mutatis Mutandis* to Representative of Juridical Person, etc.)

In this Code, the provisions concerning a statutory agent and statutory representation shall apply *mutatis mutandis* to a representative of a juridical person and to a representative or administrator of an association or foundation that is not a juridical person but is capable of suing or being sued in its name.

### **Section 2 Joint Suit**

#### Article 38 (Requirements for Joint Suit)

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 or 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 or by law.

#### Article 39 (Status of Co-Party)

Any procedural acts performed by one of the co-parties, any procedural acts performed against one of the co-parties by the opponent, and any matters that have occurred with regard to one of the co-parties shall not affect the other co-party(ies).

#### Article 40 (Mandatory Joint Suit)

- (1) Where the subject matter of the suits should be determined only in a single form for all co-parties, procedural acts performed by one of them shall become effective only in the interest of all of them.
- (2) In the case prescribed in the preceding paragraph, procedural acts performed against one of the co-parties by the opponent shall become effective against all of them.
- (3) In the case prescribed in paragraph (1), if there are any grounds for discontinuing action or suspending court proceedings with regard to one of the co-parties, the discontinuance or suspension shall become effective against all of them.
- (4) The provision of Article 32(1) shall apply *mutatis mutandis*, in the case prescribed in paragraph (1), to procedural acts that should be performed, in an appeal filed by one of the co-parties, by a person under curatorship or person under assistance who is the other co-party or by a guardian or any other statutory agent of the other co-party.

#### Article 41 (Joint Suit upon Application for Simultaneous Trial and Decision)

- (1) Where a right that is the subject matter of a suit for a codefendant and another right that is the subject matter of another suit for the other codefendant cannot legally coexist, upon the application of the plaintiff, oral arguments and judicial decisions of these suits shall not be made separately.
- (2) The application set forth in the preceding paragraph shall be made by the time of conclusion of oral argument in the second instance.
- (3) In the case referred to in paragraph (1), if appeal cases pertaining to codefendants are pending severally before the same court of second instance, oral arguments and judicial decisions of these cases shall be made in a consolidated manner.

### **Section 3 Intervention**

#### Article 42 (Assisting Intervention)

A third party who has an interest in the outcome of a suit may intervene in the suit in order to assist either party to the suit.

#### Article 43 (Application for Assisting Intervention)

- (1) An application for assisting intervention shall be made to the court where procedural acts should be performed through assisting intervention, by clarifying the purpose of and reasons for intervention.

- (2) An application for assisting intervention may be made upon performing a procedural act that may be performed by an assisting intervener.

#### Article 44 (Objection to Assisting Intervention, etc.)

- (1) When a party makes an objection to assisting intervention, the court, by an order, shall make a judicial decision with regard to whether or not to permit assisting intervention. In this case, the assisting intervener shall make a prima facie showing of the reasons for intervention.
- (2) A party, after he/she has presented oral arguments or made statements in the preparatory proceedings without making an objection set forth in the preceding paragraph, may not make such objection.
- (3) An immediate appeal may be filed against a judicial decision set forth in paragraph (1).

#### Article 45 (Procedural Acts by Assisting Intervener)

- (1) An assisting intervener, with regard to the suit in question, may advance allegations and evidence, make an objection, file an appeal, file an action for retrial or perform any other procedural acts; provided, however, that this shall not apply to procedural acts that the assisting intervener may not perform depending on the progress of the suit at the time of assisting intervention.
- (2) Any procedural acts performed by an assisting intervener shall not be effective if they conflict with procedural acts performed by the party to be assisted through intervention.
- (3) An assisting intervener, even where an objection is made to assisting intervention, may perform procedural acts until a judicial decision not permitting assisting intervention becomes final and binding.
- (4) Any procedural acts performed by an assisting intervener, even where a judicial decision not permitting assisting intervention becomes final and binding, shall be effective if invoked by the party.

#### Article 46 (Effect of Judicial Decision against Assisting Intervener)

A judicial decision on a suit pertaining to assisting intervention shall also be effective against the assisting intervener, except in the following cases:

- (i) Where the assisting intervener was unable to perform a procedural act pursuant to the provision of the proviso to paragraph (1) of the preceding Article.
- (ii) Where a procedural act performed by the assisting intervener was not effective pursuant to the provision of paragraph (2) of the preceding Article.
- (iii) Where the party to be assisted through intervention interfered with a procedural act performed by the assisting intervener.



- (iv) Where the party to be assisted through intervention, intentionally or negligently, did not perform a procedural act that the assisting intervenor may not perform.

#### Article 47 (Intervention as Independent Party)

- (1) A third party who asserts that his/her right would be prejudiced depending on the outcome of a suit or a third party who asserts that he/she is entitled to the whole or part of the subject matter of a suit may intervene in the suit as a party, designating either or both of the parties to the suit as his/her opponent(s).
- (2) An application for intervention under the provision of the preceding paragraph shall be made by means of a document.
- (3) The document set forth in the preceding paragraph shall be served upon both parties.
- (4) The provisions of Article 40(1) to (3) shall apply mutatis mutandis to the parties to a suit set forth in paragraph (1) and the person who has intervened in the suit pursuant to the provision of said paragraph, and the provision of Article 43 shall apply mutatis mutandis to an application for intervention under the provision of said paragraph.

#### Article 48 (Original Party's Withdrawal from Suit)

Where there is a person who has intervened in a suit pursuant to the provision of paragraph (1) of the preceding Article in order to assert his/her own right, the plaintiff or defendant prior to intervention may withdraw from the suit, with the consent of the opponent. In this case, a judgment of the suit shall also be effective against the original party who has withdrawn from the suit.

#### Article 49 (Interruption of Prescription in the case of Intervention by Transferee of Right)

If a person has intervened in a suit pursuant to the provision of Article 47(1) by asserting that he/she, while the suit is pending, has accepted a transfer of the whole or part of the right that is the subject matter of the suit, his/her intervention shall have the effect of interruption of prescription or observance of a statutory term.

#### Article 50 (Assumption of Suit by Successor of Obligation)

- (1) If a third party, while the suit is pending, has succeeded to the whole or part of the obligation that is the subject matter of the suit, the court, upon the petition of an original party, by an order, may have such third party assume the suit.
- (2) The court, when making an order set forth in the preceding paragraph, shall interrogate the original party and the third party.
- (3) The provisions of Article 41(1) and (3) and the preceding two Articles shall

apply mutatis mutandis where an order is made to have a third party assume a suit pursuant to the provision of paragraph (1).

Article 51 (Intervention by Successor of Obligation and Assumption of Suit by Transferee of Right)

The provisions of Article 47 to Article 49 shall apply mutatis mutandis to the intervention by a third party who asserts that he/she, while the suit is pending, has succeeded to the whole or part of the obligation that is the subject matter of the suit, and the provision of the preceding Article shall apply mutatis mutandis where a third party, while the suit is pending, has accepted a transfer of the whole or part of the right that is the subject matter of the suit.

Article 52 (Intervention as Co-Party)

- (1) Where the subject matter of a suit should be determined in a single form both for one of the original parties and a third party, such third party may intervene in the suit as a co-party.
- (2) The provisions of Article 43 and Article 47(2) and (3) shall apply mutatis mutandis to an application for intervention under the provision of the preceding paragraph.

Article 53 (Notice of Suit to Third Party)

- (1) While the suit is pending, a party may give a notice of the suit to a third party who may intervene in the suit.
- (2) A person who has received a notice of suit may give a further notice of suit to another person.
- (3) A notice of suit shall be given by submitting to the court a document stating the reasons therefor and the progress of the suit.
- (4) Even where a person who has received a notice of suit has not intervened in the suit, for the purpose of application of the provision of Article 46, such person shall be deemed to have intervened in the suit at the time when he/she was able to intervene.

**Section 4 Counsel and Assistant in Court**

Article 54 (Qualification of Counsel)

- (1) Except for an agent who may perform judicial acts under laws and regulations, no person other than an attorney at law may serve as a counsel; provided, however, that in a summary court, with its permission, a person who is not an attorney at law may be appointed as a counsel.
- (2) The permission set forth in the preceding paragraph may be rescinded at any

time.

#### Article 55 (Scope of Authority of Representation in Suit)

- (1) A counsel, with regard to a case entrusted thereto, may perform procedural acts concerning a counterclaim, intervention, compulsory execution, provisional seizure and provisional disposition, and may receive payment.
- (2) A counsel shall be specially entrusted in order to perform the following:
  - (i) Filing a counterclaim
  - (ii) Withdrawing an action, entering into a settlement, waiving or acknowledging a claim, or withdrawing from a suit under the provision of Article 48 (including cases where applied mutatis mutandis pursuant to Article 50(3) and Article 51)
  - (iii) Filing an appeal to the court of second instance or final appeal, or withdrawing a petition set forth in Article 318(1)
  - (iv) Withdrawing an objection under the provision of Article 360 (including cases where applied mutatis mutandis pursuant to Article 367(2) and Article 378(2)) or giving consent to such withdrawal
  - (v) Appointing an agent
- (3) The authority of representation in a suit may not be restricted; provided, however, that this shall not apply to a counsel who is not an attorney at law.
- (4) The provisions of the preceding three paragraphs shall not preclude the powers of an agent who may perform judicial acts under laws and regulations.

#### Article 56 (Independent Representation)

- (1) If there are two or more counsels, each one shall represent a party.
- (2) Any provision agreed between the parties outside of the provision of the preceding paragraph shall not become effective.

#### Article 57 (Correction by Party)

Statements on facts made by a counsel, if immediately retracted or corrected by a party, shall not become effective.

#### Article 58 (Non-Extinction of Authority of Representation in Suit)

- (1) The authority of representation in a suit shall not be extinct on the following grounds:
  - (i) A party's death or loss of the capacity to sue or be sued
  - (ii) Extinction by merger of a juridical person who is a party
  - (iii) Termination of duties concerning a trust assigned to a trustee who is a party
  - (iv) A statutory agent's death or loss of his/her capacity to sue or be sued, or extinction or modification of the authority of representation
- (2) The authority of representation of a counsel for a person who has a certain

status and stands as a party to a suit in his/her own name on behalf of another shall not be extinct due to the party's loss of the status upon death or on any other grounds.

- (3) The provision of the preceding paragraph shall apply mutatis mutandis where an appointed party has lost the status upon death or on any other grounds.

#### Article 59 (Application Mutatis Mutandis of Provisions on Statutory Representation)

The provisions of Article 34(1) and (2) and Article 36(1) shall apply mutatis mutandis to a counsel.

#### Article 60 (Assistant in Court)

- (1) A party or counsel, with 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 made by an assistant in court, unless immediately retracted or corrected by a party or counsel, shall be deemed to have been made by the party or counsel him/herself.

### **Chapter IV Court Costs**

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

#### Article 61 (Principle of Burden of Court Costs)

A defeated party shall bear court costs.

#### Article 62 (Burden of Costs: Unnecessary Act, etc.)

The court, depending on the circumstances, may have a winning party bear all or part of court costs incurred from any act that is unnecessary for the expansion or defense of his/her right or court costs incurred from any act that was necessary, in light of the progress of the suit as of the time of the act, for the expansion or defense of the opponent's right.

#### Article 63 (Burden of Costs: Delay in Suit)

If a party has delayed a suit due to his/her failure to advance allegations or evidence in a timely manner, nonobservance of the date or period or any other grounds attributable thereto, the court may have such party bear all or part of court costs incurred from the delay even where that party won the case.

#### Article 64 (Burden of Costs: Partial Defeat)

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

Article 65 (Burden of Costs: Joint Suit)

- (1) Co-parties shall bear court costs equally; provided, however, that the court, depending on circumstances, may have co-parties bear court costs jointly and severally or in any other manner.
- (2) The court, notwithstanding the provision of the preceding paragraph, may have a party who has performed any act that is unnecessary for the expansion or defense of a right bear court costs incurred by such act.

Article 66 (Burden of Costs: Assisting Intervention)

The provisions of Article 61 to the preceding Article shall apply mutatis mutandis to the allocation of court costs incurred from an objection to assisting intervention between the assisting intervenor and the party who has made the objection, and to the allocation of court costs incurred from assisting intervention between the assisting intervention and the opponent.

Article 67 (Judicial Decision on Burden of Court Costs)

- (1) The court, when making a judicial decision to conclude a case, by its own authority, shall make a judicial decision on the burden of all court costs incurred in the instance thereof; provided, however, that depending on the circumstances, the court, when making a judicial decision on part of a case or on an interlocutory dispute, may make a judicial decision on the burden of costs thereof.
- (2) Where an upper instance court modifies a judicial decision on merits, it shall make a judicial decision on the burden of the total costs of the suit. The same shall apply where a court that has accepted a case remanded or transferred thereto makes a judicial decision to conclude the case.

Article 68 (Burden of Costs: Settlement)

Where the parties have entered into a settlement in court, if they have not agreed any special provision on the burden of costs for settlement or court costs, the parties shall bear their own costs.

Article 69 (Reimbursement of Costs by Statutory Agent, etc.)

- (1) If a statutory agent, counsel, court clerk or court execution officer, intentionally or by gross negligence, has incurred unnecessary court costs, the court in charge of the case, upon petition or by its own authority, may order these persons to reimburse the amount of such costs.

- (2) Where a person who has performed a procedural act as a statutory agent or counsel has failed to prove that he/she has authority of representation or delegation of powers necessary for performing procedural acts and also failed to obtain ratification, the provision of the preceding paragraph shall apply mutatis mutandis to the court costs incurred from that procedural act.
- (3) An immediate appeal may be filed against an order made under the provision of paragraph (1) (including cases where applied mutatis mutandis pursuant to the provision of the preceding paragraph).

#### Article 70 (Burden of Costs by Unauthorized Agent)

In the case prescribed in paragraph (2) of the preceding Article, if the court has dismissed an action without prejudice, the person who has performed procedural acts as an agent shall bear court costs.

#### Article 71 (Procedure to Fix Amount of Court Costs)

- (1) The amount of court costs to be borne shall be fixed, upon petition, by a court clerk of the court of first instance after a judicial decision on the burden of costs becomes enforceable.
- (2) In the case referred to in the preceding paragraph, if both parties bear court costs, it shall be deemed that the costs to be borne by the parties are set off against each other at the corresponding amount, except in cases specified by the Rules of the Supreme Court.
- (3) A disposition on the petition set forth in paragraph (1) shall become effective when a notice thereof is given by a method that is considered to be appropriate.
- (4) An objection to the disposition set forth in the preceding paragraph shall be made within an unextendable period of one week from the day on which a notice thereof is received.
- (5) The objection set forth in the preceding paragraph shall have the effect of stay of execution.
- (6) Where the court finds that an objection to the disposition to fix the amount under the provision of paragraph (1) is well-grounded, if the amount of court costs to be borne is to be fixed, it shall fix such amount itself.
- (7) An immediate appeal may be filed against an order on the objection set forth in paragraph (4).

#### Article 72 (Procedure to Fix Amount of Costs in the case of Settlement)

Where the parties have entered into a settlement in court, if they have not agreed any provision of the burden of costs for settlement or court costs or fixed the amount of these costs, such amount shall be fixed, upon petition, by a court clerk of the court of first instance (in the case of a settlement set forth in Article 275, the court where

the settlement is established). In this case, the provisions of paragraph (2) to paragraph (7) of the preceding Article shall apply mutatis mutandis.

**Article 73 (Where Suit Is Concluded Not by Judicial Decision or Settlement)**

- (1) If a suit is concluded not by a judicial decision or settlement, the court of first instance, upon petition, shall make an order on the burden of court costs, and a court clerk of that court shall fix the amount to be borne after the order becomes enforceable. The same shall apply where an application for assisting intervention is withdrawn or an objection to assisting intervention is withdrawn.
- (2) The provisions of Article 61 to Article 66 and Article 71(7) shall apply mutatis mutandis to an order on the petition set forth in the preceding paragraph, the provisions of Article 71(2) and (3) shall apply mutatis mutandis to a disposition made by a court clerk on the petition set forth in the preceding paragraph, and the provisions of Article 71(4) to (7) shall apply mutatis mutandis to an objection to such disposition.

**Article 74 (Correction of Disposition to Fix Amount of Costs)**

- (1) If there is a miscalculation, clerical error or any other clear error similar thereto in a disposition to fix the amount under the provisions of Article 71(1), Article 72 or paragraph (1) of the preceding Article, a court clerk, upon petition or by his/her own authority, may correct the disposition at any time.
- (2) The provisions of Article 71(3) to (5) and (7) shall apply mutatis mutandis to a disposition of correction made under the provision of the preceding paragraph and an objection thereto.
- (3) If a lawful objection is made to a disposition to fix the amount prescribed in paragraph (1), no objection set forth in the preceding paragraph may be made.

**Section 2 Security for Court Costs**

**Article 75 (Order of Provision of Security)**

- (1) If a plaintiff does not have any domicile, business office or other office in Japan, the court, upon the petition of a defendant, shall make an order to the effect that the plaintiff should provide security for court costs. The same shall apply if any deficiency occurs in such security.
- (2) The provision of the preceding paragraph shall not apply where there is no dispute over part of a claim for payment of money and the amount of such part of the claim is sufficient as security.
- (3) A defendant may not file a petition set forth in paragraph (1) if he/she has presented oral arguments on the merits or made statements in preparatory proceedings after he/she became aware of any grounds for providing security.

- (4) The defendant who has filed a petition set forth in paragraph (1) may refuse to appear until the plaintiff provides security.
- (5) The court, in an order set forth in paragraph (1), shall specify the amount of security and a period for providing security.
- (6) The amount of security shall be specified on the basis of the total amount of court costs to be paid by the defendant in all instances.
- (7) An immediate appeal may be filed against an order on the petition set forth in paragraph (1).

#### Article 76 (Method of Providing Security)

Security shall be provided by making a statutory deposit of money or securities (including book-entry transfer company bonds, etc. prescribed in Article 129(1) of the Act on Book-Entry Transfer of Company Bonds, etc. (Act No. 75 of 2001); the same shall apply in the following Article) that the court considers appropriate, to an official depository within the jurisdictional district of the district court that has jurisdiction over the location of the court that has ordered provision of security, or by any other method specified by the Rules of the Supreme Court; provided, however, that if the parties have made a special contract, such contract shall prevail.

#### Article 77 (Defendant's Right over Collateral)

With regard to court costs, a defendant shall have the right to receive payment, in preference to other creditors, for the money or securities deposited by law pursuant to the provision of the preceding Article.

#### Article 78 (Effect of Failure to Provide Security)

If a plaintiff fails to provide security within the period during which it should be provided, the court, by a judgment, may dismiss the action without prejudice, without oral argument; provided, however, that this shall not apply if he/she provides security before a judgment is made.

#### Article 79 (Rescission of Security)

- (1) When the person who provided security has proven that the grounds for providing security have ceased to exist, the court, upon petition, shall make an order of rescission of security.
- (2) The provision of the preceding paragraph shall also apply when the person who provided security has proven that he/she has obtained the consent of the security interest holder to the rescission of security.
- (3) If, after the conclusion of a suit, the court, upon the petition of the person who provided security, has made a demand on the security interest holder that he/she should exercise his/her right within a certain period but the security interest



holder has not exercised it, it shall be deemed that the security interest holder has consented to the rescission of security.

- (4) An immediate appeal may be filed against an order made under the provisions of paragraph (1) and paragraph (2).

#### Article 80 (Substitution of Security)

The court, upon the petition of the person who provided security, may make an order of substitution for that security; provided, however, that this shall not preclude substituting another security for that security by a contract.

#### Article 81 (Application Mutatis Mutandis to Security Provided under Other Laws and Regulations)

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

### **Section 3 Judicial Aid**

#### Article 82 (Grant of Aid)

- (1) For a person who lacks the financial resources to pay the expenses necessary for preparing for and conducting a suit or person who will suffer substantial detriment in his/her standard of living by paying such expenses, the court, upon petition, may make an order to grant judicial aid; provided, however, that this shall apply only where it cannot be said that such person is unlikely to win the case.
- (2) An order to grant judicial aid shall be made in each instance.

#### Article 83 (Effects of Aid, etc.)

- (1) An order to grant judicial aid, as provided for therein, shall have the following effects with regard to the suit and compulsory execution:
- (i) Grace of payment of court costs as well as fees for a court execution officer and expenses for the performance of his/her duties
  - (ii) Grace of payment of compensation and expenses for an attorney at law who is ordered by the court to be an attendant
  - (iii) Exemption from providing security for court costs
- (2) An order to grant judicial aid shall be effective only against the person who has received it.
- (3) The court shall make an order to the effect that a successor to a suit should pay expenses and costs for which grace is given.

#### Article 84 (Revocation of Order to Grant Aid)

If a person who has received an order to grant judicial aid is found not to meet the requirements prescribed in the main clause of Article 82(1) or no longer meets the requirements, the court where the case record is kept, upon the petition of an interested person or by its own authority, by an order, may at any time revoke the order to grant judicial aid and order payment of expenses and costs for which grace is given.

#### Article 85 (Method of Collection of Expenses and Costs with Grace, etc.)

Expenses and costs for which grace is given to a person who has received an order to grant judicial aid may be collected directly from the opponent who shall bear such expenses and costs. In this case, an attorney at law or a court execution officer, on behalf of the person who has received the order to grant judicial aid, may file a petition set forth in Article 71(1), Article 72 or Article 73(1) or enforce compulsory execution with regard to their compensation or fees and expenses and costs.

#### Article 86 (Immediate Appeal)

An immediate appeal may be filed against an order prescribed in this Section.

### **Chapter V Court Proceedings**

#### **Section 1 Proceedings of Suit, etc.**

#### Article 87 (Necessity of Oral Argument)

- (1) The parties, with regard to their suit, shall conduct oral argument before the court; provided, however, that with regard to a case to be concluded by an order, the court shall determine whether or not oral argument should be conducted.
- (2) Where oral argument is not to be conducted pursuant to the provision of the proviso to the preceding paragraph, the court may interrogate the parties.
- (3) The provisions of the preceding two paragraphs shall not apply where special provisions exist.

#### Article 88 (Interrogation by Authorized Judge)

The court, where it interrogates a person, may have an authorized judge conduct such interrogation.

#### Article 89 (Attempt of Settlement)

The court, irrespective of to what extent a suit has progressed, may attempt to arrange a settlement or have an authorized judge or commissioned judge attempt to arrange a settlement.

#### Article 90 (Loss of Right of Objection to Court Proceedings)

Where a party knows or is able to know any violation of the provisions concerning court proceedings but does not make an objection without delay, he/she shall lose the right to make an objection; provided, however, that this shall not apply to such right that may not be waived.

#### Article 91 (Inspection of Case Record, etc.)

- (1) Any person may make a request to a court clerk for the inspection of a case record.
- (2) With regard to the case record pertaining to the oral argument that is prohibited from being open to the public, only the parties and a third party who has made a prima facie showing of his/her interest may make a request under the provision of the preceding paragraph.
- (3) The parties and a third party who has made a prima facie showing of his/her interest may make a request to a court clerk for the copying of the case record, issuance of an authenticated copy, transcript or extract of the case record or issuance of a certificate of matters concerning the suit.
- (4) The provision of the preceding paragraph shall not apply with respect to case records which are prepared in the form of audiotapes or videotapes (including objects on which certain matters are recorded by any means equivalent thereto). In this case, upon the request of a party or a third party who has made a prima facie showing of his/her interest with regard to these objects, a court clerk shall permit reproduction thereof.
- (5) A request for inspection, copying and reproduction of a case record may not be made if these acts would be detrimental to the preservation of the case record or the performance of the court's duties.

#### Article 92 (Restriction on Inspection, etc. for Secrecy Protection)

- (1) Where a prima facie showing is made with regard to the following grounds, the court, upon the petition of a party concerned, may, by an order, limit the persons who may make a request for inspection or copying of the part of the case record in which the relevant secret is stated or recorded, issuance of an authenticated copy, transcript or extract of such part or reproduction of such part (hereinafter referred to as "inspection, etc. of the secret part") to the parties:
  - (i) In the case record, a material secret regarding the private life of a party is stated or recorded, and the inspection, etc. of the secret part conducted by any third party would be substantially detrimental to the party concerned in his/her social life.
  - (ii) In the case record, a trade secret (meaning a trade secret prescribed in Article 2(6) of the Unfair Competition Prevention Act; the same shall apply in Article

- 132-2(1) (iii) or (2)) held by a party is stated or recorded.
- (2) If a petition set forth in the preceding paragraph is filed, a third party may not make a request for inspection, etc. of the secret part until a judicial decision on the petition becomes final and binding.
  - (3) A third party who intends to make a request for inspection, etc. of the secret part may file a petition, to the court where the case record is stored, for revocation of the order set forth in paragraph (1), on the grounds that any of the requirements prescribed in said paragraph is not met or is no longer met.
  - (4) An immediate appeal may be filed against an order dismissing without prejudice the petition set forth in paragraph (1) and a judicial decision on the petition set forth in the preceding paragraph.
  - (5) An order to revoke the order set forth in paragraph (1) shall not become effective unless it becomes final and binding.

## **Section 2 Technical Adviser, etc.**

### **Subsection 1 Technical Adviser**

#### **Article 92-2 (Participation of Technical Adviser)**

- (1) When the court finds it necessary, in the process of deliberating the necessary matters concerning the arrangement of issues or evidence or the progress of court proceedings, in order to clarify the matters related to the suit or ensure the smooth progress of court proceedings, it may, after hearing opinions of the parties, by an order, have a technical adviser participate in the proceedings so as to hear his/her explanation based on expert knowledge. In this case, the presiding judge shall have a technical adviser give an explanation in writing or orally on the date for oral argument or date for preparatory proceedings.
- (2) When the court finds it necessary, in the process of conducting the examination of evidence, in order to clarify the matters related to the suit or the gist of the result of the examination of evidence, it may, after hearing opinions of the parties, by an order, have a technical adviser participate in the proceedings so as to hear his/her explanation based on expert knowledge on the date for the examination of evidence. In this case, in order to have a technical adviser give an explanation on the date for the examination of a witness or a party him/herself or date for the questioning of an expert witness, the presiding judge, with the consent of the party, may permit the technical adviser to ask questions directly of the witness, the party him/herself or the expert witness with regard to the matters necessary for clarifying the matters related to the suit or the gist of the result of the examination of evidence.
- (3) The court, when it finds it necessary in the process of attempting to arrange a

settlement, with the consent of the parties, by an order, may have a technical adviser participate in the proceedings so as to hear his/her explanation based on expert knowledge on the date for attempting to arrange a settlement on which both parties are able to attend.

#### Article 92-3 (Participation of Technical Adviser Through Communication by Audio Transmissions)

Where the court has a technical adviser participate in the proceedings pursuant to the provisions of the paragraphs of the preceding Article, if the technical adviser lives in a remote place or the court finds it appropriate for any other reasons, it may, after hearing opinions of the parties, have the technical adviser give an explanation or ask the questions set forth in the respective paragraphs of said Article on the date set forth in the respective paragraphs of said Article, as provided for by the Rules of the Supreme Court, by a method that enables the court and both parties to communicate simultaneously with the technical adviser by audio transmissions.

#### Article 92-4 (Revocation of Order of Participation of Technical Adviser)

The court, when it finds it appropriate, upon petition or by its own authority, may revoke an order to have a technical adviser participate in the proceedings; provided, however, that the court shall revoke the order upon the petition of both parties.

#### Article 92-5 (Designation, Appointment and Dismissal, etc. of Technical Adviser)

- (1) The number of technical advisers shall be one or more for each case.
- (2) A technical adviser who is to participate in the proceedings pursuant to the provision of Article 92-2 shall be designated by the court for each case, after hearing opinions of the parties.
- (3) A technical adviser shall serve part-time, and the necessary matters concerning his/her appointment and dismissal shall be specified by the Rules of the Supreme Court.
- (4) A technical adviser shall be paid an allowance as separately provided for by an Act and also be paid travel expenses, a daily allowance and accommodation charges at the amount specified by the Rules of the Supreme Court respectively.

#### Article 92-6 (Disqualification of and Challenge to Technical Adviser)

- (1) The provisions of Article 23 to Article 25 (excluding paragraph (2) of said Article) shall apply mutatis mutandis to a technical adviser.
- (2) When a petition for the disqualification of or a challenge to a technical adviser is filed, the technical adviser may not participate in the proceedings of the case for which the petition is filed until an order on the petition becomes final and binding.

Article 92-7 (Powers of Authorized Judge, etc.)

Where an authorized judge or commissioned judge conducts the procedures set forth in the paragraphs of Article 92-2, the respective judge shall perform the duties of the court and the presiding judge under the provisions of said Article to Article 92-4 and Article 92-5(2); provided, however, that in the case of the procedure set forth in Article 92-2(2), the court in charge of the case shall make an order to have a technical adviser participate in the proceedings, revoke such order, and designate a technical adviser.

## **Subsection 2 Affairs of Judicial Research Official in Cases Relating to Intellectual Property**

Article 92-8 (Affairs of Judicial Research Official in Cases Relating to Intellectual Property)

The court, when it finds it necessary, may have a judicial research official, who is in charge of conducting an examination of a trial and a judicial decision on a case relating to intellectual property at a high court or district court, administer the following affairs in said case. In this case, the judicial research official, as ordered by the presiding judge, shall administer these affairs:

- (i) Asking questions of the parties or urging them to offer proof with regard to factual or legal matters, on the following date or in the following proceedings, in order to clarify the matters related to the suit:
  - (a) The date for oral argument or interrogation
  - (b) The proceedings for arranging issues or evidence
  - (c) The proceedings for determining the existence or nonexistence of an obligation to submit a document or obligation to present the subject matter of a observation
  - (d) The proceedings for deliberating the matters pertaining to the arrangement of issues or evidence or any other necessary matters concerning the progress of court proceedings
- (ii) Asking questions directly of a witness, a party him/herself or expert witness on the date for examination of evidence
- (iii) Giving an explanation based on expert knowledge on the date for attempting to arrange a settlement
- (iv) Stating opinions on the case to a judge

Article 92-9 (Disqualification of and Challenge to Judicial Research Official in Cases Relating to Intellectual Property)

- (1) The provisions of Article 23 to Article 25 shall apply mutatis mutandis to a judicial research official who administers the affairs set forth in the preceding

Article.

- (2) When a petition is filed for the disqualification of or a challenge to a judicial research official who administers the affairs set forth in the preceding Article, the judicial research official may not participate in the case for which the petition is filed until an order on the petition becomes final and binding.

### **Section 3 Date and Period**

#### **Article 93 (Designation and Change of Date)**

- (1) The date shall be designated by the presiding judge upon petition or by his/her own authority.
- (2) The date, only if unavoidable, may be designated on a Sunday or any other general holiday.
- (3) A change of the date for oral argument and the date for preparatory proceedings shall be allowed only if there are obvious reasons therefor; provided, however, a change of the first date shall also be allowed if agreed by the parties.
- (4) Notwithstanding the provision of the preceding paragraph, no change of the date for oral argument after preparatory proceedings shall be allowed unless there are unavoidable reasons therefor.

#### **Article 94 (Summons for Appearance Date)**

- (1) Summons for an appearance date shall be made by serving a writ of summons, giving a notice of the date to a person who has appeared for the case in question, or any other method that is considered to be appropriate.
- (2) When a summons for an appearance date is made by a method other than serving a writ of summons or giving a notice of the date to a person who has appeared for the case, no legal sanction nor any other disadvantage by reason of nonobservance of the date may be attributed to a party, witness or expert witness who does not appear on the date; provided, however, that this shall not apply if these persons have submitted a document stating that they have been summoned for the appearance date.

#### **Article 95 (Computation of Period of Time)**

- (1) The computation of a period of time shall be governed by the provisions of the Civil Code concerning periods of time.
- (2) If a judicial decision to specify a period does not specify the time of commencement, the period shall commence to run when the judicial decision becomes effective.
- (3) If the last day of a period falls upon 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, the period shall expire on the day following the respective day.

Article 96 (Extension and Shortening of Period and Additional Period)

- (1) The court may extend or shorten a statutory period or a period specified by itself; provided, however, that this shall not apply to an unextendable period.
- (2) For an unextendable period, the court may specify an additional period in the interests of a person who has a domicile or residence in a remote place.

Article 97 (Subsequent Completion of Procedural Act)

- (1) Where a party was unable to observe an unextendable period due to grounds not attributable thereto, he/she may subsequently complete, within one week after the grounds cease to exist, the procedural act to be performed within the unextendable period; provided, however, that for a party who is in a foreign state, such additional period shall be two months.
- (2) The provision of the main clause of paragraph (1) of the preceding Article shall not apply to the period set forth in the preceding paragraph.

**Section 4 Service**

Article 98 (Principle of Service by Authority, etc.)

- (1) A service, except as otherwise provided, shall be made by the authority of the court.
- (2) Affairs concerning service shall be administered by a court clerk.

Article 99 (Organs Making Service)

- (1) A service, except as otherwise provided, shall be made by mail or by a court execution officer.
- (2) In the case of a service by mail, a person engaging in postal services shall be treated as a person who is to make the service.

Article 100 (Service by Court Clerk)

A court clerk may make a service by him/herself upon a person who has appeared for a case that is pending before the court to which he/she belongs.

Article 101 (Principle of Service by Delivery)

A service, except as otherwise provided, shall be made by delivering, to the person who is to receive the service, a document to be served upon him/her.

Article 102 (Service upon Person without Capacity to Sue or Be Sued, etc.)



- (1) A service upon a person without capacity to sue or be sued shall be made upon his/her statutory agent.
- (2) Where two or more persons are to exercise the authority of representation jointly, it shall be sufficient to make a service upon any one of them.
- (3) A service upon a person who is in a penal institution shall be made upon the head of the penal institution.

#### Article 103 (Place of Service)

- (1) A service shall be made at the domicile, residence, business office or other office (hereinafter referred to as the "domicile, etc.") of the person who is to receive the service; provided, however, that a service upon a statutory agent may also be made at the business office or other office of the principal.
- (2) If the place specified in the preceding paragraph is unknown or there is an obstacle to making a service at that place, a service may be made at the domicile, etc. of another person where the person who is to receive the service engages in work based on employment, entrustment or any other legal act (hereinafter referred to as the "workplace"). The same shall apply where the person who is to receive the service (except one prescribed in paragraph (1) of the following Article) has made a statement that he/she will receive the service at the workplace.

#### Article 104 (Notification of Place of Service, etc.)

- (1) A party, statutory agent or counsel shall notify the court in charge of the case of the place where a service is to be received (limited to a place in Japan). In this case, they may also notify the court of a designated service recipient.
- (2) Where a notification is made under the provision of the first sentence of the preceding paragraph, a service, notwithstanding the provision of the preceding Article, shall be made at the place reported in the notification.
- (3) A subsequent service upon a person who does not make a notification under the provision of the first sentence of paragraph (1) and who has received any of the services listed in the following items, notwithstanding the provision of the preceding Article, shall be made at the place specified in the respective items:
  - (i) A service under the provision of the preceding Article  
The place where the service was made
  - (ii) A service under the provision of the second sentence of the following Article to be made by a person engaging in postal services at a business office of Japan Post Service Co., Ltd (including a business office of a person who is entrusted by Japan Post Service Co., Ltd with said postal services; the same shall apply in the second sentence of Article 106(1)), and a service under the provision of the second sentence of Article 106(1)

- The place designated as the place where the service was to be made
- (iii) A service under the provision of Article 107(1) (i)
- The place designated as the destination of the service

#### Article 105 (Service at the Place of Meeting)

Notwithstanding the provisions of the preceding two Articles, a service upon the person who is to receive the service and for whom it is not obvious that he/she has a domicile, etc. in Japan (excluding one who has made a notification under the provision of the first sentence of paragraph (1) of the preceding Article), may be made at a place where the deliverer of the service has met the person. The same shall apply where a person for whom it is obvious that he/she has a domicile, etc. in Japan or person who has made a notification under the provision of the first sentence of said paragraph does not refuse to receive a service.

#### Article 106 (Substituted Service and Service by Leaving Documents)

- (1) If the deliverer of a service has not met the person who is to receive the service at the place, other than the workplace, where the service is to be made, the relevant document may be delivered to an employee or any other worker or a person living together with that person, who has reasonable discretion concerning the receipt of documents. The same shall apply where a person engaging in postal services is to deliver the document at the business office of Japan Post Service Co., Ltd.
- (2) Where the deliverer of a service has not met the person who is to receive the service at the workplace (including cases where the place reported in the notification made under the provision of the first sentence of Article 104(1) is the workplace), if another person set forth in Article 103(2) or his/her statutory agent or employee or any other worker, who has reasonable discretion concerning the receipt of documents, does not refuse to receive the delivery of the document, the document may be delivered to these persons.
- (3) If a person who is to receive a service or a person who is to receive the delivery of the document pursuant to the provision of the first sentence of paragraph (1) has refused to receive the service or the delivery without justifiable grounds, the relevant document may be left at the place where the service is to be made.

#### Article 107 (Service by Registered Mail, etc.)

- (1) Where it is impossible to make a service pursuant to the provision of the preceding Article, a court clerk, for the cases listed in the following items, may send the document to the place specified in the respective items, by registered mail or services of correspondence delivery prescribed in Article 2(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, which are specified by the Rules of the Supreme Court as services equivalent to registered mail (hereinafter referred to as "registered mail, etc." in the following paragraph and paragraph (3)):

(i) Where a service under the provision of Article 103 is to be made

The place specified in paragraph (1) of the preceding Article

(ii) Where a service under the provision of Article 104(2) is to be made

The place set forth in said paragraph

(iii) Where a service under the provision of Article 104(3) is to be made

The place set forth in said paragraph (in cases where that place is the workplace, the domicile, etc. of the person in question as indicated in the case record)

(2) Where the document is sent by registered mail, etc. pursuant to the provisions of item (ii) or item (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 item (iii) of said paragraph.

(3) Where the document is sent by registered mail, etc. pursuant to the provisions of the preceding two paragraphs, the service shall be deemed to have been made at the time of sending.

#### Article 108 (Service in Foreign State)

A service to be made in a foreign state shall be made as commissioned by the presiding judge to the competent government agency of that state or the Japanese ambassador, minister or consul stationed in that state.

#### Article 109 (Service Report)

A person who has made a service shall prepare a document, state therein the matters concerning the service, and submit it to the court.

#### Article 110 (Requirements for Service by Publication)

(1) In the following cases, a court clerk, upon petition, may make a service by publication:

(i) Where a party's domicile, residence or any other place where the service is to be made is unknown.

(ii) Where it is impossible to make a service pursuant to the provision of Article 107(1)

(iii) Where, with regard to a service to be made in a foreign state, it is impossible to make the service by the method prescribed in Article 108 or it is found to be impossible to make the service by such method.

- (iv) Where, even after six months have elapsed since a commission was issued to the competent government agency of a foreign state pursuant to the provision of Article 108, no document that certifies that the agency has made the service has been sent.
- (2) In the case referred to in the preceding paragraph, the court, when it finds it necessary in order to avoid a delay in a suit, without petition, may order a court clerk to make a service by publication.
- (3) The second and subsequent services by publication upon the same party shall be made by authority of the court; provided, however, that this shall not apply in the case set forth in paragraph (1) (iv).

#### Article 111 (Method of Service by Publication)

A service by publication shall be made by posting a notice, at the posting area of the court, to the effect that a court clerk shall retain the document to be served and deliver it at any time to the person who is to receive the service.

#### Article 112 (Time When Service by Publication Becomes Effective)

- (1) A service by publication shall become effective when two weeks have elapsed since the day on which the posting under the provision of the preceding Article was carried out; provided, however, that a service by publication set forth in Article 110 (3) shall become effective on the day following the day on which the posting was carried out.
- (2) In the case of a service by publication made with regard to a service to be made in a foreign state, the period set forth in the preceding paragraph shall be six weeks.
- (3) The period set forth in the preceding two paragraphs may not be shortened.

#### Article 113 (Arrival of Manifestation of Intention by Service by Publication)

Where a party to a suit is unable to discover the whereabouts of the opponent, if the document served by publication upon the opponent states that the party make a manifestation of intention to the opponent with respect to the claim that is the subject matter of the suit or the allegations and evidence for defense, such manifestation of intention shall be deemed to have arrived at the opponent when two weeks have elapsed since the day on which the posting under the provision of Article 111 was carried out. In this case, the provision of the proviso to Article 98(3) of the Civil Code shall apply *mutatis mutandis*.

### **Section 5 Judicial Decision**

#### Article 114 (Scope of Res Judicata)

- (1) A final and binding judgment, only for the contents thereof that are included in the main text, shall have res judicata.
- (2) A determination on the validity or invalidity of a claim alleged for the purpose of effecting a set-off shall have res judicata for the amount duly asserted by reason of the set-off.

Article 115 (Scope of Persons Subject to Effect of Final and Binding Judgment, etc.)

- (1) A final and binding judgment shall be effective against the following persons:
  - (i) The parties
  - (ii) Another person for whom a party has served as a plaintiff or defendant
  - (iii) A person who has succeeded to any of the persons listed in the preceding two items after the conclusion of oral argument
  - (iv) A person who possesses the subject matter of the claim on behalf of any of the persons listed in the preceding three items.
- (2) The provision of the preceding paragraph shall apply mutatis mutandis to a declaration of provisional execution.

Article 116 (Time When Judgment Becomes Final and Binding)

- (1) A judgment shall not become final and binding until the expiration of a period specified for filing an appeal to the court of second instance or a final appeal (excluding a final appeal set forth in Article 327(1) (including cases where applied mutatis mutandis pursuant to Article 380(2))), filing a petition set forth in Article 318(1) or making an objection under the provision of Article 357 (including cases where applied mutatis mutandis pursuant to Article 367(2)) or Article 378(1).
- (2) The process of a judgment becoming final and binding shall be interrupted by the filing of an appeal to the court of second instance, filing of a final appeal set forth in the preceding paragraph or filing of a petition or making of an objection set forth in said paragraph within the period set forth in said paragraph.

Article 117 (Action to Seek Modification of Final and Binding Judgment Ordering Compensation by Periodic Payments)

- (1) Where, with regard to a final and binding judgment ordering compensation by periodic payments for the damage that arose prior to the conclusion of oral argument, any significant change has occurred to the severity of residual disability, wage standards or any other circumstances that were used as the basis for calculation of the amount of damages, an action to seek a modification of the judgment may be filed; provided, however, that this shall apply only to the part of the judgment which pertains to the periodic payments that will become due after the date of filing of the action.

- (2) The action set forth in the preceding paragraph shall be subject exclusively to the jurisdiction of the court of first instance.

Article 118 (Effect of Final and Binding Judgment Rendered by Foreign Court)

A final and binding judgment rendered by a foreign court shall be effective only where it meets all of the following requirements:

- (i) The jurisdiction of the foreign court is recognized under laws or regulations or conventions or treaties.
- (ii) The defeated defendant has received a service (excluding a service by publication or any other service similar thereto) of a summons or order necessary for the commencement of the suit, or has appeared without receiving such service.
- (iii) The content of the judgment and the court proceedings are not contrary to public policy in Japan.
- (iv) A mutual guarantee exists.

Article 119 (Notice of Order and Direction)

An order and a direction shall become effective when a notice thereof is given by a method that is considered to be appropriate.

Article 120 (Revocation of Judicial Decision Concerning Control of Court Proceedings)

An order and a direction concerning control of court proceedings may be revoked at any time.

Article 121 (Objection to Disposition by Court Clerk)

With regard to an objection to a disposition made by a court clerk, the court to which the court clerk belongs shall make a judicial decision by an order.

Article 122 (Application Mutatis Mutandis of Provisions on Judgment)

With regard to orders and directions, unless contrary to the nature thereof, the provisions concerning judgments shall apply mutatis mutandis.

Article 123 (Powers of Assistant Judge)

A judicial decision other than a judgment may be made by an assistant judge independently.

**Section 6 Discontinuation of Action and Suspension of Court Proceedings**

Article 124 (Discontinuation and Taking Over of Action)

- (1) If any of the grounds listed in the following items exist, an action shall be discontinued. In this case, the person specified in the respective items shall take over the action:
  - (i) A party's death  
The party's heir, administrator of the inherited property or any other person who should continue the action under laws or regulations
  - (ii) Extinction by merger of a juridical person who is a party  
The juridical person established by the merger or juridical person surviving the merger
  - (iii) A party's loss of capacity to sue or be sued, or a statutory agent's death or extinction 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 concerning a trust assigned to each of the persons listed in (a) to (c) below: The respective person specified in (a) to (c)
    - (a) The trustee who is a party: A new trustee or the administrator of trust property or administrator of incorporated trust property
    - (b) The administrator of trust property or administrator of incorporated trust property who is a party: A new trustee or a new administrator of trust property or new administrator of incorporated trust property
    - (c) The trust manager who is a party: The beneficiary or a new trust manager
  - (v) A person who has a certain status and acts as a party to the suit in his/her own name on behalf of another has lost his/her status upon death or on any other grounds  
A person who has the same status
  - (vi) All appointed parties' loss of status upon death or on any other grounds  
All appointers or a newly appointed party
- (2) The provision of the preceding paragraph shall not apply while there is a counsel.
- (3) Even where the grounds set forth in paragraph (1) (i) exist, the heir may not take over the action while he/she may renounce his/her inheritance.
- (4) The provision of paragraph (1) (ii) shall not apply where the merger may not be duly asserted against the opponent.
- (5) Where the statutory agent set forth in paragraph (1) (iii) is a curator or assistant, the provision of paragraph (1) (iii) shall not apply in the following cases:
  - (i) Where the person under curatorship or person under assistance is not required to obtain the consent of the curator or assistant for performing procedural acts.
  - (ii) Where the person under curatorship or person under assistance is required to obtain the consent prescribed in the preceding item, and has obtained it

#### Article 125 Deleted

#### Article 126 (Opponent's Petition for Taking Over of Action)

A petition for taking over of action may also be filed by the opponent.

#### Article 127 (Notice of Taking Over of Action)

Where a petition for taking over of action is filed, the court shall notify the opponent.

#### Article 128 (Judicial Decision on Taking Over of Action)

- (1) Where a petition for taking over of action is filed, the court, when it finds that the petition is groundless after conducting an examination by its own authority, shall dismiss the petition without prejudice by an order.
- (2) Where a petition is filed for the taking over of an action that has been discontinued after a judgment document or written statement set forth in Article 254(2) (including cases where applied *mutatis mutandis* pursuant to Article 374 (2)) has been served, the court that has made the judgment in question shall make a judicial decision on the petition.

#### Article 129 (Order of Continuation by Court's Authority)

Even where neither party files a petition for taking over of action, the court, by its own authority, may order continuation of the action.

#### Article 130 (Suspension due to Impossibility of Execution of Duties by Court)

If it is impossible for the court to execute its duties due to a natural disaster or any other cause, the court proceedings shall be suspended until such cause ceases to exist.

#### Article 131 (Suspension due to Problem Affecting Party)

- (1) If it is impossible for a party to continue court proceedings due to a problem which may exist for an uncertain period, the court, by an order, may order suspension of the court proceedings.
- (2) The court may revoke the order set forth in the preceding paragraph.

#### Article 132 (Effect of Discontinuation and Suspension)

- (1) A judgment may be rendered even while the action is discontinued.
- (2) If an action is discontinued or court proceedings are suspended, the period shall be suspended. In this case, the entire period shall commence to run as from the time when a notice of the taking over of the action is given or the action is



continued.

## **Chapter VI Disposition of Collection of Evidence prior to Filing of Action, etc.**

### **Article 132-2 (Inquiry prior to Filing of Action)**

- (1) Where a person who intends to file an action has given by means of a document, to the person who is to be the defendant in the action, an advance notice of filing of an action (hereinafter referred to as an "advance notice" in this Chapter), the person who has given the advance notice (hereinafter referred to as the "advance noticer" in this Chapter), within four months after the day on which the advance notice has been given, may specify a reasonable period and make an inquiry by means of a document to the person who has received the advance notice in order to request him/her to make a response by means of a document, before the filing of the action, with regard to the matters that would be obviously necessary for preparing allegations or proof should the action actually be filed; provided, however, that this shall not apply if the inquiry falls under any of the following items:
  - (i) Inquiry that falls under any of the items of Article 163
  - (ii) Inquiry with regard to the matters concerning a secret on the private life of the opponent or a third party, any response to which would be substantially detrimental to the opponent or the third party in his/her social life
  - (iii) Inquiry with regard to the matters concerning a trade secret held by the opponent or a third party
- (2) In the case of an inquiry with regard to the matters concerning a secret on the private life of a third party prescribed in item (ii) of the preceding paragraph or a trade secret held by a third party prescribed in item (iii) of said paragraph, these provisions shall not apply where the third party has consented to the opponent making a response to such inquiry.
- (3) A document of the advance notice shall state the gist of the claim pertaining to the action to be filed and the points of the dispute.
- (4) An inquiry set forth in paragraph (1) may not be made based on the advance notice that overlaps with any previous advance notice.

### **Article 132-3**

- (1) When a person who has received the advance notice (hereinafter referred to as a "recipient of advance notice" in this Chapter) has made a response to the advance notice by providing the advance noticer with a document stating the gist of his/her answers regarding the gist of the claim and the points of the dispute set forth in paragraph (3) of the preceding Article that are stated in the document of the advance notice, the recipient of advance notice, within four months after the day on

which the advance notice has been given, may specify a reasonable period and make an inquiry by means of a document to the advance noticer in order to request him/her to make a response by means of a document, before the filing of the action, with regard to the matters that would be obviously necessary for preparing allegations or proof should the action actually be filed. In this case, the provisions of the proviso to paragraph (1) of said Article and paragraph (2) of said Article shall apply mutatis mutandis.

- (2) An inquiry set forth in the preceding paragraph may not be made based on a response to the advance notice that overlaps with any previous advance notice.

#### Article 132-4 (Disposition of Collection of Evidence prior to Filing of Action)

- (1) When a petition is filed by an advance noticer or a recipient of advance notice who made a response set forth in paragraph (1) of the preceding Article and it is found that the petitioner has difficulty collecting by him/herself any material as evidence that would be obviously necessary for showing proof should the action pertaining to the advance notice actually be filed, the court, before the filing of the action, may make any of the following dispositions pertaining to such collection of evidence, after hearing opinions of the party to whom the advance notice has been given or the response has been made (hereinafter simply referred to as the "opposite party" in this Chapter); provided, however, that this shall not apply where the court finds it inappropriate to do so on the grounds that the time required for the collection or the burden borne by a person to be commissioned for the collection would be unreasonable:
- (i) Commissioning the holder of a document (including an object prescribed in Article 231; hereinafter the same shall apply 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) (ii) of the following Article) to conduct the necessary examination
  - (iii) Commissioning a person who has expert knowledge and experience to state his/her opinions based on such expert knowledge and experience
  - (iv) Ordering a court execution officer to conduct an examination on the shape, possession or other current status of an object
- (2) A petition for a disposition set forth in the preceding paragraph shall be filed within an unextendable period of four months from the day on which the advance notice was given; provided, however, that this shall not apply where the opposite party has given consent to the filing of the petition after the expiration of this period.
- (3) A petition for a disposition set forth in paragraph (1) may not be filed based on

the advance notice that overlaps with any previous advance notice or based on a response to such overlapping advance notice.

- (4) The court, after making a disposition set forth in paragraph (1), may revoke the disposition if it is found to be inappropriate due to the circumstances prescribed in the proviso to said paragraph.

#### Article 132-5 (Court with Jurisdiction over Disposition of Collection of Evidence)

- (1) A petition for a disposition listed in each of the following items shall be filed with the district court that has jurisdiction over the place specified in the respective items:
  - (i) A petition for a disposition set forth in paragraph (1) (i) of the preceding Article: The location of the general venue of the petitioner or the opposite party, or the residence of the holder of the document
  - (ii) A petition for a disposition set forth in paragraph (1) (ii) of the preceding Article: The location of the general venue of the petitioner or the opposite party, or the location of the public agency, etc. to be commissioned to conduct the examination
  - (iii) A petition for a disposition set forth in paragraph (1) (iii) of the preceding Article: The location of the general venue of the petitioner or the opposite party, or the location of the specific object about which a statement of opinions is to be commissioned
  - (iv) A petition for a disposition set forth in paragraph (1) (iv) of the preceding Article: The location of the object pertaining to the examination
- (2) The provisions of Article 16(1), Article 21 and Article 22 shall apply mutatis mutandis to a case pertaining to a petition for a disposition set forth in paragraph (1) of the preceding Article.

#### Article 132-6 (Procedure for Disposition of Collection of Evidence, etc.)

- (1) The court, when making a disposition set forth in Article 132-4(1) (i) to (iii), shall specify a period during which the person commissioned should send the document, report the examination results or state his/her opinions.
- (2) A report of the examination results based on the commission set forth in Article 132-4(1) (ii) or under the order set forth in Article 132-4(1) (iv) or a statement of opinion based on the commission set forth in Article 132-(1) (iii) shall be made by means of a document.
- (3) The court, when the document is sent, the examination results are reported or opinions are stated based on a disposition set forth in Article 132-4(1), shall notify the petitioner and the opposite party to that effect.
- (4) The court, for use by the petitioner and the opposite party through the procedures specified in the following Article, shall retain the sent document or the

document concerning the report of the examination results or statement of opinion within one month from the day on which the notice prescribed in the preceding paragraph was given.

- (5) The provision of Article 180(1) shall apply mutatis mutandis to a disposition set forth in Article 132-4(1), the provision of Article 184(1) shall apply mutatis mutandis to a disposition set forth in Article 132-4(1) (i) to (iii), and the provision of Article 213 shall apply mutatis mutandis to a disposition set forth in Article 132-4(1) (iii).

#### Article 132-7 (Inspection of Record of Case, etc.)

- (1) The petitioner and the opposite party may make a request to a court clerk for the inspection or copying of the record of a case pertaining to a petition for a disposition set forth in article 132-4(1), issuance of an authenticated copy, transcript or extract of such record, or issuance of a certificate of matters concerning said case.
- (2) The provisions of Article 91(4) and (5) shall apply mutatis mutandis to the record set forth in the preceding paragraph. In this case, in paragraph (4) of said Article, the term "the preceding paragraph" shall be deemed to be replaced with "Article 132-7(1)," and the phrase "a party or a third party who has made a prima facie showing of his/her interest" shall be deemed to be replace with "the petitioner or the opposite party."

#### Article 132-8 (Non-Permission of Appeal)

No appeal may be entered against a judicial decision on a petition for a disposition set forth in Article 132-4(1).

#### Article 132-9 (Burden of Costs for Judicial Decision on Disposition of Collection of Evidence)

Costs for a judicial decision on a petition for a disposition set forth in Article 132-4(1) shall be borne by the petitioner.

### **Chapter VII Petition, etc. by Means of Electronic Data Processing System**

#### Article 132-10

- (1) In the case of a petition or any other statement to be filed or made in the procedures for civil suits (hereinafter referred to as a "petition, etc."), which shall be filed or made, pursuant to the provisions of this Code or other laws and regulations concerning such petition, etc., by means of a document, etc. (meaning a document, a transcript, extract, authenticated copy or duplicate of a document or a duplicate of a bill or note, or any other paper or other tangible object on which

information recognizable to human perception such as characters and shapes is stated; the same shall apply hereinafter) to the court specified by the Supreme Court (including one filed or made to the presiding judge, authorized judge, commissioned judge or court clerk of such court), notwithstanding the provisions of said laws and regulations, as provided for by the Rules of the Supreme Court, the petition, etc. may be filed or made by means of an electronic data processing system (meaning an electronic data processing system wherein the computer (including input-output devices; the same shall apply hereinafter) used in the court is connected, by way of telecommunication lines, to the computer used by the person who files or makes the petition, etc. or person who receives a notice of a disposition under the provision of Article 399(1); the same shall apply in Article 397 to Article 401); provided, however, that this shall not apply to a petition, etc. on the demand procedure where a petition for demand for payment is filed or made by means of a document.

- (2) With regard to a petition, etc. filed or made pursuant to the provision of the main clause of the preceding paragraph, by deeming it to have been filed or made by means of a document, etc. prescribed in the provisions of laws and regulations concerning a petition, etc., which provide that the petition, etc. shall be filed or made by means of a document, etc., the provisions of such laws and regulations concerning a petition, etc. shall be applied.
- (3) A petition, etc. filed or made pursuant to the provision of the main clause of paragraph (1) shall be deemed to have arrived at the court set forth in said paragraph when it is recorded onto a file stored in the computer used in said court.
- (4) In the case referred to in the main clause of paragraph (1), with regard to a petition, etc. for which, pursuant to the provisions of other laws and regulations concerning the petition, etc., a signature, etc. (meaning a signature, name or seal or otherwise the name stated in a document, etc.; hereinafter the same shall apply in this paragraph) is required to be affixed, the person who files or makes such petition, etc., notwithstanding the provisions of said laws and regulations, in lieu of affixing a signature, etc., shall take measures to clarify the name, as provided for by the Rules of the Supreme Court.
- (5) Where a petition, etc. filed or made pursuant to the provision of the main clause of paragraph (1) (excluding a petition, etc. filed or made in the demand procedure; the same shall apply in the following paragraph) is recorded onto the file prescribed in paragraph (3), the court set forth in paragraph (1) shall output, in the form of a document, the content of the information recorded in said file.
- (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(1) or (3) (referred to as the "inspection, etc. of a case record" in Article 401), which pertains to a petition, etc. filed or made pursuant to the provision of the main clause of

paragraph (1), shall be made by means of the document set forth in the preceding paragraph. The same shall apply to serving or sending a document pertaining to such petition, etc.

## **Part II Court Proceedings in First Instance**

### **Chapter I Action**

#### **Article 133 (Form of Filing of Action)**

- (1) An action shall be filed by submitting a complaint to the court.
- (2) A complaint shall state the following matters:
  - (i) The parties and statutory agents
  - (ii) The object and statement of the claim

#### **Article 134 (Action for Declaratory Judgment to Determine Validity of Certificate)**

An action for declaratory judgment may also be filed to determine the validity of a document that certifies legal relationships.

#### **Article 135 (Action for Future Performance)**

An action to seek future performance may be filed only where it is necessary to make a claim therefor in advance.

#### **Article 136 (Joinder of Claims)**

Two or more claims, only if they shall be made through the same kind of court proceedings, may be made by filing a single action.

#### **Article 137 (Presiding Judge's Authority to Examine Complaint)**

- (1) Where a complaint is in violation of the provision of Article 133(2), the presiding judge shall specify a reasonable period and order that such defect should be corrected within that period. The same shall apply where fees for filing an action required under the provisions of the Act on Costs of Civil Procedure (Act No. 40 of 1971) are not paid.
- (2) In the case referred to in the preceding paragraph, if the plaintiff fails to correct the defect, the presiding judge, by a direction, shall dismiss the complaint without prejudice.
- (3) An immediate appeal may be filed against the direction set forth in the preceding paragraph.

#### **Article 138 (Service of Complaint)**

- (1) The complaint shall be served upon the defendant.

- (2) The provision of the preceding Article shall apply mutatis mutandis where it is not possible to serve the complaint (including cases where the expenses necessary for serving the complaint are not prepaid) .

#### Article 139 (Designation of Date for Oral Argument)

When an action is filed, the presiding judge shall designate the date for oral argument and summon the parties.

#### Article 140 (Dismissal of Action without Prejudice, without Oral Argument)

If an action is unlawful and such defect cannot be corrected, the court, by a judgment, may dismiss the action without prejudice, without oral argument.

#### Article 141 (Dismissal of Action without Prejudice in the case of No Prepayment of Expenses for Summons)

- (1) Where the court has specified a reasonable period and ordered the plaintiff to prepay, under the provisions of the Act on Costs of Civil Procedure, expenses necessary for issuing a summons to the parties to appear on the appearance date, but such expenses are not prepaid, the court, by an order, may dismiss the action without prejudice if the defendant has no objection.
- (2) An immediate appeal may be filed against the order set forth in the preceding paragraph.

#### Article 142 (Prohibition of Filing of Overlapping Actions)

With regard to a case pending before the court, neither party to the case may file another action.

#### Article 143 (Amendment of Claim)

- (1) The plaintiff, unless there is any change to the basis for a claim, may amend the claim or statement of claim until oral argument is concluded; provided, however, that this shall not apply where such amendment would substantially delay the court proceedings.
- (2) An amendment of the claim shall be made by means of a document.
- (3) The document set forth in the preceding paragraph shall be served upon the opponent.
- (4) The court, when it finds that an amendment of the claim or statement of claim is inappropriate, upon petition or by its own authority, shall make an order not to permit such amendment.

#### Article 144 (Addition of Claim Pertaining to Appointers)

- (1) Where a party to stand as a plaintiff is appointed under the provision of Article

30(3), such party may add a claim in the interest of the appointers until oral argument is concluded.

- (2) Where a party to stand as a defendant is appointed under the provision of Article 30(3), the plaintiff may add a claim pertaining to the appointers until oral argument is concluded.
- (3) The provisions of the proviso to paragraph (1) of the preceding Article and paragraph (2) to paragraph (4) shall apply mutatis mutandis to the addition of a claim set forth in the preceding two paragraphs.

#### Article 145 (Action for Interlocutory Declaration)

- (1) If a judicial decision which is sought in a suit relates to the validity or invalidity of the legal relationships that are in dispute in the process of the suit, a party may expand his/her claim and seek a declaratory judgment on such legal relationships; provided, however, that this shall not apply where such claim for declaration is subject to the exclusive jurisdiction of another court (excluding one determined by an agreement between the parties pursuant to the provision of Article 11).
- (2) Where the suit set forth in the preceding paragraph is pending before the court specified in any of the items of Article 6(1), if the claim for declaration set forth in the preceding paragraph is subject to the exclusive jurisdiction of another court pursuant to the provision of paragraph (1) of said Article, the provision of the proviso to the preceding paragraph shall not apply.
- (3) The provisions of Article 143(2) and (3) shall apply mutatis mutandis to the expansion of a claim under the provision of paragraph (1).

#### Article 146 (Counterclaim)

- (1) The plaintiff, only for the purpose of making a claim relevant to the claim that is the subject matter of the principal action or to the allegations and evidence for defense, may file a counterclaim with the court where the principal action is pending, until oral argument is concluded; provided, however, that this shall not apply in the following cases:
  - (i) Where 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 provision of Article 11).
  - (ii) Where the filing of a counterclaim would substantially delay the court proceedings.
- (2) Where the principal action is pending before the court specified in any of the items of Article 6(1), if the claim that is the subject matter of the counterclaim is subject to the exclusive jurisdiction of another court pursuant to the provision of paragraph (1) of said Article, the provision of item (i) of the preceding paragraph shall not apply.



- (3) A counterclaim shall be governed by the provisions concerning an action.

#### Article 147 (Time When Interruption of Prescription, etc. Becomes Effective)

A demand by litigation necessary for the interruption of the prescription or observance of a statutory term shall become effective when an action is filed or when a document set forth in Article 143(2) (including cases where applied *mutatis mutandis* pursuant to Article 144(3) or Article 145(3)) is submitted to the court.

### **Chapter II Well-Organized Proceedings**

#### Article 147-2 (Well-Organized Progress of Court Proceedings)

The court and the parties, in order to achieve proper and prompt trial, shall ensure the well-organized progress of court proceedings.

#### Article 147-3 (Plan for Trial)

- (1) The court, when it finds it necessary in order to achieve a proper and prompt trial in light of the complexity of a case which involves a number of or complicated matters to be examined or any other circumstances concerned, shall consult with both parties and formulate a plan for trial based on the outcome of the consultation.
- (2) The plan for trial set forth in the preceding paragraph shall specify the following matters:
  - (i) A period for arranging issues and evidence
  - (ii) A period for examining witnesses and the parties themselves
  - (iii) A schedule of timing for concluding oral argument and rendering a judgment
- (3) The plan for trial set forth in paragraph (1) may specify, in addition to the matters set forth in the items of the preceding paragraph, a period for advancing allegations or evidence on a specific matter and any other matters necessary for the well-organized progress of court proceedings.
- (4) The court, when it finds it necessary while taking into consideration the existing status of a trial, the status of each party's conduct of the suit and any other circumstances concerned, shall consult with both parties and modify the plan for trial set forth in paragraph (1) based on the outcome of the consultation.

### **Chapter III Oral Argument and Preparation Thereof**

#### **Section 1 Oral Argument**

#### Article 148 (Presiding Judge's Control of Court Proceedings)

- (1) Oral argument shall be directed by the presiding judge.

- (2) The presiding judge may permit a person to speak or prohibit a person who does not comply with his/her direction from speaking.

Article 149 (Authority to Ask for Explanation, etc.)

- (1) The presiding judge, on the date for oral argument or a date other than that date, in order to clarify the matters related to the suit, may ask questions of a party or encourage him/her to show proof with regard to factual or legal matters.
- (2) An associate judge, after notifying the presiding judge, may take the measures prescribed in the preceding paragraph.
- (3) A party, on the date for oral argument or a date other than that date, may request the presiding judge to ask the necessary questions.
- (4) If the presiding judge or associate judge, on the date other than the date for oral argument, has taken the measures under the provisions of paragraph (1) or paragraph (2) with regard to a matter which could cause a material change to a party's allegations or evidence, he/she shall notify the opponent of the content of such change.

Article 150 (Objection to Control of Court Proceedings, etc.)

When a party has made an objection to a direction issued by the presiding judge with regard to the control of oral argument or the measure taken by the presiding judge or associate judge under the provisions of paragraph (1) or paragraph (2) of the preceding Article, the court, by an order, shall make a judicial decision on such objection.

Article 151 (Disposition for Explanation)

- (1) The court, in order to clarify the matters related to the suit, may make the following dispositions:
  - (i) Ordering a party him/herself or his/her statutory agent to appear on the date for oral argument
  - (ii) Requesting a person, who administers affairs on behalf of a party or assists a party and whom the court considers to be appropriate, to make statements on the date for oral argument
  - (iii) Requesting the submission of case documents or documents or other objects cited in the suit, which are held by a party
  - (iv) Retaining a document or other object submitted by a party or a third party at court
  - (v) Conducting a observation or ordering expert testimony
  - (vi) Commissioning an examination
- (2) With regard to the observation, expert testimony and commission of an examination, the provisions concerning examination of evidence shall apply

mutatis mutandis.

Article 152 (Consolidation of Oral Arguments, etc.)

- (1) The court may order the restriction, separation or consolidation of oral arguments, or revoke such order.
- (2) Where the court has ordered the consolidation of oral arguments of the cases involving different parties, if a party has requested examination of a witness who has already been examined before the consolidation but whom the party had no chance to examine, the witness shall be examined.

Article 153 (Resumption of Oral Argument)

The court may order resumption of the oral argument that is concluded.

Article 154 (Attendance of Interpreter, etc.)

- (1) If a person who participates in oral argument is unable to communicate in Japanese, or unable to hear or speak, an interpreter shall attend the oral argument; provided, however, that in the case of a person who is unable to hear or speak, it shall be permissible to ask questions of him/her or have him/her make statements by means of writing.
- (2) The provisions concerning expert witnesses shall apply mutatis mutandis to interpreters.

Article 155 (Measures for Person Without Ability to Participate in Oral Argument)

- (1) The court may prohibit a party, agent or assistant in court, who is unable to make the statements necessary to clarify the matters related to the suit, from making statements, and specify another date for continuance of oral argument.
- (2) Where the court has prohibited any person from making statements pursuant to the provision of the preceding paragraph, it may order the person to be accompanied by an attorney at law when it finds it necessary.

Article 156 (Time for Advancement of Allegations and Evidence)

Allegations and evidence shall be advanced at an appropriate time depending on the status of progress of the suit.

Article 156-2 (Time for Advancement of Allegations and Evidence Where Plan for Trial Is Formulated)

The presiding judge, when he/she finds it necessary for the progress of court proceedings based on a plan for trial set forth in Article 147-3(1), may specify a period for advancing allegations and evidence on a specific matter, after hearing opinions of the parties.

Article 157 (Dismissal of Allegations or Evidence Advanced Outside the Appropriate Time)

- (1) With regard to allegations or evidence that a party has advanced outside the appropriate time intentionally or by gross negligence, the court, when it finds that such allegations or evidence will delay the conclusion of the suit, may make an order of dismissal upon petition or by its own authority.
- (2) The provision of the preceding paragraph shall also apply where a party does not give the necessary explanation with regard to his/her allegations or evidence whose import is unclear, or does not appear on the date for giving explanation.

Article 157-2 (Dismissal of Allegations or Evidence Where Plan for Trial Is Formulated)

Where a period for advancing allegations and evidence on a specific matter is specified pursuant to the provisions of Article 147-3(3) or Article 156-2 (including cases where applied mutatis mutandis pursuant to Article 170(5)), if the court, with regard to allegations or evidence that a party has advanced after the expiration of such period, finds that such allegations or evidence will be substantially detrimental to the progress of court proceedings based on the plan for trial, it may make an order of dismissal upon petition or by its own authority; provided, however, that this shall not apply where such party has made a prima facie showing to the effect that he/she has reasonable grounds for having been unable to advance the allegations or evidence within that period.

Article 158 (Constructive Statements in Complaint, etc.)

If a plaintiff or defendant does not appear on the date for his/her first oral argument or appears on that date but does not present any oral arguments on merits, the court may deem the plaintiff or defendant to have stated matters as stated in the complaint or written answer or any other brief that he/she has submitted, and have the opponent who has appeared on that date present oral arguments.

Article 159 (Constructive Admission)

- (1) Where a party, at oral argument, does not make it clear that he/she denies the fact alleged by the opponent, he/she shall be deemed to have admitted such fact; provided, however, that this shall not apply where the party, when taking the entire import of the oral argument into consideration, is found to have denied such fact.
- (2) A person who has stated that he/she has no knowledge of the fact alleged by the opponent shall be presumed to have denied such fact.

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

#### Article 160 (Record of Oral Argument)

- (1) A court clerk shall prepare a record of oral argument for each date for oral argument.
- (2) An objection made by a party or any other person concerned to any statements in the record shall be stated in the record.
- (3) Observance of the provisions concerning the formality of oral argument may be proven only by the record; provided, however, that this shall not apply in the event of the loss of the record.

### **Section 2 Brief, etc.**

#### Article 161 (Brief)

- (1) Oral argument shall be prepared by means of a document.
- (2) A brief shall state the following matters:
- (i) Allegations and evidence
  - (ii) Statements on the opponent's claim and allegations and evidence
- (3) At oral argument without the presence of the opponent in court, no facts other than those stated in a brief (limited to one served upon the opponent or one for which the opponent has submitted a document stating that he/she has received it) may be alleged.

#### Article 162 (Period for Submission of Brief, etc.)

The presiding judge may specify a period for submitting a written answer or a brief stating an allegation on a specific matter or for offering evidence on a specific matter.

#### Article 163 (Inquiry to Opponent)

A party, while the suit is pending, may specify a reasonable period and make an inquiry by means of a document to the opponent in order to request the opponent to make a response by means of a document with regard to the matters necessary for preparing allegations or proof; provided, however, that this shall not apply where the inquiry falls under any of the following items:

- (i) Inquiry that is not specific or individual
- (ii) Inquiry that insults or confuses the opponent
- (iii) Inquiry that overlaps with any previous inquiry
- (iv) Inquiry to ask opinions
- (v) Inquiry for which the opponent is required to spend unreasonable expenses or

time to make a response

- (vi) Inquiry on the matters that are the same as the matters about which a witness may refuse to testify pursuant to the provisions of Article 196 or Article 197

### **Section 3 Proceedings to Arrange Issues and Evidence**

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

##### **Article 164 (Commencement of Preliminary Oral Arguments)**

The court, when it finds it necessary in order to arrange issues and evidence, may execute preliminary oral arguments as provided for in this Subsection.

##### **Article 165 (Confirmation on Facts to Be Proven, etc.)**

- (1) The court, upon closing preliminary oral arguments, shall confirm, with the parties, the facts to be proven through the subsequent examination of evidence.
- (2) The presiding judge, when he/she finds it appropriate, upon closing preliminary oral arguments, may have the parties submit a document summarizing the issues and evidence as arranged through the preliminary oral arguments.

##### **Article 166 (Close of Proceedings due to Non-Appearance of Party)**

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

##### **Article 167 (Advancement of Allegations and Evidence after Close of Preliminary Oral Arguments)**

A party who has advanced allegations or evidence after the close of preliminary oral arguments, upon the request of the opponent, shall explain to the opponent the reasons why he/she was unable to advance the allegations or evidence prior to the close of preliminary oral arguments.

#### **Subsection 2 Preparatory Proceedings**

##### **Article 168 (Commencement of Preparatory Proceedings)**

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

##### **Article 169 (Date for Preparatory Proceedings)**

- (1) Preparatory proceedings shall be conducted on a date on which both parties can

attend.

- (2) The court may permit observation by a person whom it considers to be appropriate; provided, however, that the court shall permit observation by any person requested by a party, except where his/her observation would be detrimental to the conduct of the proceedings.

#### Article 170 (Procedural Acts in Preparatory Proceedings, etc.)

- (1) The court may have each party submit a brief.
- (2) The court, on the date for preparatory proceedings, may make a judicial decision on an offer of evidence or any other judicial decision that may be made on the date other than the date for oral argument, and examine evidence with regard to documents (including objects prescribed in Article 231).
- (3) When a party lives in a remote place or the court finds it appropriate for any other reasons, the court, after hearing opinions of the parties, may conduct proceedings on the date for preparatory proceedings, as provided for by the Rules of the Supreme Court, by a method that enables the court and both parties to simultaneously communicate with one another by audio transmissions; provided, however, that this shall apply only where either party appears on that date.
- (4) The party who has participated in the proceedings set forth in the preceding paragraph without appearing on the date set forth in said paragraph shall be deemed to have appeared on that date.
- (5) The provisions of Article 148 to Article 151, Article 152(1), Article 153 to Article 159, Article 162, Article 165 and Article 166 shall apply mutatis mutandis to preparatory proceedings.

#### Article 171 (Preparatory Proceedings by Authorized Judge)

- (1) The court may have an authorized judge conduct preparatory proceedings.
- (2) Where an authorized judge conducts preparatory proceedings, the duties of the court and the presiding judge under the provisions of the preceding two Articles (excluding the duty to make a judicial decision prescribed in paragraph (2) of the preceding Article) shall be 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 said Article and a judicial decision on dismissal under the provision of Article 157-2 as applied mutatis mutandis pursuant to said paragraph shall be made by the court in charge of the case.
- (3) An authorized judge who conducts preparatory proceedings may make a judicial decision on the commission of an examination under the provision of Article 186, commission of expert testimony, request for examination of documentary evidence made by submitting documents (including the objects prescribed in Article 231) and commission of the sending of documents (including the objects prescribed in

Article 229(2) and Article 231)).

Article 172 (Revocation of Judicial Decision to Refer to Preparatory Proceedings)

The court, when it finds it appropriate, upon petition or by its own authority, may revoke a judicial decision to refer to preparatory proceedings; provided, however, that the court shall revoke the judicial decision upon the petition of both parties.

Article 173 (Statement of Outcome of Preparatory Proceedings)

The parties, at oral argument, shall state the outcome of preparatory proceedings.

Article 174 (Advancement of Allegations and Evidence after Close of Preparatory Proceedings)

The provision of Article 167 shall apply *mutatis mutandis* to a party who has advanced allegations or evidence after the close of preparatory proceedings.

**Subsection 3 Preparatory Proceedings by Means of Documents**

Article 175 (Commencement of Preparatory Proceedings by Means of Documents)

The court, when a party lives in a remote place or it finds it appropriate for any other reasons, may refer a case to preparatory proceedings by means of documents (meaning proceedings for arranging issues and evidence through the submission of briefs, etc., without the appearance of the parties; the same shall apply hereinafter) .

Article 176 (Method of Preparatory Proceedings by Means of Documents, etc.)

- (1) Preparatory proceedings by means of documents shall be conducted by the presiding judge; provided, however, that a high court may have an authorized judge conduct the proceedings.
- (2) The presiding judge or an authorized judge at a high court (hereinafter referred to as the "presiding judge, etc." in the following paragraph) shall specify the period prescribed in Article 162.
- (3) The presiding judge, etc., when he/she finds it necessary, may consult both parties with regard to the matters concerning the arrangement of issues and evidence or any other matters necessary for oral argument, as provided for by the Rules of the Supreme Court, by a method that enables the court and both parties to communicate simultaneously with one another by audio transmissions. In this case, the presiding judge, etc. may have a court clerk record the outcome of the consultation.
- (4) The provisions of Article 149 (excluding paragraph (2), Article 150 and Article 165(2) shall apply *mutatis mutandis* to preparatory proceedings by means of documents.



#### Article 177 (Confirmation on Facts to Be Proven)

The court, on the date for oral argument held after the close of preparatory proceedings by means of documents, shall confirm, with the parties, the facts to be proven through the subsequent examination of evidence.

#### Article 178 (Advancement of Allegations and Evidence after Close of Preparatory Proceedings by means of Documents)

Where a party, in a case for which preparatory proceedings by means of documents are closed, has advanced allegations or evidence after, on the date for oral argument, statements were made on the matters as stated in the document set forth in Article 165(2) as applied mutatis mutandis pursuant to Article 176(4) or confirmation was made pursuant to the provision of the preceding Article, that party, at the request of the opponent, shall explain to the opponent the reasons why he/she was unable to advance the allegations or evidence prior to the statements or confirmation being made.

### **Chapter IV Evidence**

#### **Section 1 General Provisions**

#### Article 179 (Facts Not Required to Be Proven)

Facts admitted by a party before a court and obvious facts shall not be required to be proven.

#### Article 180 (Offer of Evidence)

- (1) Evidence shall be offered by specifying the fact to be proven thereby.
- (2) Evidence may be offered prior to the date for oral argument.

#### Article 181 (Where Examination of Evidence Is Not Required)

- (1) The court shall not be required to examine evidence offered by a party that the court considers to be unnecessary.
- (2) If any obstacle to the examination of evidence exists for an uncertain period, the court may choose not to conduct an examination of evidence.

#### Article 182 (Intensive Examination of Witnesses and Parties)

The examination of witnesses and the parties themselves shall be conducted as intensively as possible after the arrangement of issues and evidence has been completed.

#### Article 183 (In Cases of Non-Appearance of Party)

The examination of evidence may be conducted even where neither party appears on the date for oral argument.

#### Article 184 (Examination of Evidence in Foreign State)

- (1) The examination of evidence to be conducted in a foreign state shall be commissioned to the competent government agency of that state or the Japanese ambassador, minister or consul stationed in that state.
- (2) The examination of evidence conducted in a foreign state, even where it contravenes any Acts of that state, shall be effective if it does not contravene this Code.

#### Article 185 (Examination of Evidence Out of Court)

- (1) The court, when it finds it appropriate, may examine evidence out of court. In this case, it may order a member of a panel of judges or commission a district court or summary court to examine evidence.
- (2) A commissioned judge who performs his/her duties based on the commission prescribed in the preceding paragraph, when he/she finds it appropriate for another district court or summary court to examine evidence, may further commission such other court to examine the evidence.

#### Article 186 (Commission of Examination)

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

#### Article 187 (Interrogation of Witness, etc.)

- (1) The court, with regard to a case to be concluded by an order, may interrogate a witness or a party him/herself; provided, however, that witnesses to be interrogated shall be limited to those requested by a party.
- (2) Interrogation under the provision of the preceding paragraph, in a case where the parties stand opposed to each other, shall be conducted on the date for interrogation on which both parties can attend.

#### Article 188 (Prima Facie Showing)

A prima facie showing shall be made by evidence that can be examined immediately.

#### Article 189 (Execution of Judicial Decision of Non-Penal Fine)

- (1) A judicial decision of a non-penal fine under the provisions of this Chapter shall

be executed by an order of a public prosecutor. This order shall have the same effect as an enforceable title of obligation.

- (2) A judicial decision of a non-penal fine shall be executed pursuant to the provisions of the Civil Execution Act (Act No. 4 of 1979) and other laws and regulations concerning a procedure for compulsory execution; provided, however, that it shall not be necessary to make a service of the judicial decision before executing it.
- (3) The provision of Article 507 of the Code of Penal Procedure (Act No. 131 of 1948) shall apply mutatis mutandis to execution of a judicial decision of a non-penal fine.
- (4) Where, after a judicial decision of a non-penal fine has been executed, an immediate appeal is filed against said judicial decision (hereinafter referred to as the "judicial decision of prior instance" in this paragraph), if the court in charge of the appeal finds that said immediate appeal is well-grounded and makes another judicial decision of a non-penal fine by revoking the judicial decision of prior instance, it shall be deemed that the latter judicial decision of a non-penal fine is executed to the extent of the amount of the non-penal fine already executed. In this case, if the amount obtained as a result of execution of the judicial decision of prior instance exceeds the amount of the latter non-penal fine, such amount in excess shall be refunded.

## **Section 2 Examination of Witness**

### **Article 190 (Witness's Obligation)**

The court, except as otherwise provided, may examine any person as a witness.

### **Article 191 (Examination of Public Officer)**

- (1) When examining, as a witness, a public officer or a person who was a public officer with regard to any secrets in relation to his/her duties, the court shall obtain approval 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 post, the respective House; in the case of the Prime Minister or any other Minister of State or a person who held such post, the Cabinet).
- (2) The supervisory government agency may not refuse to give the approval set forth in the preceding paragraph except where such approval is likely to harm the public interest or substantially hinder the performance of public duties.

### **Article 192 (Non-Penal Fine for Non-Appearance, etc.)**

- (1) If a witness does not appear without justifiable grounds, the court shall make an order to the effect that he/she shall bear any court costs incurred from the

non-appearance, and punish him/her by a non-penal fine of not more than 100,000 yen.

- (2) An immediate appeal may be filed against the order set forth in the preceding paragraph.

#### Article 193 (Fine for Non-Appearence, etc.)

- (1) If a witness does not appear without justifiable grounds, he/she shall be punished by a fine of not more than 100,000 yen or misdemeanor imprisonment without work.
- (2) Both a fine and misdemeanor imprisonment without work may be imposed cumulatively on a person who has committed the crime set forth in the preceding paragraph, depending on the circumstances.

#### Article 194 (Subpoena)

- (1) The court may order subpoena of a witness who does not appear without justifiable grounds.
- (2) The provisions of the Code of Penal Procedure concerning subpoenas shall apply mutatis mutandis to the subpoena set forth in the preceding paragraph.

#### Article 195 (Examination of Witness by Authorized Judge, etc.)

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

- (i) Where the witness does not have an obligation to appear before the court in charge of the case, or is unable to appear before that court for justifiable grounds.
- (ii) Where the witness is required to spend undue expenses or time to appear before the court in charge of the case.
- (iii) Where it is necessary to examine the witness at the scene relating to the dispute in order to discover a fact.
- (iv) Where neither party has any objection.

#### Article 196 (Right of Refusal to Testify)

If a witness's testimony relates to matters for which the witness him/herself or a person who has any of the following relationships with him/her is likely to be subject to criminal prosecution or conviction, the witness may refuse to testify. The same shall apply where his/her testimony relates to matters that would harm the reputation of such persons:

- (i) A person who is or was the witness's spouse, relative by blood within the fourth degree or relative through marriage within the third degree
- (ii) A person who is 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) The case set forth in Article 191(1)
  - (ii) Cases where a doctor, dentist, pharmacist, pharmaceuticals distributor, birthing assistant, attorney at law (including a registered foreign lawyer), patent attorney, defense counsel, notary or person engaged in a religious occupation, or a person who was any of these professionals is examined with regard to any fact which they have learnt in the course of their duties and which should be kept secret
  - (iii) Cases where the witness is examined with regard to matters concerning technical or professional secrets
- (2) The provision of the preceding paragraph shall not apply where the witness is released from his/her duty of secrecy.

#### Article 198 (Prima Facie Showing of Reasons for Refusal to Testify)

A witness shall make a prima facie showing of the reasons for his/her refusal to testify.

#### Article 199 (Judicial Decision on Refusal to Testify)

- (1) Except in the case referred to in Article 197(1)(i), with regard to whether or not a witness's refusal to testify is appropriate, the court in charge of the case shall make a judicial decision by an order, after interrogating the party(ies).
- (2) The party(ies) and the witness may file an immediate appeal against the judicial decision set forth in the preceding paragraph.

#### Article 200 (Sanction against Refusal to Testify)

The provisions of Article 192 and Article 193 shall apply mutatis mutandis where a witness, after a judicial decision finding that his/her refusal to testify is groundless has become final and binding, still refuses to testify without justifiable grounds.

#### Article 201 (Oath)

- (1) The court, except as otherwise provided, shall have a witness swear under oath.
- (2) When examining, as a witness, a person under 16 years of age or person who is unable to understand the purpose of swearing under oath, the court may not have him/her swear.
- (3) When examining a witness who falls under the provision of Article 196 and does not exercise a right of refusal to testify, the court may choose not to have him/her swear under oath.

- (4) A witness may refuse to swear under oath when he/she is examined with regard to matters of great concern for him/herself or a person who has any of the relationships listed in the items of Article 196 with him/her.
- (5) The provisions of Article 198 and Article 199 shall apply mutatis mutandis where a witness refuses to swear under oath, and the provisions of Article 192 and Article 193 shall apply mutatis mutandis where a witness, after a judicial decision finding that his/her refusal to testify is groundless has become final and binding, still refuses to testify without justifiable grounds.

#### Article 202 (Order of Examination)

- (1) A witness shall be examined by the party who has requested the examination, the other party, and the presiding judge, in that order.
- (2) The presiding judge, when he/she finds it appropriate, may change the order set forth in the preceding paragraph, after hearing opinions of the parties.
- (3) When a party has made an objection to the change made under the provision of the preceding paragraph, the court, by an order, shall make a judicial decision on the objection.

#### Article 203 (Prohibition of Statements based on Documents)

A witness may not make statements based on documents; provided, however, that this shall not apply where he/she has obtained permission of the presiding judge.

#### Article 204 (Examination through Communication by Audio and Visual Transmissions)

When examining a witness who lives in a remote place, the court, as provided for by the Rules of the Supreme Court, may examine him/her by a method that enables parties at a distance to communicate with each other while mutually recognizing the other party's status by audio and visual transmissions.

#### Article 205 (Submission of Document in lieu of Examination)

The court, when it finds it appropriate and no objection is made by the parties, may have a witness submit a document in lieu of examining him/her.

#### Article 206 (Powers of Authorized Judge, etc.)

Where an authorized judge or commissioned judge examines a witness, the respective judge shall perform the duties of the court and the presiding judge; provided, however, that a judicial decision on an objection under the provision of Article 202(3) shall be made by the court in charge of the case.

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

#### Article 207 (Examination of Party Him/Herself)

- (1) The court, upon petition or by its own authority, may examine a party him/herself. In this case, the court may have the party swear under oath.
- (2) When examining a witness and a party him/herself, the court shall examine the witness first; provided, however, that the court, when it finds it appropriate, may examine the party him/herself first, after hearing opinions of the parties.

#### Article 208 (Effect of Non-Appearance, etc.)

Where a party him/herself is to be examined, if the party, without justifiable grounds, does not appear or refuses to swear under oath or make statements, the court may recognize that the opponent's allegations concerning the matters for examination are true.

#### Article 209 (Non-Penal Fine for False Statements)

- (1) If a party who has sworn under oath has made false statements, the court, by an order, shall punish him/her by a non-penal fine of not more than 100,000 yen.
- (2) An immediate appeal may be filed against the order set forth in the preceding paragraph.
- (3) In the case referred to in paragraph (1), if the party who has made false statements has admitted, while the suit is pending, that his/her statements are false, the court may revoke the order set forth in said paragraph, depending on the circumstances.

#### Article 210 (Application Mutatis Mutandis of Provisions on Examination of Witness)

The provisions of Article 195, Article 201 (2), Article 202 to Article 204 and Article 206 shall apply mutatis mutandis to the examination of a party him/herself.

#### Article 210 (Examination of Statutory Agent)

The provisions of this Code concerning the examination of a party him/herself shall apply to a statutory agent who represents the party in a suit; provided, however, that this shall not preclude the examination of a party him/herself.

### **Section 4 Expert Testimony**

#### Article 212 (Obligation to Give Expert Testimony)

- (1) A person who has the relevant knowledge and experience necessary to give expert testimony shall have an obligation to give expert testimony.
- (2) A person who has 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

(4), or a person prescribed in Article 201(2), may not serve as an expert witness.

#### Article 213 (Designation of Expert Witness)

An expert witness shall be designated by the court in charge of the case or an authorized judge or commissioned judge.

#### Article 214 (Challenge)

- (1) If there are circumstances with regard to an expert witness that would prevent him/her from giving a sincere expert testimony, a party may challenge such expert witness before the expert witness makes statements on the matters for expert testimony. The same shall apply where, after an expert witness has made statements, any grounds for challenge occur or a party becomes aware of the existence of any grounds for challenge.
- (2) A petition for challenge shall be filed with the court in charge of the case or an authorized judge or commissioned judge.
- (3) No appeal may be entered against an order finding that the challenge is well-grounded.
- (4) An immediate appeal may be filed against an order finding that the challenge is groundless.

#### Article 215 (Method for Making Statements for Expert Witness, etc.)

- (1) The presiding judge may have an expert witness state his/her opinions in writing or orally.
- (2) Where the court has had an expert witness state his/her opinions, when it finds it necessary in order to clarify the content of the opinions or confirm the grounds thereof, the court, upon petition or by its own authority, may have the expert witness state additional opinions.

#### Article 215-2 (Questioning of Expert Witness)

- (1) Where the court has an expert witness state his/her opinions orally, it may ask questions of the expert witness after he/she has stated his/her opinions.
- (2) The questioning set forth in the preceding paragraph shall be conducted by the presiding judge, the party who has requested the expert witness's testimony, and the other party, in that order.
- (3) The presiding judge, when he/she finds it appropriate, may change the order set forth in the preceding paragraph, after hearing opinions of the parties.
- (4) When a party has made an objection to the change made under the provision of the preceding paragraph, the court, by an order, shall make a judicial decision on the objection.



Article 215-3 (Statements Made through Communication Through Audio and Visual Transmissions)

Where the court has an expert witness state his/her opinions orally, when the expert witness lives in a remote place or the court finds it appropriate for any other reasons, the court, as provided for by the Rules of the Supreme Court, may have him/her state opinions by a method that enables parties at a distance to communicate with each other while mutually recognizing the other party's status by audio and visual transmissions.

Article 215-4 (Powers of Authorized Judge, etc.)

Where an authorized judge or commissioned judge has an expert witness state his/her opinions, the respective judge shall perform 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(4) shall be made by the court in charge of the case.

Article 216 (Application Mutatis Mutandis of Provisions on Examination of Witness)

The provision of Article 191 shall apply mutatis mutandis where the court has a public officer or person who was a public officer state his/her opinions as an expert witness with regard to any secrets in relation to his/her duties, the provisions of Article 197 to Article 199 shall apply mutatis mutandis where an expert witness refuses to give expert testimony, the provision of Article 201(1) shall apply mutatis mutandis where the court has an expert witness swear under oath, and the provisions Article 192 and Article 193 shall apply mutatis mutandis where an expert witness does not appear without justifiable grounds, where an expert witness refuses to swear under oath, and where an expert witness, after a judicial decision finding that his/her refusal to give expert testimony is groundless has become final and binding, still refuses to give expert testimony without justifiable grounds.

Article 217 (Expert as Witness)

An examination concerning facts that an expert has learnt based on his/her special knowledge and experience shall be governed by the provisions concerning the examination of a witness.

Article 218 (Commission of Expert Testimony)

- (1) The court, when it finds it necessary, may commission a government agency or public office, a foreign government agency or public office, or a juridical person that has adequate equipment to give expert testimony. In this case, the provisions of this Section, except for those concerning swearing under oath, shall apply mutatis mutandis.
- (2) In the case referred to in the preceding paragraph, the court, when it finds it

necessary, may have a person designated by the government agency, public office or juridical person give an explanation on a written expert testimony.

## **Section 5 Examination of Documentary Evidence**

### **Article 219 (Request for Examination of Documentary Evidence)**

A request for examination of documentary evidence shall be made by submitting a document or requesting the court to order the holder of a document to submit such document.

### **Article 220 (Obligation to Submit Document)**

In the following cases, the holder of the document may not refuse to submit the document:

- (i) Where a party personally possesses the document that he/she has cited in the suit.
- (ii) Where the party who offers evidence may make a request to the holder of the document for the delivery or inspection of the document.
- (iii) Where the document has been prepared in the interest of the party who offers evidence or with regard to the legal relationships between the party who offers evidence and the holder of the document.
- (iv) In addition to the cases listed in the preceding three items, in cases where the document does not fall under any of the following categories:
  - (a) A document stating the matters prescribed in Article 196 with regard to the holder of the document or a person who has any of the relationships listed in the items of said Article with the holder of the document
  - (b) A document concerning a secret in relation to a public officer's duties, which is, if submitted, likely to harm the public interest or substantially hinder the performance of his/her public duties
  - (c) A document stating the fact prescribed in Article 197(1) (ii) or the matter prescribed in Article 197(1) (iii), neither or which are released from the duty of secrecy
  - (d) A document prepared exclusively for use by the holder thereof (excluding a document held by the State or a local public entity, which is used by a public officer for an organizational purpose).
  - (e) A document concerning a suit pertaining to a criminal case or a record of a juvenile case, or a document seized in these cases

### **Article 221 (Petition for Order to Submit Document)**

- (1) A petition for an order to submit a document shall be filed by clarifying the following matters:

- (i) The indication of the document
  - (ii) The purport of the document
  - (iii) The holder of the document
  - (iv) The facts to be proven by the document
  - (v) The grounds for the obligation to submit the document
- (2) No petition for an order to submit a document may 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 make a request for examination of documentary evidence by way of a petition for an order to submit a document.

#### Article 222 (Procedure for Identifying Document)

- (1) Where a person files a petition for an order to submit a document, if it is extremely difficult to clarify the matters set forth in paragraph (1) (i) or (ii) of the preceding Article, it is sufficient when filing the petition to clarify, in lieu of said matters, any matters by which the holder of the document can identify the document pertaining to the petition. In this case, the person shall request the court to request the holder of the document to clarify the matters set forth in item (i) or item (ii) of said paragraph.
- (2) Upon the request made under the provision of the preceding paragraph, the court, except where it is obvious that the petition for an order to submit a document is groundless, may request the holder of the document to clarify the matters set forth in the second sentence of said paragraph.

#### Article 223 (Order to Submit Document, etc.)

- (1) The court, when it finds that a petition for an order to submit a document is well-grounded, shall make an order to the effect that the holder of the document should submit the document. In this case, if the document contains any part for which it is found to be unnecessary to be examined or which cannot be found to be subject to the obligation to submit, the court may order submission of the document excluding such part.
- (2) The court, where it intends to order a third party to submit a document, shall interrogate the third party.
- (3) Where a petition for an order to submit a document is filed, with regard to a document concerning a secret in relation to a public officer's duties, on the grounds that the document falls under any of the categories set forth in Article 220 (iv), the court, except where it is obvious that the petition is groundless, shall hear opinions 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 post, the respective House; in the case of the Prime Minister or any other Minister of State or a person who held such post, the Cabinet) as to whether or not the

document in question falls under the category of document set forth in Article 220 (iv) (b). In this case, the supervisory government agency, when stating an opinion that the document falls under the category of document set forth in Article 220 (iv) (b), shall specify reasons therefor.

- (4) In the case referred to in the preceding paragraph, if the supervisory government agency has stated an opinion that the document falls under the category of document set forth in Article 220 (iv) (b) by reason that the submission of the document has any of the following risks, the court, except where it cannot find reasonable grounds for such opinion, may order the holder of the document to submit the document:
- (i) Risk that the document will impair national security, harm relationships of trust with a foreign state or international organization or cause a disadvantage in negotiation with a foreign state or international organization
  - (ii) Risk that the document will be a hindrance to the prevention, suppression or investigation of crimes, maintenance of prosecution, execution of sentences or any other matters concerning the maintenance of public safety and order
- (5) In the case referred to in the first sentence of paragraph (3), when the supervisory government agency intends to state opinions on a document stating the matters concerning technical or professional secrets held by a third party other than the holder of the document, it shall hear opinions of said third party in advance, except where it intends to state an opinion that the document falls under the category of document set forth in Article 220 (iv) (b).
- (6) The court, when it finds it necessary in order to determine which of the categories of documents set forth in Article 220 (iv) (a) to (d) the document pertaining to the petition for an order to submit a document falls under, may have the holder of the document present the document. In this case, no person may request the disclosure of the document presented.
- (7) An immediate appeal may be filed against an order on a petition for an order to submit a document.

#### Article 224 (Effect of Party's Non-Compliance with Order to Submit Document, etc.)

- (1) If a party does not comply with an order to submit a document, the court may recognize that the opponent's allegations concerning the statements in the document are true.
- (2) The provision of the preceding paragraph shall also apply where a party, for the purpose of disrupting the opponent's use thereof, has caused the document to be lost or otherwise unusable despite his/her obligation to submit,.
- (3) In the cases prescribed in the preceding two paragraphs, if it is extremely difficult for the opponent to make specific allegations concerning the statements in the document and prove, by other evidence, the fact that is to be proven by the

document, the court may recognize that the opponent's allegations concerning such fact are true.

Article 225 (Non-Penal Fine for Third Party's Non-Compliance with Order to Submit Document)

- (1) If a third party does not comply with an order to submit a document, the court, by an order, punish him/her by a non-penal fine of not more than 200,000 yen.
- (2) An immediate appeal may be filed against the order set forth in the preceding paragraph.

Article 226 (Commission to Send Document)

A request for examination of documentary evidence, notwithstanding the provision of Article 219, may be made by requesting the court to commission the holder of the document to send the document; provided, however, that this shall not apply where a party may request the issuance of an authenticated copy or transcript of the document under laws and regulations.

Article 227 (Retainment of Document)

The court, when it finds it necessary, may retain a document submitted or sent thereto.

Article 228 (Creation of Document)

- (1) A document shall be proven to be authentically created.
- (2) A document, if it is found, in light of its formality and purport, to have been prepared by a public officer in the course of his/her duties, shall be presumed to be an official document authentically created.
- (3) If there is any doubt about the authenticity of the creation of an official document, the court, by its own authority, may make an inquiry to the relevant government agency or public office concerned.
- (4) A private document, if it is signed or sealed by the principal or his/her agent, shall be presumed to be authentically created.
- (5) The provisions of paragraph (2) and paragraph (3) shall apply mutatis mutandis to a document that is found to have been prepared by a foreign government agency or public office.

Article 229 (Proof by Comparison of Handwriting, etc.)

- (1) The authenticity or inauthenticity of the creation of a document may be proven by comparison of handwriting or seal impressions.
- (2) The provisions of Article 219, Article 223, Article 224(1) and (2), Article 226 and Article 227 shall apply mutatis mutandis to the submission or sending of a

document or any other object which contains the handwriting or seal impression to be used for comparison.

- (3) If the opponent's handwriting that is suitable for comparison is unavailable, the court may order the opponent to write letters to be used for comparison.
- (4) If the opponent, without justifiable grounds, does not comply with the order made under the provision of the preceding paragraph, the court may recognize that the allegations of the party who offers evidence concerning the authenticity or inauthenticity of the creation of the document are true. The same shall apply where the opponent has written letters by a style of handwriting that is different from his/her own.
- (5) If a third party, without justifiable grounds, does not comply with an order to submit made under the provision of Article 223(1) as applied *mutatis mutandis* pursuant to paragraph (2), the court, by an order, shall punish him/her by a non-penal fine of not more than 100,000 yen.
- (6) An immediate appeal may be filed against the order set forth in the preceding paragraph.

#### Article 230 (Non-Penal Fine on Party Challenging Authenticity of Creation of Document)

- (1) If a party or his/her agent, contrary to the truth, has challenged the authenticity of the creation of a document intentionally or by gross negligence, the court, by an order, shall punish him/her by a non-penal fine of not more than 100,000 yen.
- (2) An immediate appeal may be filed against the order set forth in the preceding paragraph.
- (3) In the case referred to in paragraph (1), if the party or agent who challenged the authenticity of the creation of a document has admitted, while the suit is pending, that the document is authentically created, the court may revoke the order set forth in said paragraph, depending on the circumstances.

#### Article 231 (Application *Mutatis Mutandis* to Objects Equivalent to Documents)

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

### **Section 6 Observation**

#### Article 232 (Presentation of Subject Matter of Observation, etc.)

- (1) The provisions of Article 219, Article 223, Article 224, Article 226 and Article 227 shall apply *mutatis mutandis* to the presentation or sending of the subject matter of a observation.

- (2) If a third party, without justifiable grounds, does not comply with an order to submit made under the provision of Article 223(1) as applied mutatis mutandis pursuant to the preceding paragraph, the court, by an order, shall punish him/her by a non-penal fine of not more than 200,000 yen.
- (3) An immediate appeal may be filed against the order set forth in the preceding paragraph.

#### Article 233 (Expert Testimony upon Observation)

The court or an authorized judge or commissioned judge, when it or he/she finds it necessary in the course of conducting a observation, may order expert testimony.

### **Section 7 Preservation of Evidence**

#### Article 234 (Preservation of Evidence)

When the court finds that there are circumstances under which, unless the examination of evidence is conducted in advance, it would be difficult to examine the evidence, it may conduct an examination of the evidence pursuant to the provisions of this Chapter upon petition.

#### Article 235 (Court with Jurisdiction, etc.)

- (1) A petition for the preservation of evidence, 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 period after the date for the first oral argument is designated or the case is referred to preparatory proceedings or preparatory proceedings by means of documents until oral argument is concluded, such petition shall be filed with the court in charge of the case.
- (2) A petition for the preservation of evidence, 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 who is to be examined or person who holds the document in question or the location of the subject of a observation.
- (3) If there are pressing circumstances, a petition for the preservation of evidence, even after the filing of an action, may be filed with the district court or summary court set forth in the preceding paragraph.

#### Article 236 (Where Opponent Cannot Be Designated)

A petition for the preservation of evidence may be filed even where the opponent cannot be designated. In this case, the court may appoint a special agent on behalf of the person who should be the opponent.

#### Article 237 (Preservation of Evidence by Court's Authority)

The court, when it finds it necessary, while the suit is pending, may make an order of preservation of evidence by its own authority.

Article 238 (Non-Permission of Appeal)

No appeal may be entered against an order of preservation of evidence.

Article 239 (Examination of Evidence by Authorized Judge)

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

Article 240 (Summons for Appearance Date)

On the date for examination of evidence, the petitioner and the opponent shall be summoned; provided, however, that this shall not apply in case of urgency.

Article 241 (Expenses for Preservation of Evidence)

Expenses for the preservation of evidence shall constitute part of the court costs.

Article 242 (Re-Examination at Oral Argument)

If a party has requested examination at oral argument of a witness who was examined in the procedure for the preservation of evidence, the court shall examine the witness.

## **Chapter V Judgment**

Article 243 (Final Judgment)

- (1) The court, when the suit is ripe for making a judicial decision, shall make a final judgment.
- (2) The court, when part of the suit is ripe for making a judicial decision, may make a final judgment with regard to such part.
- (3) The provision of the preceding paragraph shall apply *mutatis mutandis* where one of the suits for which consolidation of oral arguments has been ordered is ripe for making a judicial decision or where the principal action or counterclaim is ripe for making a judicial decision.

Article 244

Where either or both party(ies), on the date for oral argument, does not appear or does not present any oral arguments before leaving the court, the court, when it finds it appropriate while taking into consideration the existing status of the trial and the status of each party's conduct of the suit, may make a final judgment; provided, however, that where either party, on the date for oral argument, does not appear or



does not present any oral arguments before leaving the court, this shall apply only upon the request of the opponent who appears on that date.

#### Article 245 (Interlocutory Judgment)

The court, when the suit is ripe for making a judicial decision with regard to an independent allegation or evidence or any other interlocutory dispute, may make an interlocutory judgment. The same shall apply with regard to the statement of claim where the statement of claim and the number or amount concerned are in dispute.

#### Article 246 (Matters for Judgment)

The court may not make a judgment on any matters for which the parties have not claimed.

#### Article 247 (Principle of Free Determination)

When making a judgment, the court, in light of the entire import of the oral argument and the result of the examination of evidence, and based on its free determination, shall decide whether or not the allegations on facts are true.

#### Article 248 (Determination of Amount of Damage)

Where it is found that any damage has occurred, if it is extremely difficult, from the nature of the damage, to prove the amount thereof, the court, based on the entire import of the oral argument and the result of the examination of evidence, may determine a reasonable amount of damage.

#### Article 249 (Principle of Direct Trial)

- (1) A judgment shall be made by a judge who has participated in the oral argument on which the judgment is to be based.
- (2) In the case of the replacement of a judge, the parties shall state the result of the oral argument already conducted.
- (3) In the case of the replacement of a single judge or the replacement of the majority of a panel of judges, if a party has requested the additional examination of a witness who has already been examined before the replacement, the court shall examine the witness.

#### Article 250 (When Judgment Becomes Effective)

A judgment shall become effective when it is rendered.

#### Article 251 (Date for Rendition of Judgment)

- (1) The court shall render a judgment within two months from the date of conclusion of oral argument; provided, however, that this shall not apply where the

case is complex or there are any other special circumstances.

- (2) The court may render a judgment even where both parties are not present in court.

#### Article 252 (Formality of Rendition)

The court shall render a judgment based on the original of a judgment document.

#### Article 253 (Judgment Document)

- (1) A judgment document shall state the following matters:
  - (i) The main text
  - (ii) The facts
  - (iii) The reasons
  - (iv) The date of conclusion of oral argument
  - (v) The parties and statutory agents
  - (vi) The court
- (2) The statements of facts shall clarify the claim and indicate allegations necessary to show that the main text is justifiable.

#### Article 254 (Special Provisions on Formality of Rendition)

- (1) In the following cases, if the court upholds a plaintiff's claim, it may render a judgment which is not based on the original of a judgment document, notwithstanding the provision of Article 252:
  - (i) Where the defendant does not deny the facts alleged by the plaintiff at oral argument or does not advance any allegations or evidence.
  - (ii) Where the defendant, despite being summoned by a service by publication, does not appear on the date for oral argument (excluding cases where the brief submitted by the defendant is deemed to have been stated at oral argument).
- (2) When having rendered a judgment pursuant to the provision of the preceding paragraph, the court, in lieu of preparing a judgment document, shall have a court clerk state, in the record of the date for oral argument on which the judgment has been rendered, the parties and statutory agents, the main text, the claim, and the gist of the reasons.

#### Article 255 (Service of Judgment Document, etc.)

- (1) A judgment document or a record set forth in paragraph (2) of the preceding Article shall be served upon the parties.
- (2) The service prescribed in the preceding paragraph shall be made by using an authenticated copy of the judgment document or a transcript of the record set forth in paragraph (2) of the preceding Article.

#### Article 256 (Judgment for Modification)

- (1) The court, when it has found in a judgment any violation of laws or regulations, may make a judgment for modification only within one week after the rendition; provided, however, that this shall not apply where the judgment has become final and binding or additional oral arguments concerning the case are necessary in order to modify the judgment.
- (2) A judgment for modification shall be made without oral argument.
- (3) With regard to the summons on the date for the rendition of a judgment set forth in the preceding paragraph, except where it is served by publication, it shall be deemed that a service has been made at the time when a writ of summons is sent to the place where the service is to be made.

#### Article 257 (Order of Correction)

- (1) If there is a miscalculation, clerical error or any other clear error similar thereto in a judgment, the court, upon petition or by its own authority, may make an order of correction at any time.
- (2) An immediate appeal may be filed against an order of correction; provided, however, that this shall not apply where a lawful appeal to the court of second instance is filed against the judgment.

#### Article 258 (Omission in Judicial Decision)

- (1) If the court has omitted to address part of a claim in a judicial decision, the suit shall continue to be pending before that court with regard to such part of the claim.
- (2) In the case of an omission in addressing the burden of the court costs in a judicial decision, the court, upon petition or by its own authority, by an order, shall make a judicial decision on the burden of court costs. In this case, the provisions of Article 61 to Article 66 shall apply mutatis mutandis.
- (3) An immediate appeal may be filed against the order set forth in the preceding paragraph.
- (4) A judicial decision on the burden of court costs made under the provision of paragraph (2) shall cease to be effective when a lawful appeal to the court of second instance is filed against a judgment on merits. In this case, the court of second instance shall make a judicial decision on the burden of the total costs of the suit.

#### Article 259 (Declaration of Provisional Execution)

- (1) With regard to a judgment concerning a claim on a property right, the court, when it finds it necessary, upon petition or by its own authority, may declare that provisional execution may be enforced with or without security.

- (2) With regard to a judgment on a claim for payment of money for a bill or note or a check and a claim for damages at the statutory interest rate that is incidental thereto, the court, by its own authority, shall declare that provisional execution may be enforced without security; provided, however, that when the court finds it appropriate, it may require the provision of security for provisional execution.
- (3) The court, upon petition or by its own authority, may declare that provisional execution may be avoided by providing security.
- (4) A declaration of provisional execution shall be indicated in the main text of a judgment. The same shall apply to a declaration made under the provision of the preceding paragraph.
- (5) If the court has not made a judicial decision on a petition for a declaration of provisional execution or has not made a declaration of provisional execution when the court should have made it by its own authority, it shall make a supplemental order upon petition or by its own authority. The same shall apply where the court has not made a judicial decision on a petition set forth in paragraph (3).
- (6) The provisions of Article 76, Article 77, Article 79 and Article 80 shall apply mutatis mutandis to security set forth in paragraph (1) to paragraph (3).

Article 260 (Loss of Effect of Declaration of Provisional Execution and Restoration, etc.)

- (1) A declaration of provisional execution shall cease to be effective when a judgment to modify the declaration or the judgment on merits is rendered, to the extent of the modification.
- (2) When modifying a judgment on merits, the court, upon the petition of the defendant, shall order, in a judgment for modification, that the plaintiff should return the performance provided by the defendant based on a declaration of provisional execution and compensate any damage suffered by the defendant due to provisional execution or in order to avoid it.
- (3) Where only a declaration of provisional execution is modified, the provision of the preceding paragraph shall apply mutatis mutandis to a judgment to be made later to modify a judgment on merits.

## **Chapter VI Conclusion of Suit Not by Judicial Decision**

Article 261 (Withdrawal of Action)

- (1) An action may be withdrawn in whole or part before a judgment becomes final and binding.
- (2) The withdrawal of an action, after the opponent has submitted a brief, made statements in preparatory proceedings or conducted oral argument on the merits, shall not become effective without the consent of the opponent; provided, however,

that this shall not apply to the withdrawal of a counterclaim where the principal action is withdrawn.

- (3) The withdrawal of an action shall be made by means of a document; provided, however, that this shall not preclude withdrawing an action orally on the date for oral argument, preparatory proceedings or settlement (hereinafter referred to as the "date for oral argument, etc." in this Chapter).
- (4) In the case referred to in the main clause of paragraph (2), if an action is withdrawn by means of a document, the document shall be served upon the opponent, and if it is withdrawn orally on the date for oral argument, etc. (excluding cases where the opponent has appeared on that date), a transcript of the record of that date shall be served upon the opponent.
- (5) If the opponent does not make an objection within two weeks from the day on which he/she has received a service of a document of withdrawal of an action, he/she shall be deemed to have consented to the withdrawal of the action. The same shall apply where an action is withdrawn orally on the date for oral argument, etc. and the opponent does not make an objection within two weeks from, if the opponent has appeared on that date, the day on which the action has been withdrawn, and if the opponent has not appeared on that date, the day on which a service of a transcript set forth in the preceding paragraph has been made.

#### Article 262 (Effect of Withdrawal of Action)

- (1) A suit, with regard to its part for which the action is withdrawn, shall be deemed to have never been pending before the court.
- (2) A person who has withdrawn an action after a final judgment on the merits is made may not file the same action.

#### Article 263 (Constructive Withdrawal of Action)

Where neither party has appeared on the date for oral argument or preparatory proceedings or has not presented any oral arguments or made any statements in preparatory proceedings before leaving the court or their seats, if neither of them files a petition for designation of the date within one month, it shall be deemed that the action has been withdrawn. The same shall apply where neither party, on two consecutive occasions, has appeared on the date for oral argument or preparatory proceedings or has presented any oral arguments or made any statements in preparatory proceedings before leaving the court or their seats.

#### Article 264 (Acceptance by Means of Document of Proposed Terms of Settlement)

Where it is found to be difficult for a party to appear due to living in a remote place or any other grounds, if the party has submitted a document stating that he/she accepts the proposed terms of settlement presented in advance by the court or

an authorized judge or commissioned judge, and the other party has appeared on the appearance date and accepted such proposed terms of settlement, it shall be deemed that both parties have reached a settlement.

Article 265 (Terms of Settlement Determined by Court, etc.)

- (1) The court or an authorized judge or commissioned judge, upon the joint petition of the parties, may determine the appropriate terms of settlement in order to solve the case.
- (2) The petition set forth in the preceding paragraph shall be filed by means of a document. In this case, the document shall state to the effect that the parties will obey the terms of settlement set forth in said paragraph.
- (3) The terms of settlement under the provision of paragraph (1) shall be determined by way of a notice on the date for oral argument, etc. or any other notice given by a method that is considered to be appropriate.
- (4) A party may withdraw a petition set forth in paragraph (1) only prior to when the notice set forth in the preceding paragraph has been given. In this case, such party shall not be required to obtain consent from the opponent.
- (5) When a notice set forth in paragraph (3) has been given to both parties, it shall be deemed that the parties have reached a settlement.

Article 266 (Waiver or Acknowledgment of Claim)

- (1) A waiver or acknowledgement of a claim shall be made on the date for oral argument, etc.
- (2) If a party who has submitted a document stating that he/she waives or acknowledges a claim does not appear on the date for oral argument, etc., the court or an authorized judge or commissioned judge may deem that the party has stated to that effect.

Article 267 (Effect of Record of Settlement, etc.)

When a settlement or a waiver or acknowledgement of a claim is stated in a record, such statement shall have the same effect as a final and binding judgment.

**Chapter VII Special Provisions Concerning Large-Scale Suit, etc.**

Article 268 (Examination of Witnesses, etc. by Authorized Judge in Case Pertaining to Large-Scale Suit)

The court, in a case pertaining to a large-scale suit (meaning a suit in which a significantly large number of parties are involved and a significantly large number of witnesses or parties themselves are to be examined), may have an authorized judge examine witnesses or parties themselves within the court, if no objection is made by

the parties.

Article 269 (Composition of Panel in Case Pertaining to Large-Scale Suit)

- (1) In a district court, with regard to a case prescribed in the preceding Article, a panel of five judges may make an order to the effect that said panel shall conduct a trial and make a judicial decision on that case.
- (2) In the case referred to in the preceding paragraph, the panel may not contain three or more assistant judges simultaneously, and no assistant judge may serve as a presiding judge.

Article 269-2 (Composition of Panel in Case Pertaining to Action Relating to Patent Right, etc.)

- (1) In the court specified in each item of Article 6(1), with regard to a case pertaining to an action relating to a patent right, etc., a panel of five judges may make an order to the effect that said panel shall conduct a trial and make a judicial decision on that case; provided, however, that this shall not apply to a case pertaining to a suit transferred pursuant to the provision of Article 20-2(1).
- (2) The provision of paragraph (2) of the preceding Article shall apply mutatis mutandis to the case referred to in the preceding paragraph.

**Chapter VIII Special Provisions Concerning Court Proceedings in Summary Court**

Article 270 (Characteristics of Proceedings)

In a summary court, simplified proceedings shall be applied to solve disputes promptly.

Article 271 (Oral Filing of Action)

An action may be filed orally.

Article 272 (Matters to Be Clarified in Filing of Action)

In filing an action, it shall be sufficient to clarify the points of the dispute, in lieu of the statement of claim.

Article 273 (Filing of Action by Voluntary Appearance, etc.)

Both parties may voluntarily appear before the court and conduct oral argument on their suit. In this case, an action shall be filed by an oral statement.

Article 274 (Transfer Based on Filing of Counterclaim)

- (1) Where the defendant, by filing a counterclaim, has made a claim that is subject

to the jurisdiction of a district court, the summary court, upon the petition of the opponent, by an order, shall transfer the principal action and counterclaim to the district court. In this case, the provision of Article 22 shall apply *mutatis mutandis*.  
(2) No appeal may be entered against the order set forth in the preceding paragraph.

#### Article 275 (Settlement Prior to Filing of Action)

- (1) With regard to a civil dispute, a party may file a petition for settlement with the summary court that has jurisdiction over the location of the general venue of the opponent, by indicating the object and statement of claim as well as the actual circumstances of the dispute.
- (2) Where the settlement set forth in the preceding paragraph is not reached, the court, upon the petition of both parties who have appeared on the date for settlement, shall immediately order the parties to present oral arguments as they would do in a suit. In this case, the party who has filed a petition for settlement shall be deemed to have filed an action at the time of filing of the petition, and expenses for settlement shall constitute part of the court costs.
- (3) If the petitioner or the opponent does not appear on the date for settlement set forth in paragraph (1), the court may deem that no settlement is reached.
- (4) With regard to a settlement set forth in paragraph (1), the provisions of Article 264 and Article 265 shall not apply.

#### Article 275-2 (Order in Lieu of Settlement)

- (1) Where, with regard to an action to make a claim for payment of money, the defendant does not deny the facts alleged by the plaintiff at oral argument or does not advance any allegations or evidence, the court, when it finds it appropriate while taking into consideration the defendant's financial resources and any other circumstances concerned, after hearing opinions of the plaintiff, may make an order to the effect that the defendant should make a payment of money pertaining to said claim, while stipulating in the order a provision concerning the period for payment of the money pertaining to said claim or a provision authorizing installment payment with regard to such payment of money, both of which shall be within five years from the expiration of the period set forth in paragraph (3), or simultaneously stipulating a provision to the effect that if the defendant has made a payment pursuant to the provision concerning the period or has made a payment without losing, pursuant to the provision of the following paragraph, the benefit of time under the provision authorizing installment payment, he/she shall be exempted from the obligation to pay any delay damages accrued after the filing of the action.
- (2) When stipulating a provision authorizing installment payment set forth in the



preceding paragraph, the court shall stipulate a provision on the loss of the benefit of time in the event of the defendant's failure to pay.

- (3) With regard to an order set forth in paragraph (1), a party may make an objection to the court that has made the order, within an unextendable period of two weeks from the day on which he/she has received a notice of the order.
- (4) If an objection is made within the period set forth in the preceding paragraph, the order set forth in paragraph (1) shall cease to be effective.
- (5) If no objection is made within the period set forth in paragraph (3), the order set forth in paragraph (1) shall have the same effect as a judicial settlement.

#### Article 276 (Omission of Brief, etc.)

- (1) Oral argument shall not be required to be prepared by means of a document.
- (2) With regard to matters on which it is found that the opponent will be unable to make statements without making preparation, notwithstanding the provision of the preceding paragraph, a document shall be prepared or a notice shall be given directly to the opponent prior to oral argument.
- (3) The matters prescribed in the preceding paragraph, except for those which are stated in a brief (limited to one served upon the opponent or one for which the opponent has submitted a document stating that he/she has received it) or for which a notice thereof under the provision of said paragraph is given, may not be alleged at oral argument without the presence of the opponent in court.

#### Article 277 (Constructive Statements on Date for Continuance)

The provision of Article 158 shall apply mutatis mutandis where the plaintiff or the defendant does not appear on the date for continuance of oral argument or appears on that date but does not present any oral arguments on merits.

#### Article 278 (Submission of Document in Lieu of Examination, etc.)

The court, when it finds it appropriate, may allow the submission of a document in lieu of examining a witness or a party him/herself or having an expert witness state his/her opinions.

#### Article 279 (Judicial Commissioner)

- (1) The court, when it finds it necessary, may have a judicial commissioner assist an attempt to arrange a settlement or have a judicial commissioner attend the trial to hear his/her opinions on the case.
- (2) The number of judicial commissioners shall be one or more for each case.
- (3) A judicial commissioner shall be designated by the court for each case from among persons appointed in advance by a district court each year.
- (4) The qualification of persons to be appointed pursuant to the provision of the

preceding paragraph, the number of such persons, and any other necessary matters concerning the appointment set forth in said paragraph shall be specified by the Rules of the Supreme Court.

- (5) A judicial commissioner shall be paid travel expenses, a daily allowance and accommodation charges at the amount specified by the Rules of the Supreme Court.

#### Article 280 (Matters to Be Stated in Judgment Document)

When stating facts and reasons in a judgment document, it shall be sufficient to indicate the gist of the object and statement of claim, the existence or nonexistence of the statement, and the gist of a defense which is the reason for rejecting the claim.

### **Part III Appeal**

#### **Chapter 1 Appeal to Court of Second Instance**

##### Article 281 (Judgment Appealable to Court of Second Instance, etc.)

- (1) An appeal to the court of second instance may be filed against a final judgment made by a district court as the court of first instance or a final judgment made by a summary court; provided, however, that this shall not apply where, after a final judgment is made, both parties have made an agreement not to file an appeal to the court of second instance while reserving the right to file a final appeal.
- (2) The provisions of Article 11(2) and (3) shall apply mutatis mutandis to the agreement set forth in the preceding paragraph.

##### Article 282 (Restriction on Filing of Appeal to Court of Second Instance against Judicial Decision on Burden of Court Costs)

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

##### Article 283 (Judicial Decision Subject to Determination by Court of Second Instance)

Any judicial decision made prior to a final judgment shall be subject to a determination made by the court of second instance; provided, however, that this shall not apply to a judicial decision against which no appeal may be entered and a judicial decision against which an appeal may be entered by filing an appeal against a ruling.

##### Article 284 (Waiver of Right to Appeal to Court of Second Instance)

A right to appeal to the court of second instance may be waived.

Article 285 (Period for Filing Appeal to Court of Second Instance)

A appeal to the court of second instance shall be filed within an unextendable period of two weeks from the day on which a service of a judgment document or of a record set forth in Article 254(2) is received; provided, however, that this shall not preclude the effect of an appeal to the court of second instance filed prior to that period.

Article 286 (Formality of Filing of Appeal to Court of Second Instance)

- (1) An appeal to the court of second instance shall be filed by submitting a petition for appeal to the court of first instance.
- (2) A petition for appeal shall state the following matters:
  - (i) The parties and statutory agents
  - (ii) The indication of the judgment of first instance and a statement to the effect that an appeal is filed against this judgment

Article 287 (Dismissal of Appeal without Prejudice by Court of First Instance)

- (1) If an appeal to the court of second instance is unlawful and it is obvious that such defect cannot be corrected, the court of first instance, by an order, shall dismiss the appeal without prejudice.
- (2) An immediate appeal may be filed against the order set forth in the preceding paragraph.

Article 288 (Presiding Judge's Authority to Examine Petition for Appeal)

The provision of Article 137 shall apply mutatis mutandis where a petition for appeal is in violation of Article 286(2) and where fees for filing an appeal to the court of second instance required under the provisions of the Act on Costs of Civil Procedure are not paid.

Article 289 (Service of Petition for Appeal)

- (1) A petition for appeal shall be served upon the appellee.
- (2) The provision of Article 137 shall apply mutatis mutandis where it is impossible to serve a petition for appeal (including cases where the expenses necessary for serving the petition for appeal are not prepaid) .

Article 290 (Dismissal of Appeal without Prejudice, without Oral Argument)

If an appeal to the court of second instance is unlawful and such defect cannot be corrected, the court of second instance, by a judgment, may dismiss the appeal without prejudice, without oral argument.

Article 291 (Dismissal of Appeal without Prejudice in the case of No Prepayment of

#### Expenses for Summons)

- (1) Where the court of second instance has specified a reasonable period and ordered the appellant to prepay, under the provisions of the Act on Costs of Civil Procedure, the expenses necessary for issuing a summons to the parties to appear on the appearance date, but such expenses are not prepaid, the court, by an order, may dismiss the appeal without prejudice.
- (2) An immediate appeal may be filed against the order set forth in the preceding paragraph.

#### Article 292 (Withdrawal of Appeal to Court of Second Instance)

- (1) An appeal to the court of second instance may be withdrawn before the court of second instance makes a final judgment.
- (2) The provisions of Article 261(3), Article 262(1) and Article 263 shall apply *mutatis mutandis* to the withdrawal of an appeal to the court of second instance.

#### Article 293 (Incidental Appeal)

- (1) The appellee, even after the extinction of a right to appeal to the court of second instance, may file an incidental appeal until oral argument is concluded.
- (2) An incidental appeal shall cease to be effective when an appeal to the court of second instance is withdrawn or an appeal to the court of second instance is dismissed as unlawful without prejudice; provided, however, that an incidental appeal that meets the requirements for an appeal to the court of second instance shall be deemed to be an independent appeal to the court of second instance.
- (3) An incidental appeal shall be governed by the provisions concerning an appeal to the court of second instance; provided, however, that an incidental appeal may be filed by submitting a petition for incidental appeal to the court of second instance.

#### Article 294 (Declaration of Provisional Execution Regarding Judgment of First Instance)

The court of second instance, only with regard to the part of the judgment of first instance against which no appeal is entered, upon petition, may declare provisional execution by an order.

#### Article 295 (Appeal against Judicial Decision Concerning Provisional Execution)

No appeal may be entered against a judicial decision made by the court of second instance concerning provisional execution; provided, however, that an immediate appeal may be filed against an order to dismiss without prejudice the petition set forth in the preceding Article.

#### Article 296 (Scope of Oral Argument, etc.)

- (1) Oral argument shall be conducted only to the extent that a party seeks modification of the judgment of first instance.
- (2) The parties shall state the result of the oral argument conducted in the first instance.

Article 297 (Application Mutatis Mutandis of Provisions on Court Proceedings in First Instance)

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

Article 298 (Effect of Procedural Act Performed in First Instance, etc.)

- (1) Any procedural act performed in the first instance shall also be effective in the second instance.
- (2) The provision of Article 167 shall apply mutatis mutandis to a party who advances allegations and evidence in the second instance with regard to the case for which preliminary oral arguments or preparatory proceedings have been closed in the first instance, and the provision of Article 178 shall apply mutatis mutandis to a party who advances allegations and evidence in the second instance in cases where the statements or confirmation set forth in said Article have or has been made with regard to the case for which preparatory proceedings by means of documents have been closed in the first instance.

Article 299 (Restriction on Allegation of Lack of Jurisdiction of Court of First Instance)

- (1) In the second instance, the parties may not allege that the court of first instance has no jurisdiction; provided, however, that this shall not apply to an exclusive jurisdiction (excluding one determined by an agreement between the parties pursuant to the provision of Article 11).
- (2) Where the court of first instance set forth in the preceding paragraph is the court specified in any of the items of Article 6(1), if the suit is subject to the exclusive jurisdiction of another court pursuant to the provision of Article 6(1), the provision of the proviso to the preceding paragraph shall not apply.

Article 300 (Filing of Counterclaim, etc.)

- (1) In the second instance, a counterclaim may be filed only with the consent of the opponent.
- (2) If the opponent presents oral arguments on the merits of a counterclaim without making any objection, he/she shall be deemed to have consented to the filing of the counterclaim.

- (3) The provisions of the preceding two paragraphs shall apply mutatis mutandis to the addition of a claim pertaining to appointers.

Article 301 (Period for Advancement of Allegations and Evidence, etc.)

- (1) The presiding judge, after hearing opinions of the parties, may specify periods for advancing allegations and evidence, amending the claim or statement of claim, filing a counterclaim or adding a claim pertaining to appointers.
- (2) A party who performs any of the procedural acts prescribed in the preceding paragraph after the expiration of the period specified pursuant to the provision of said paragraph shall explain to the court the reasons why he/she was unable to perform the act within that period.

Article 302 (Dismissal of Appeal with Prejudice on Merits)

- (1) The court of second instance, when it finds that the judgment of first instance is appropriate, shall dismiss the appeal filed thereto with prejudice on the merits.
- (2) Even where the judgment of first instance is unjust for a reason attached thereto, if it is just for any other reason, the court of second instance shall dismiss the appeal filed thereto with prejudice on the merits.

Article 303 (Sanction against Abuse of Right to Appeal to Court of Second Instance)

- (1) Where the court of second instance dismisses the appeal filed thereto with prejudice on the merits pursuant to the provision of paragraph (1) of the preceding Article, if it finds that the appellant has filed the appeal exclusively for the purpose of delaying the conclusion of the suit, it may order the appellant to pay money of not more than ten times the amount payable as fees for filing an appeal with the court of second instance.
- (2) A judicial decision made under the provision of the preceding Article shall be indicated in the main text of a judgment.
- (3) A judicial decision made under the provision of paragraph (1) shall cease to be effective when a judgment to modify the judgment on merits is rendered.
- (4) The final appellate court, even where it dismisses a final appeal with prejudice on the merits, may modify a judicial decision made under the provision of paragraph (1).
- (5) The provision of Article 189 shall apply mutatis mutandis to a judicial decision made under the provision of paragraph (1).

Article 304 (Scope of Revocation and Modification of Judgment of First Instance)

A judgment of first instance may be revoked and modified only to the extent that an appeal is entered against it.

Article 305 (Revocation of Unjust Judgment of First Instance)

The court of second instance shall revoke the judgment of first instance when it finds that the judgment is unjust.

Article 306 (Revocation of Judgment Made by Court of First Instance by Illegal Procedure)

If the procedures followed by the court of first instance when making a judgment are in violation of any Acts, the court of second instance shall revoke the judgment of first instance.

Article 307 (Remand of Case)

The court of second instance, when revoking the judgment of first instance that has dismissed the action as unlawful without prejudice, shall remand the case to the court of first instance; provided, however, that this shall not apply where additional oral arguments concerning the case are not necessary.

Article 308

- (1) In addition to the case prescribed in the main clause of the preceding Article, where the court of second instance revokes the judgment of first instance, if additional oral arguments concerning the case are necessary, it may remand the case to the court of first instance.
- (2) If the case is remanded on the grounds that court proceedings in the court of first instance are in violation of any Acts, such court proceedings shall be deemed to have been rescinded by the remand.

Article 309 (Transfer on Grounds of Lack of Jurisdiction of Court of First Instance)

The court of second instance, when revoking the judgment of first instance on the grounds of lack of jurisdiction over the case, shall transfer the case to a court with jurisdiction.

Article 310 (Declaration of Provisional Execution in Judgment Made by Court of Second Instance)

The court of second instance, with regard to a judgment concerning a claim for payment of money (excluding a claim set forth in Article 259(2)), upon petition, shall declare that provisional execution may be enforced without security, unless it finds such declaration unnecessary; provided, however, that when the court of second instance finds it appropriate, it may require the provision of security for provisional execution.

Article 310-2 (Composition of Panel in Appeal Case against Action Relating to Patent

Right, etc.)

In the Tokyo High Court with which an appeal is filed against a final judgment on an action relating to a patent right, etc. that is made by any of the courts specified in the items of Article 6(1) as the court of first instance, a panel of five judges may make an order to the effect that said panel shall conduct a trial and make a judicial decision on that case; provided, however, that this shall not apply to a case pertaining to an appeal to the court of second instance against a final judgment on an action pertaining to a suit transferred pursuant to the provision of Article 20-2 (1).

## **Chapter II Final Appeal**

### **Article 311 (Final Appellate Court)**

- (1) A final appeal may be filed with the Supreme Court against a final judgment made by a high court as the court of second instance or the court of first instance, and may be filed with a high court against a final judgment made by a district court as the court of second instance.
- (2) In the case referred to in the proviso to Article 281(1), a final appeal may be filed directly with the Supreme Court against a judgment made by a district court, and may be filed directly with a high court against a judgment made by a summary court.

### **Article 312 (Reasons for Final Appeal)**

- (1) A final appeal may be filed by reason that a judgment contains a misconstruction of the Constitution or any other violation of the Constitution.
- (2) A final appeal may also be filed by reason of the existence of any of the following grounds; provided, however, that this shall not apply to the grounds set forth in item (iv) where ratification is made under the provision of Article 34(2) (including cases where applied mutatis mutandis pursuant to Article 59):
  - (i) The court rendering judgment was not composed under any Acts.
  - (ii) A judge who may not participate in making the judgment under any Acts participated in making the judgment.
  - (iii) The judgment was made in violation of the provisions concerning exclusive jurisdiction (excluding cases where any of the courts specified in the items of Article 6(1) made a final judgment in the first instance when the suit is subject to the exclusive jurisdiction of another court pursuant to the provision of Article 6(1)).
  - (iv) The judgment was made in the absence of the authority of statutory representation, authority of representation in a suit or the delegation of powers necessary for performing procedural acts.



- (v) The judgment was made in violation of the provision on the opening of oral argument to the public.
- (vi) The judgment lacks reasons, or the reasons attached to the judgment are inconsistent.
- (3) A final appeal to a high court may also be filed by reason that there is a violation of laws or regulations that apparently affects a judgment.

Article 313 (Application Mutatis Mutandis of Provisions on Appeal to Court of Second Instance)

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

Article 314 (Formality of Filing of Final Appeal, etc.)

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

Article 315 (Statement of Reasons for Final Appeal)

- (1) If a petition for final appeal does not state any reasons for final appeal, a statement of reasons for final appeal shall be submitted to the court of prior instance within the period specified by the Rules of the Supreme Court.
- (2) Reasons for final appeal shall be stated in the form specified by the Rules of the Supreme Court.

Article 316 (Dismissal of Final Appeal without Prejudice by Court of Prior Instance)

- (1) Where it is obvious that a final appeal falls under any of the following items, the court of prior instance, by an order, shall dismiss the final appeal without prejudice:
  - (i) Where the final appeal is unlawful and such defect cannot be corrected.
  - (ii) Where a statement of reasons for final appeal is not submitted in violation of the provision of paragraph (1) of the preceding Article, or the stated reasons for final appeal are in violation of paragraph (2) of said Article.
- (2) An immediate appeal may be filed against the order set forth in the preceding paragraph.

Article 317 (Dismissal of Final Appeal without Prejudice by Final Appellate Court, etc.)

- (1) In the cases listed in the items of paragraph (1) of the preceding Article, the final appellate court, by an order, may dismiss a final appeal without prejudice.
- (2) The Supreme Court, as the final appellate court, by an order, may dismiss a final appeal with prejudice on the merits where the reasons for final appeal obviously do not fall under the grounds prescribed in Article 312(1) or (2).

#### Article 318 (Petition for Acceptance of Final Appeal)

- (1) With regard to a case in which the judgment in prior instance contains a determination that is inconsistent with precedents rendered by the Supreme Court (or precedents rendered by the former Supreme Court or those rendered by high courts as the final appellate court or the court of second instance, if there are no precedents rendered by the Supreme Court) or any other case in which the judgment in prior instance is found to involve material matters concerning the construction of laws and regulations, where the court with which a final appeal shall be filed is the Supreme Court, the Supreme Court, upon petition, by an order, may accept such case as the final appellate court.
- (2) The petition set forth in the preceding paragraph (hereinafter referred to as a "petition for acceptance of final appeal") may not state the grounds prescribed in Article 312(1) and (2) as reasons for petition.
- (3) In the case referred to in paragraph (1), the Supreme Court may exclude any reasons for petition for acceptance of final appeal that is found not to be material.
- (4) Where an order set forth in paragraph (1) is made, it shall be deemed that a final appeal is filed. In this case, for the purpose of application of the provision of Article 320, the reasons for petition for acceptance of final appeal except for those excluded pursuant to the provision of the preceding paragraph shall be deemed to be the reasons for final appeal.
- (5) The provisions of Article 313 to Article 315 and Article 316(1) shall apply mutatis mutandis to a petition for acceptance of final appeal.

#### Article 319 (Dismissal of Final Appeal with Prejudice on Merits, without Oral Argument)

The final appellate court, when it finds that a final appeal is groundless based on the petition for final appeal, statement of reasons for final appeal, written answer or any other documents, may dismiss the final appeal with prejudice on the merits by a judgment, without oral argument.

#### Article 320 (Scope of Examination)

The final appellate court, based on the reasons for final appeal, shall conduct an examination only to the extent that an appeal is entered.

Article 321 (Binding Force of Facts Determined by Judgment in Prior Instance)

- (1) The facts legally determined by the judgment in prior instance shall be binding on the final appellate court.
- (2) Where a final appeal is filed under the provision of Article 311(2), the final appellate court may not quash the judgment in prior instance on the grounds that the determination of facts by the judgment is in violation of any Acts.

Article 322 (Exclusion from Application of Matters to Be Examined by Court's Own Authority)

The provisions of the preceding two Articles shall not apply to matters to be examined by the court's own authority.

Article 323 (Declaration of Provisional Execution)

With regard to the part of the judgment in prior instance against which no appeal is entered, the final appellate court, upon petition, by an order, may declare provisional execution.

Article 324 (Transfer to the Supreme Court)

A high court, as the final appellate court, by an order, shall transfer a case to the Supreme Court if any grounds specified by the Rules of the Supreme Court exist.

Article 325 (Quashing and Remand, etc.)

- (1) Where the grounds prescribed in Article 312(1) or (2) exist, the final appellate court shall quash the judgment in prior instance, and except in the cases set forth in the following Article, shall remand the case to the court of prior instance or transfer the case to another court equivalent thereto. The same shall apply where a high court is the final appellate court and there is a violation of laws or regulations that apparently affects a judgment.
- (2) The Supreme Court, as the final appellate court, even where the grounds prescribed in Article 312(1) or (2) do not exist, may quash the judgment in prior instance if there is a violation of laws or regulations that apparently affects a judgment, and except in the cases set forth in the following Article, 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 make a judicial decision based on additional oral argument. In this case, the factual or legal determination based on which the final appellate court has quashed the judgment shall be binding on the court to which the case is remanded or transferred.
- (4) A judge who has participated in making the judgment in prior instance may not

participate in making the judicial decision set forth in the preceding paragraph.

#### Article 326 (Quashing and Decision by Final Appellate Court)

In the following cases, the final appellate court shall make a judicial decision on the case:

- (i) Where the final appellate court quashes the judgment on the grounds that the judgment has erred in applying the Constitution or any other laws or regulations to the determined facts, and the case is ripe for making a judicial decision based on such facts.
- (ii) Where the final appellate court quashes the judgment on the grounds that the case is subject to the jurisdiction of no court.

#### Article 327 (Special Appeal to Court of Last Resort)

- (1) Against a final judgment made by a high court as the final appellate court, an appeal may further be filed with the Supreme Court only on the grounds that the judgment contains a misconstruction of the Constitution or any other violation of the Constitution.
- (2) With regard to the appeal set forth in the preceding paragraph and court proceedings in the appellate instance, unless contrary to the nature thereof, the provisions concerning a final appeal against a final judgment made by the court of second instance or the court of first instance and court proceedings in the final appellate instance shall apply mutatis mutandis. In this case, the phrase "the judgment in prior instance" in Article 321(1) shall be deemed to be replaced with "a final judgment made by a district court as the court of second instance (in cases where a final appeal is filed under the provision of Article 311(2), a final judgment made by a summary court)".

### **Chapter III Appeal against Ruling**

#### Article 328 (Judicial Decision Subject to Appeal against Ruling)

- (1) An appeal against a ruling may be filed against an order or direction that has dismissed without prejudice a petition concerning court proceedings, without oral argument.
- (2) If an order or direction is made with regard to matters for which a judicial decision may not be made by an order or direction, an appeal against a ruling may be filed against it.

#### Article 329 (Appeal against Judicial Decision Made by Authorized Judge, etc.)

- (1) A party who disagrees with a judicial decision made by an authorized judge or commissioned judge may make an objection to the court in charge of the case;

- provided, however, that this shall apply only where an appeal against a ruling may be filed against the judicial decision if it is made by the court in charge of the case.
- (2) An appeal against a ruling may be filed against a judicial decision on the objection set forth in the preceding paragraph.
- (3) For the purpose of application of the provision of paragraph (1) in cases where 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 said paragraph shall be deemed to be replaced with "a district court."

#### Article 330 (Re-appeal from Appeal against Ruling)

An appeal against a ruling may further be filed against an order made by the court in charge of an appeal against a ruling only on the grounds that the order contains a misconstruction of the Constitution or any other violation of the Constitution or that there is a violation of laws or regulations that apparently affects an order.

#### Article 331 (Application Mutatis Mutandis of Provisions on Appeal to Court of Second Instance or Final Appeal)

With regard to an appeal against a ruling and court proceedings in the court in charge of an appeal against a ruling, unless contrary to the nature thereof, the provisions of Chapter I shall apply mutatis mutandis; provided, however, that with regard to an appeal against a ruling set forth in the preceding Article and court proceedings for such appeal, the provisions of the preceding Chapter concerning a final appeal against a final judgment made by the court of second instance or the court of first instance and court proceedings in the final appellate instance shall apply mutatis mutandis.

#### Article 332 (Period for Filing Immediate Appeal)

An immediate appeal shall be filed within an unextendable period of one week from the day on which a notice of the judicial decision is received.

#### Article 333 (Correction by Court of Prior Instance, etc.)

The court or the presiding judge which or who has made the judicial decision of prior instance, when it or he/she finds that an appeal against a ruling is well-grounded, shall correct the judicial decision.

#### Article 334 (Stay of Execution of Judicial Decision of Prior Instance)

- (1) An appeal against a ruling, only if it is filed as an immediate appeal, shall have the effect of stay of execution.
- (2) The court in charge of an appeal against a ruling or the court or the presiding judge which or who has made the judicial decision of prior instance, until an order

is made on the appeal against a ruling, may order stay of execution of the judicial decision of prior instance or any other necessary disposition.

#### Article 335 (Interrogation in Lieu of Oral Argument)

The court in charge of an appeal against a ruling, if it does not hold oral argument on the appeal against a ruling, may interrogate the appellant and any other interested person.

#### Article 336 (Special Appeal against Ruling to the Supreme Court)

- (1) Against an order and a direction made in a district court or summary court against which no appeal may be entered as well as an order and a direction made in a high court, a special appeal against a ruling may further be filed with the Supreme Court on the grounds that the respective judicial decision contains a misconstruction of the Constitution or any other violation of the Constitution.
- (2) The appeal against a ruling set forth in the preceding paragraph shall be filed within an unextendable period of five days from the day on which a notice of the judicial decision is received.
- (3) With regard to an appeal against a ruling set forth in paragraph (1) and court proceedings for such appeal, unless contrary to the nature thereof, the provisions concerning an appeal set forth in Article 327(1) and court proceedings in the appellate instance and the provision of Article 334(2) shall apply *mutatis mutandis*.

#### Article 337 (Appeal with Permission)

- (1) Against an order and direction made in a high court (excluding an order and direction on an appeal against a ruling set forth in Article 330 and a petition set forth in the following paragraph), in addition to the case under the provision of paragraph (1) of the preceding Article, an appeal may be specially filed with the Supreme Court only if the high court permits it pursuant to the provision of the following paragraph; provided, however, that this shall apply only where an appeal against a ruling may be filed against the respective judicial decision if it is made by a district court.
- (2) Where the judicial decision set forth in the preceding paragraph contains a determination that is inconsistent with precedents rendered by the Supreme Court (or precedents rendered by the former Supreme Court or those rendered by high courts as the final appellate court or the court in charge of an appeal against a ruling, if there are no precedents rendered by the Supreme Court) or where said judicial decision is found to involve material matters concerning the construction of laws and regulations, the high court set forth in said paragraph, upon petition, by an order, may permit an appeal against a ruling.

- (3) The petition set forth in the preceding paragraph may not state the grounds prescribed in paragraph (1) of the preceding Article as reasons for petition.
- (4) Where permission is granted under the provision of paragraph (2), it shall be deemed that an appeal against a ruling set forth in paragraph (1) is filed.
- (5) The Supreme Court may quash the judicial decision of prior instance if there is a violation of laws or regulations that apparently affects a judicial decision.
- (6) The provisions of Article 313, Article 315 and paragraph (2) of the preceding Article shall apply mutatis mutandis to the petition set forth in paragraph (2), the provision of Article 318(3) shall apply mutatis mutandis where the court grants permission under the provision of paragraph (2), and the provisions of the second sentence of Article 318(4) and paragraph (3) of the preceding Article shall apply mutatis mutandis where permission is granted under the provision of paragraph (2).

#### **Part IV Retrial**

##### **Article 338 (Grounds for Retrial)**

- (1) Where any of the following grounds exist, an appeal may be entered by filing an action for retrial against a final judgment that has become final and binding; provided, however, that this shall not apply where a party, when filing the appeal to the court of second instance or final appeal, alleged such grounds or did not allege them while being aware of them:
  - (i) The court rendering judgment was not composed under any Acts.
  - (ii) A judge who may not participate in making the judgment under any Acts participated in making the judgment.
  - (iii) The judgment was made in the absence of the authority of statutory representation, authority of representation in a suit or the delegation of powers necessary for performing procedural acts.
  - (iv) The judge who participated in making the judgment has committed a crime in relation to his/her duties with regard to the case.
  - (v) Another person's act that is criminally punishable caused the party to admit any fact or prevented him/her from advancing allegations or evidence that should have affected a judgment.
  - (vi) The documents or any other objects used as evidence for making the judgment were forged or altered.
  - (vii) False statements by a witness, an expert witness, interpreter or a party or statutory agent who had sworn were used as evidence for making the judgment.
  - (viii) The judgment or other judicial decision on a civil or criminal case or administrative disposition, based on which the judgment pertaining to the appeal was made, has been modified by a subsequent judicial decision or administrative

disposition.

- (ix) There was an omission in a determination with regard to material matters that should have affected a judgment.
  - (x) The judgment pertaining to an appeal conflicts with a previous judgment that has become final and binding.
- (2) Where any of the grounds set forth in item (iv) to item (vii) of the preceding paragraph exist, an action for retrial may be filed only if, with regard to a punishable act, a judgment of conviction or judgment of a non-penal fine has become final and binding, or a final and binding judgment of conviction or final and binding judgment of a non-penal fine cannot be obtained due to grounds other than grounds of lack of evidence.
- (3) When the court of second instance has made a judgment on merits with regard to the case, no action for retrial may be filed against the judgment made by the court of first instance.

#### Article 339

Where the grounds prescribed in paragraph (1) of the preceding Article exist 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 grounds set forth in item (iv) to (vii) of said paragraph exist), such grounds may be stated as grounds for retrial against the judgment, even if any method of entering an independent appeal against such judicial decision is specified.

#### Article 340 (Court with Jurisdiction)

- (1) An action for retrial shall be subject exclusively to the jurisdiction of the court that has made the judgment pertaining to an appeal.
- (2) Actions for retrial against judgments made by the courts of different instances with regard to the same case shall be subject collectively to the jurisdiction of the upper instance court of these courts.

#### Article 341 (Court Proceedings for Retrial)

With regard to court proceedings for retrial, unless contrary to the nature thereof, the provisions concerning court proceedings in their respective instances shall apply *mutatis mutandis*.

#### Article 342 (Period of Retrial)

- (1) An action for retrial shall be filed within an unextendable period of 30 days from the day on which a party has become aware of the grounds for retrial after the judgment became final and binding.
- (2) When five years have elapsed from the day on which a judgment became final



and binding (or the day on which the grounds for retrial occurred if they occurred after the judgment became final and binding), no action for retrial may be filed.

- (3) The provisions of the preceding two paragraphs shall not apply to an action for retrial filed on the grounds of the lack of authority of representation, which are included in the grounds set forth in Article 338(1) (iii), and the grounds set forth in Article 338(1) (x).

#### Article 343 (Matters to Be Stated in Complaint for Retrial)

A complaint for retrial shall state the following matters:

- (i) The parties and statutory agents
- (ii) The indication of the judgment pertaining to an appeal and the statement to the effect that a retrial is sought against this judgment
- (iii) The reasons for appeal

#### Article 344 (Amendment of Reasons for Appeal)

A party who has filed an action for retrial may amend the reasons for appeal.

#### Article 345 (Dismissal without Prejudice of Action for Retrial, etc.)

- (1) Where an action for retrial is unlawful, the court, by an order, shall dismiss it without prejudice.
- (2) Where there are no grounds for retrial, the court, by an order, shall dismiss a claim for retrial with prejudice on the merits.
- (3) When an order set forth in the preceding paragraph becomes final and binding, no further action for retrial may be filed by stating the same grounds as reasons for appeal.

#### Article 346 (Order of Commencement of Retrial)

- (1) The court, where there are grounds for retrial, shall make an order of commencement of retrial.
- (2) The court, when making an order set forth in the preceding paragraph, shall interrogate the opponent.

#### Article 347 (Immediate Appeal)

An immediate appeal may be filed against the order set forth in Article 345(1) and (2) and paragraph (1) of the preceding Article.

#### Article 348 (Trial and Judicial Decision on Merits)

- (1) The court, where an order of commencement of retrial becomes final and binding, shall conduct a trial and make a judicial decision on the merits to the extent that an appeal is entered.

- (2) In the case referred to in the preceding paragraph, the court, when it finds that the judgment is justifiable, shall dismiss the claim for retrial with prejudice on the merits.
- (3) Except in the case referred to in the preceding paragraph, the court shall revoke the judgment and make another judicial decision.

#### Article 349 (Retrial against Order or Direction)

- (1) A petition for retrial may be filed against an order or direction against which an appeal may be entered by filing an immediate appeal, which has become final and binding.
- (2) The provisions of Article 338 to the preceding Article shall apply mutatis mutandis to the petition set forth in the preceding paragraph.

### **Part V Special Provisions on Actions on Bills and Notes and Actions on Checks**

#### Article 350 (Requirements for Action on Bills and Notes)

- (1) For a claim for payment of money for a bill or note and a claim for damages at the statutory interest rate that is incidental thereto, a trial and judicial decision may be sought by way of an action on bills and notes.
- (2) The statement to the effect that a trial and judicial decision are sought by way of an action on bills and notes shall be made in a complaint.

#### Article 351 (Prohibition of Counterclaim)

No counterclaim may be filed in an action on bills and notes.

#### Article 352 (Restriction on Examination of Evidence)

- (1) In an action on bills and notes, the examination of evidence shall be limited to documentary evidence.
- (2) No order to submit a document and no commission of sending of a document may be made or issued. The same shall apply to an order to submit an object which contains the handwriting or seal impression to be used for comparison or to commission the sending of such object.
- (3) With regard to a fact concerning the authenticity of the creation of a document or the presentation of a bill or note, upon petition, a party him/herself may be examined.
- (4) No commission of the examination of evidence may be issued. The same shall apply to the commission of an examination under the provision of Article 186.
- (5) The provisions of the preceding paragraphs shall not apply to matters to be examined by the court's own authority.

#### Article 353 (Transfer to Ordinary Proceedings)

- (1) The plaintiff, until oral argument is concluded, without the consent of the defendant, may state that he/she requests the action to be transferred to ordinary proceedings.
- (2) The action shall be transferred to ordinary proceedings at the time when the statement set forth in the preceding paragraph is made.
- (3) In the case referred to in the preceding paragraph, the court shall immediately send to the defendant a document stating that the action has been transferred to ordinary proceedings; provided, however, that if the statement set forth in paragraph (1) is made orally on the date on which the defendant has appeared, it shall not be required to be sent to the defendant.
- (4) In the case referred to in paragraph (2), the date already designated for the action on bills and notes shall be deemed to have been designated for ordinary proceedings.

#### Article 354 (Conclusion of Oral Argument)

The court, where the defendant does not deny the facts alleged by the plaintiff at oral argument or does not advance any allegations or evidence, may conclude oral argument even before sending the document under the provision of paragraph (3) of the preceding Article.

#### Article 355 (Dismissal of Action without Prejudice, without Oral Argument)

- (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, by a judgment, may dismiss without prejudice the whole or part of the action, without oral argument.
- (2) In the case referred to in the preceding paragraph, if the plaintiff has filed an action to make a claim set forth in said paragraph through ordinary proceedings within two weeks from the day on which he/she received a service of a judgment document, for the purpose of application of the provision of Article 147, such action shall be deemed to have been filed at the time of the filing of the previous action.

#### Article 356 (Prohibition of Appeal)

No appeal to the court of second instance may be filed against a final judgment of an action on bills and notes; provided, however, that this shall not apply to a judgment to dismiss an action without prejudice, except for the judgment set forth in paragraph (1) of the preceding Article.

#### Article 357 (Objection)

Against a final judgment of an action on bills and notes, except for a judgment to dismiss the action without prejudice, an objection may be made to the court that has

made the judgment, within an unextendable period of two weeks from the day on which a service of a judgment document or of a record set forth in Article 254(2) is received; provided, however, that this shall not preclude the effect of an objection made prior to that period.

#### Article 358 (Waiver of Right to Make Objection)

A person may no longer waive a right to make an objection after he/she has made an objection.

#### Article 359 (Dismissal of Objection without Prejudice, without Oral Argument)

If an objection is unlawful and such defect cannot be corrected, the court, by a judgment, may dismiss the objection without prejudice, without oral argument.

#### Article 360 (Withdrawal of Objection)

- (1) An objection may be withdrawn until the court of first instance makes a final judgment through ordinary proceedings.
- (2) The withdrawal of an objection shall not become effective without the consent of the opponent.
- (3) The provisions of Article 261(3) to (5), Article 262(1) and Article 263 shall apply mutatis mutandis to the withdrawal of an objection.

#### Article 361 (Proceedings after Objection)

When a lawful objection is made, the action shall be restored to the stage before the conclusion of oral argument. In this case, ordinary proceedings shall be applied to the trial and judicial decision thereof.

#### Article 362 (Judgment after Objection)

- (1) If a judgment to be made pursuant to the provision of the preceding Article is consistent with a judgment of an action on bills and notes, the court shall approve the judgment of the action on bills and notes; provided, however, that this shall not apply where the procedures followed when making the judgment of the action on bills and notes are in violation of any Acts.
- (2) Except where the court approves a judgment of an action on bills and notes pursuant to the provision of the preceding paragraph, the court, in a judgment to be made pursuant to the provision of the preceding Article, shall revoke the judgment of the action on bills and notes.

#### Article 363 (Court Costs in Judgment after Objection)

- (1) The court, when dismissing an objection without prejudice or approving a judicial decision on the burden of court costs made in an action on bills and notes,

shall make a judicial decision on the burden of court costs incurred after the objection is made.

- (2) The provision of Article 258(4) shall apply mutatis mutandis where a lawful objection is made to a judgment of an action on bills and notes.

#### Article 364 (Remand of Case)

The court of second instance, when revoking the judgment of first instance that has dismissed an objection as unlawful without prejudice, shall remand the case to the court of first instance; provided, however, that this shall not apply where additional oral arguments concerning the case are not necessary.

#### Article 365 (Transfer from Proceedings for Settlement prior to Filing of Action, to Action on Bills and Notes)

With regard to an action that shall be deemed to have been filed pursuant to the provision of the second sentence of Article 275(2), the statement to the effect that a trial and judicial decision are sought by way of an action on bills and notes shall be made upon filing the petition set forth in the first sentence of Article 275(2).

#### Article 366 (Transfer from Demand Procedure to Action on Bills and Notes)

- (1) With regard to an action that shall be deemed to have been filed pursuant to the provisions of Article 395 or Article 398(1) (including cases where applied mutatis mutandis pursuant to Article 402(2)), the statement to the effect that a trial and judicial decision are sought by way of an action on bills and notes shall be made upon filing a petition for demand for payment.
- (2) When a declaration of provisional execution is made under the provision of Article 391(1), the statement set forth in the preceding paragraph shall be deemed to have never been made.

#### Article 367 (Action on Checks)

- (1) For a claim for payment of money for a check and a claim for damages at the statutory interest rate that is incidental thereto, a trial and judicial decision may be sought by way of an action on checks.
- (2) The provisions of Article 350(2) and Article 351 to the preceding Article shall apply mutatis mutandis to an action on checks.

### **Part VI Special Provisions Concerning Actions on Small Claims**

#### Article 368 (Requirements for Action on Small Claim, etc.)

- (1) In a summary court, for a claim for payment of money, a trial and judicial decision may be sought by way of an action on small claim if the value of the

subject matter of the action is not more than 600,000 yen; provided, however, that such actions may not be filed 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) The statement to the effect that a trial and judicial decision are sought by way of an action on small claim shall be made upon filing an action.
- (3) When making the statement set forth in the preceding paragraph, the plaintiff shall make a notification of the number of times that he/she has sought trials and judicial decisions by way of actions on small claims in the relevant year in the summary court where he/she files the action.

#### Article 369 (Prohibition of Counterclaim)

No counterclaim may be filed in an action on small claim.

#### Article 370 (Principle of Trial on Single Date)

- (1) In an action on small claim, except where there are special circumstances, a trial shall be completed on the first date for oral argument.
- (2) The parties shall advance all allegations and evidence prior to the date set forth in the preceding paragraph or on that date; provided, however, that this shall not apply where oral argument is continued.

#### Article 371 (Restriction on Examination of Evidence)

The examination of evidence shall be limited to evidence that can be examined immediately.

#### Article 372 (Examination of Witness, etc.)

- (1) A witness may be examined without having him/her swear under oath.
- (2) A witness and a party him/herself shall be examined in the order that a judge considers to be appropriate.
- (3) The court, when it finds it appropriate, may examine a witness, as provided for by the Rules of the Supreme Court, by a method that enables the parties and the witness to communicate simultaneously with one another by audio transmission.

#### Article 373 (Transfer to Ordinary Proceedings)

- (1) The defendant may state that he/she requests the action to be transferred to ordinary proceedings; provided, however, that this shall not apply after the defendant has presented oral arguments on the first date for oral argument or that date has ended.
- (2) The action shall be transferred to ordinary proceedings at the time when the statement set forth in the preceding paragraph is made.
- (3) In the following cases, the court shall make an order to the effect that a trial

and judicial decision of the action should be made through ordinary proceedings:

- (i) Where the plaintiff has sought a trial and judicial decision by way of an action on small claim in violation of the provision of Article 368(1).
  - (ii) Where the court has specified a reasonable period and ordered that a notification should be made pursuant to the provision of Article 368(3), but such notification is not made.
  - (iii) Where it is impossible to issue a summons to the defendant on the first date for oral argument by any method other than making a service by publication.
  - (iv) Where the court finds it inappropriate to conduct a trial and make a judicial decision by way of an action on small claim.
- (4) No appeal may be entered against the order set forth in the preceding paragraph.
- (5) When the action is transferred to ordinary proceedings, the date already designated for the action on small claim shall be deemed to have been designated for ordinary proceedings.

#### Article 374 (Rendition of Judgment)

- (1) The court, except where it finds it inappropriate, shall render a judgment immediately after the conclusion of oral argument.
- (2) In the case referred to in the preceding paragraph, the court may render a judgment not based on the original of a judgment document. In this case, the provisions of Article 254(2) and Article 255 shall apply *mutatis mutandis*.

#### Article 375 (Grace of Payment by Judgment)

- (1) Where the court makes a judgment to uphold a claim, when it finds it particularly necessary while taking into consideration the defendant's financial resources and any other circumstances concerned, it may stipulate in the judgment a provision concerning the period for payment of money pertaining to the claim that it upholds or provision authorizing installment payment with regard to such payment of money, both of which shall be within three years from the date of rendition of the judgment, or simultaneously stipulate a provision to the effect that if the defendant has made a payment pursuant to the provision concerning the period or has made a payment without losing, pursuant to the provision of the following paragraph, the benefit of time under the provision authorizing installment payment, he/she shall be exempted from the obligation to pay any delay damages accrued after the filing of the action.
- (2) When stipulating a provision authorizing installment payment set forth in the preceding paragraph, the court shall stipulate a provision on the loss of the benefit of time in the event of the defendant's failure to pay.
- (3) No appeal may be entered against a judicial decision concerning the provisions

stipulated under the provisions of the preceding two paragraphs.

#### Article 376 (Declaration of Provisional Execution)

- (1) With regard to a judgment to uphold a claim, the court, by its own authority, shall declare that provisional execution may be enforced with or without security.
- (2) The provisions of Article 76, Article 77, Article 79 and Article 80 shall apply *mutatis mutandis* to the security set forth in the preceding paragraph.

#### Article 377 (Prohibition of Appeal to Court of Second Instance)

No appeal to the court of second instance may be filed against a final judgment of an action on small claim.

#### Article 378 (Objection)

- (1) With regard to a final judgment of an action on small claim, an objection may be made to the court that has made the judgment, within an unextendable period of two weeks from the day on which a service of a judgment document or of a record set forth in Article 254(2) (including cases where applied *mutatis mutandis* pursuant to Article 374(2)) is received; provided, however, that this shall not preclude the effect of an objection made prior to that period.
- (2) The provisions of Article 358 to Article 360 shall apply *mutatis mutandis* to the objection set forth in the preceding paragraph.

#### Article 379 (Trial and Judicial Decision after Objection)

- (1) When a lawful objection is made, the action shall be restored to the stage before the conclusion of oral argument. In this case, ordinary proceedings shall be applied to the trial and judicial decision thereof.
- (2) The provisions of Article 362, Article 363, Article 369, Article 372(2) and Article 375 shall apply *mutatis mutandis* to the trial and judicial decision set forth in the preceding paragraph.

#### Article 380 (Appeal against Judgment after Objection)

- (1) No appeal to the court of second instance may be filed against a final judgment made pursuant to the provision of Article 359, as applied *mutatis mutandis* pursuant to Article 378(2), and the provision of paragraph(1) of the preceding Article.
- (2) The provision of Article 327 shall apply *mutatis mutandis* to the final judgment set forth in the preceding paragraph.

#### Article 381 (Non-Penal Fine)

- (1) Where a person who has sought a trial and judicial decision by way of an action



on small claim has made a false notification of the number of times set forth in Article 368(3), the court, by an order, shall punish him/her by a non-penal fine of not more than 100,000 yen.

- (2) An immediate appeal may be filed against the order set forth in the preceding paragraph.
- (3) The provision of Article 189 shall apply *mutatis mutandis* to a judicial decision of a non-penal fine made under the provision of paragraph (1).

## **Part VII Demand Procedure**

### **Chapter I General Provisions**

#### Article 382 (Requirements for Demand for Payment)

With regard to a claim for payment of a certain amount of money or any other alternatives or securities, a court clerk, upon the petition of the creditor, may issue a demand for payment; provided, however, that this shall apply only where such demand may be served in Japan by a method other than making a service by publication.

#### Article 383 (Petition for Demand for Payment)

- (1) A petition for demand for payment shall be filed with a court clerk of the summary court that has jurisdiction over the location of the general venue of the debtor.
- (2) A petition for demand for payment with regard to the claim specified in each of the following items may also be filed with a court clerk of the summary court that has jurisdiction over the place specified in the respective items:
  - (i) A claim against a person who has a business office or other office, which relates to the business conducted at such business office or other office  
The location of the business office or other office in question
  - (ii) A claim for payment of money for a bill or note or a check, and a claim incidental thereto  
The place of payment of the bill or note or the check

#### Article 384 (Application *Mutatis Mutandis* of Provisions Concerning Action)

With regard to a petition for demand for payment, unless contrary to the nature thereof, the provisions concerning an action shall apply *mutatis mutandis*.

#### Article 385 (Dismissal of Petition without Prejudice)

- (1) If a petition for demand for payment is in violation of the provisions of Article 382 or Article 383 or it is obvious, from the purport of the petition, that the claim

is groundless, such petition shall be dismissed without prejudice. The same shall apply to the part of a claim for which a demand for payment may not be issued.

- (2) The disposition made under the provision of the preceding paragraph shall become effective when a notice thereof is given by a method that is considered to be appropriate.
- (3) An objection to the disposition set forth in the preceding paragraph shall be made within an unextendable period of one week from the day on which the notice is received.
- (4) No appeal may be entered against a judicial decision on the objection set forth in the preceding paragraph.

#### Article 386 (Issuance of Demand for Payment, etc.)

- (1) A demand for payment shall be issued without interrogating the debtor.
- (2) With regard to a demand for payment, the debtor may make an objection to demand to the summary court to which the court clerk who has issued the demand belongs.

#### Article 387 (Matters to Be Stated in Demand for Payment)

A demand for payment shall state the following matters, and it shall be accompanied by a supplementary note to the effect that if the debtor does not make an objection to demand within two weeks from the day on which he/she has received a service of the demand for payment, provisional execution shall be declared upon the petition of the creditor:

- (i) The statement to order the payment set forth in Article 382
- (ii) The object and statement of claim
- (iii) The parties and statutory agents

#### Article 388 (Service of Demand for Payment)

- (1) A demand for payment shall be served upon the debtor.
- (2) A demand for payment shall become effective when it is served upon the debtor.
- (3) If it is impossible to serve a demand for payment due to the fact that the debtor's domicile, residence, business office or other office or workplace does not exist at the place proposed by the creditor, a court clerk shall notify the creditor to that effect. In this case, if the creditor does not propose, within an unextendable period of two weeks from the day on which he/she has received the notice, a place where a service is to be made other than the place previously proposed, he/she shall be deemed to have withdrawn the petition for demand for payment.

#### Article 389 (Correction of Demand for Payment)

- (1) The provisions of Article 74(1) and (2) shall apply mutatis mutandis to a

demand for payment.

- (2) If a lawful objection to demand is made after a declaration of provisional execution, no objection may be made to a disposition of correction made under the provision of Article 74(1) as applied mutatis mutandis pursuant to the preceding paragraph.

#### Article 390 (Objection to Demand Prior to Declaration of Provisional Execution)

If a lawful objection to demand is made prior to a declaration of provisional execution, the demand for payment shall cease to be effective to the extent of the objection to demand.

#### Article 391 (Declaration of Provisional Execution)

- (1) If the debtor does not make an objection to demand within two weeks from the day on which he/she has received a service of a demand for payment, a court clerk, upon the petition of the creditor, shall declare provisional execution, while attaching to the demand for payment a supplementary note of the amount of expenses for the demand procedure; provided, however, that this shall not apply where an objection to demand is made prior to the declaration.
- (2) A declaration of provisional execution shall be stated in a demand for payment, and such demand for payment shall be served upon the parties; provided, however, that with the consent of the creditor, a demand for payment containing such statement may be sent to the creditor, in lieu of making a service thereof upon him/her.
- (3) The provisions of Article 385(2) and (3) shall apply mutatis mutandis to a disposition to dismiss without prejudice the petition set forth in paragraph (1) and an objection to such disposition.
- (4) An immediate appeal may be filed against a judicial decision on the objection set forth in the preceding paragraph.
- (5) The provisions of Article 260 and Article 388(2) shall apply mutatis mutandis to the declaration of provisional execution set forth in paragraph (1).

#### Article 392 (Loss of Effect of Demand for Payment upon Expiration of Period)

If the creditor does not make a petition for declaration of provisional execution within 30 days from the time when he/she may file such petition, the demand for payment shall cease to be effective.

#### Article 393 (Objection to Demand after Declaration of Provisional Execution)

When an unextendable period of two weeks has expired after the day on which the debtor has received a service of a demand for payment with a declaration of provisional execution, he/she may not make an objection to demand against the

demand for payment.

Article 394 (Dismissal without Prejudice of Objection to Demand)

- (1) A summary court, when it finds that an objection to demand is unlawful, shall dismiss without prejudice the objection to demand by an order even where the claim pertaining to the objection to demand is subject to the jurisdiction of a district court.
- (2) An immediate appeal may be filed against the order set forth in the preceding paragraph.

Article 395 (Transfer to Suit upon Objection to Demand)

If a lawful objection to demand is made, with regard to the claim pertaining to the objection to demand, it shall be deemed that an action is filed, at the time of filing of the petition for demand for payment, with the summary court to which the court clerk who has issued the demand for payment belongs or the district court that has jurisdiction over the location of such summary court, depending on the value of the subject matter of the claim. In this case, expenses for the demand procedure shall constitute part of the court costs.

Article 396 (Effect of Demand for Payment)

If no objection to demand is made against a demand for payment with a declaration of provisional execution or if an order to dismiss without prejudice an objection to a demand becomes final and binding, the demand for payment shall have the same effect as a final and binding judgment.

**Chapter II Special Provisions for Demand Procedure by Means of Electronic Data Processing System**

Article 397 (Petition for Demand for Payment by Means of Electronic Data Processing System)

A petition for a demand for payment may also be filed, by means of an electronic data processing system, with a court clerk of a summary court specified by the Rules of the Supreme Court as a court that shall handle a demand procedure by means of an electronic data processing system (hereinafter referred to as a "designated summary court" in this Chapter), as provided for by the Rules of the Supreme Court, in the case prescribed in Article 383 as well as in cases where the summary court prescribed in said Article is a summary court separately specified by the Rules of the Supreme Court.

Article 398

- (1) If a lawful objection to demand is made against a demand for payment issued through the demand procedure based on a petition for demand for payment that is filed by means of an electronic data processing system pursuant to the provision of the main clause of Article 132-10(1), with regard to the claim pertaining to the objection to demand, it shall be deemed that an action is filed, at the time of filing of the petition for demand for payment, with the summary court prescribed in Article 383 to which the court clerk who has issued the demand for payment belongs or a summary court specified separately by the Rules of the Supreme Court as set forth in the preceding Article or the district court that has jurisdiction over the location of either summary court, depending on the value of the subject matter of the claim.
- (2) In the case referred to in the preceding paragraph, if there are two or more applicable summary or district courts prescribed in said paragraph, with regard to the claim pertaining to the objection to demand, it shall be deemed that, if said applicable courts include the summary court prescribed in Article 383(1) or the district court that has jurisdiction over the location of such summary court, an action is filed with any of these courts, or otherwise, an action is filed with the summary court that has jurisdiction over the place specified in paragraph (2) (i) of said Article or the district court that has jurisdiction over the location of such summary court.
- (3) Notwithstanding the provision of the preceding paragraph, when 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 court prescribed in paragraph (1), it shall be deemed that an action is filed with such designated court.

Article 399 (Notice of Disposition by Means of Electronic Data Processing System)

- (1) With regard to a notice of a disposition given by a court clerk of a designated summary court concerning a demand procedure based on a petition for demand for payment that is filed by means of an electronic data processing system pursuant to the provision of the main clause of Article 132-10(1), if it shall be given by means of a document, etc. pursuant to the provisions of this Code or other laws and regulations concerning such notice of a disposition, notwithstanding the provisions of said laws and regulations, an electronic data processing system may be applied to give such notice as provided for by the Rules of the Supreme Court.
- (2) The provisions of Article 132-10(2) to (4) shall apply mutatis mutandis to a notice of a disposition given by a court clerk of a designated summary court pursuant to the provision of the preceding paragraph.
- (3) Notwithstanding the provision of Article 132-10(3) as applied mutatis mutandis pursuant to the provision of the preceding paragraph, with the consent of the

creditor who is to receive a notice of a disposition given under the provision of paragraph (1), the notice of the disposition shall be deemed to have arrived at the creditor when the information pertaining to the disposition is recorded, as provided for by the Rules of the Supreme Court, onto a file stored in the computer used in the court, and a notice concerning such record is given to the creditor.

#### Article 400 (Preparation, etc. in the Form of Electromagnetic Record)

- (1) With regard to a demand procedure based on a petition for demand for payment that is filed by means of an electronic data processing system pursuant to the provision of the main clause of Article 132-10(1), for which a court clerk shall be in charge of the preparation, etc. (meaning the preparation or retention; hereinafter the same shall apply in this Article and paragraph (1) of the following Article) of a document, etc. pursuant to the provisions of this Act and other laws and regulations, notwithstanding the provisions of said laws and regulations, a court clerk of a designated summary court may conduct, in lieu of the preparation, etc. of a document, etc., preparation, etc. of an electromagnetic record pertaining to the document, as provided for by the Rules of the Supreme Court.
- (2) The provisions of Article 132-10(2) and (4) shall apply mutatis mutandis to the preparation, etc. of an electromagnetic record conducted by a court clerk of a designated summary court pursuant to the provision of the preceding paragraph.

#### Article 401 (Treatment of Case Record in the Form of Electromagnetic Record)

- (1) When, with regard to such part of a case record concerning a demand procedure, which pertains to a petition that is filed by means of an electromagnetic data processing system pursuant to the provision of the main clause of Article 132-10(1) or for which the preparation, etc. of an electromagnetic record is conducted pursuant to the provision of paragraph (1) of the preceding Article (hereinafter such part shall be generally referred to as the "electromagnetic record part" in this Article), a request for inspection, etc. of a case record is made under the provisions of Article 91(1) or (3), a court clerk of a designated summary court shall print out, in the form of a document, the content of the electromagnetic record part recorded onto a file stored in the computer used in the designated summary court, and conduct an inspection, etc. of the case record by means of such document. The same shall apply to serving or sending a document pertaining to the preparation, etc. of an electromagnetic record.
- (2) If a lawful objection to demand is made against a demand for payment issued through the demand procedure based on a petition for demand for payment that is filed by means of an electronic data processing system pursuant to the provision of the main clause of Article 132-10(1), the court with which an action shall be deemed to have been filed pursuant to the provision of Article 398 shall print out,

in the form of a document, the content of the electromagnetic record part, and conduct an inspection, etc. of the case record by means of such document.

Article 402 (Petition for Demand for Payment Filed by Means of Document in Designated Form through Demand Procedure Handled by Means of Electromagnetic Data Processing System)

- (1) To a court clerk of a summary court specified by the Rules of the Supreme Court as a court that shall handle a demand procedure by means of an electronic data processing system (meaning an electronic data processing system that connects multiple computers used in the court to one another by telecommunication lines), a petition for demand for payment may also be filed by means of a document prepared in a form that conforms to the form specified by the Rules of the Supreme Court in the case prescribed in Article 383 as well as in cases where the summary court prescribed in said Article is a summary court separately specified by the Rules of the Supreme Court.
- (2) The provision of Article 398 shall apply *mutatis mutandis* where a lawful objection to demand is made against a demand for payment issued through the demand procedure based on a petition for demand for payment that is filed by means of a document prepared in the form prescribed in the preceding paragraph.

**Part VIII Stay of Execution**

Article 403 (Judicial Decision of Stay of Execution)

- (1) In the following cases, the court, upon petition, may make an order of a temporary stay of compulsory execution while requiring or not requiring the provision of security, or simultaneously may make an order to the effect that compulsory execution should be commenced or continued with security or an order of revocation of the executive measure already taken while requiring the provision of security; provided, however, that an order of commencement or continuation of compulsory execution may be made only in the cases set forth in item (iii) to item (vi):
  - (i) Where an appeal set forth in Article 327(1) (including cases where applied *mutatis mutandis* pursuant to Article 380(2); the same shall apply in the following Article) or an action for retrial is filed, and the circumstances alleged as reasons for appeal appear to be legally well-grounded, a *prima facie* showing is made on factual matters, and a *prima facie* showing is made to the effect that execution is likely to cause damage for which compensation cannot be made
  - (ii) Where a final appeal or a petition for acceptance of final appeal is filed against a judgment with a declaration of provisional execution, and a *prima facie* showing is made with regard to the circumstances under which the judgment in

prior instance should be quashed and to the effect that execution is likely to cause damage for which compensation cannot be made.

- (iii) Where an appeal to the court of second instance is filed against a judgment with a declaration of provisional execution or an objection to demand is made against a demand for payment with a declaration of provisional execution (excluding an appeal to the court of second instance and objection to demand set forth in the following item) , and a prima facie showing is made to the effect that it cannot be said that there are no circumstances under which the judgment in prior instance or demand for payment should be revoked or modified or that execution is likely to cause substantial damage.
  - (iv) Where, with regard to a claim for payment of money for a bill or note or a check and a claim for damages at the statutory interest rate that is incidental thereto, an appeal to the court of second instance is filed against a judgment with a declaration of provisional execution or an objection to demand is made against a demand for payment with a declaration of provisional execution, and a prima facie showing is made with regard to the circumstances under which the judgment in prior instance or demand for payment should be revoked or modified.
  - (v) Where an objection is made to a judgment of an action on bills and notes or action on checks with a declaration of provisional execution or an objection is made to a judgment of an action on small claim with a declaration of provisional execution, and if a prima facie showing is made with regard to the circumstances under which the judgment in prior instance should be revoked or modified.
  - (vi) Where an action set forth in Article 117(1) is filed, and if the circumstances alleged for modification appear to be legally well-grounded, and a prima facie showing is made on factual matters.
- (2) No appeal may be entered against a judicial decision on the petition prescribed in the preceding paragraph.

#### Article 404 (Judicial Decision by Court of Prior Instance)

- (1) Where an appeal set forth in Article 327(1) is filed, a final appeal or a petition for acceptance of final appeal is filed against a judgment with a declaration of provisional execution, or an appeal to the court of second instance is filed against a judgment with a declaration of provisional execution, if the case record is stored at the court of prior instance, that court shall make a judicial decision on the petition prescribed in paragraph (1) of the preceding Article.
- (2) The provision of the preceding paragraph shall apply mutatis mutandis where an objection to demand is made against a demand for payment with a declaration of provisional execution.



Article 405 (Provision of Security)

- (1) Where security is to be provided pursuant to the provisions of this Part, if it is provided as a statutory deposit, such deposit shall be made at the official depository located in the jurisdictional district of the district court that has jurisdiction over the location of the court that has ordered the provision of security or of the execution court.
- (2) The provisions of Article 76, Article 77, Article 79 and Article 80 shall apply *mutatis mutandis* to the security set forth in the preceding paragraph.