

CY Japan Legal Update

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Litigation and Dispute Resolution

Japanese New Class Action Law comes into Force on October 1, 2016

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On October 1, 2016, the Act on Special Measures Concerning Civil Court Proceedings for the Collective Redress for Property Damage Incurred by Consumers (Act No. 96 of December 11, 2013), which provides for new Japanese class action proceedings, will come into force.

This Japanese class action is a system for collective redress of property damage for “consumer contracts” (contracts other than employment contracts which are contracts between individual consumers and business operators) and establishes a two stage litigation system. Namely, in the procedure for the first stage, a Specified Qualified Consumer Organization certified by the Prime Minister becomes the plaintiff and the court will determine whether the business operator owes an obligation for monetary payment due to a common cause among a considerable number of consumers. If the consumer organization prevails in the first stage, in the proceeding for the second stage, the individual consumers will join the proceeding and the court will determine the existence of the claim or the amount (referred to as “simplified determination proceeding”).

In contrast to the US class action, in the Japanese class action, the cases subject to class action are limited to a certain degree. Namely, the cases are limited to monetary payment claims which are (1) claims for performance of obligations, (2) claims related to unjust enrichment, (3) claims for compensation of damages due to non-performance of obligations, (4) claims for compensation of damages based on liability for defect warrant and (5) claims for compensation of damages based on a tort (limited to those under the Civil Code). Consequential damages (kakudaisongai), lost profits, physical injuries (jinshinsongai), and pain and suffering (isharyou) are beyond the scope of the Japanese class action. The defendants are business operators who are counterparties of the consumer contracts, however, in regard to the claim in the above (5), in addition to business operators who are the counterparty of consumer agreements, business operators who perform obligations (even without having a contractual relationship directly with consumers), and business operators who solicit or have others solicit or promote solicitation of execution of consumer contracts will also be defendants.

As well, in the Japanese class action system, in contrast with US class action, plaintiffs are limited to Specified Qualified Consumer Organizations. Specified Qualified Consumer Organizations are organizations certified by the Prime Minister (it is reported that it is expected that several organizations will be certified in January 2017) as satisfying requirements including, in particular, properly conducting continuously for a reasonable period services involved in demand of an injunction among qualified consumer organizations (there are currently 14 organization certified nation-wide under the Consumer Contract Act and conducting activities such as demand for court injunction for the protection of consumer interests).

Under the Japanese class action system, foreign business operators may become defendants. Even if there is an agreement between the foreign business operator and consumers that the court of jurisdiction will be a foreign court, under the new class action law, such agreement on jurisdiction cannot prevent an Specified Qualified Consumer Organization from bringing a class action lawsuit (i.e., the proceedings for the first stage described above) and the participation of consumers in a “simplified determination proceeding” cannot be excluded. In civil litigation in Japan, jury system and punitive damages are not used.

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