

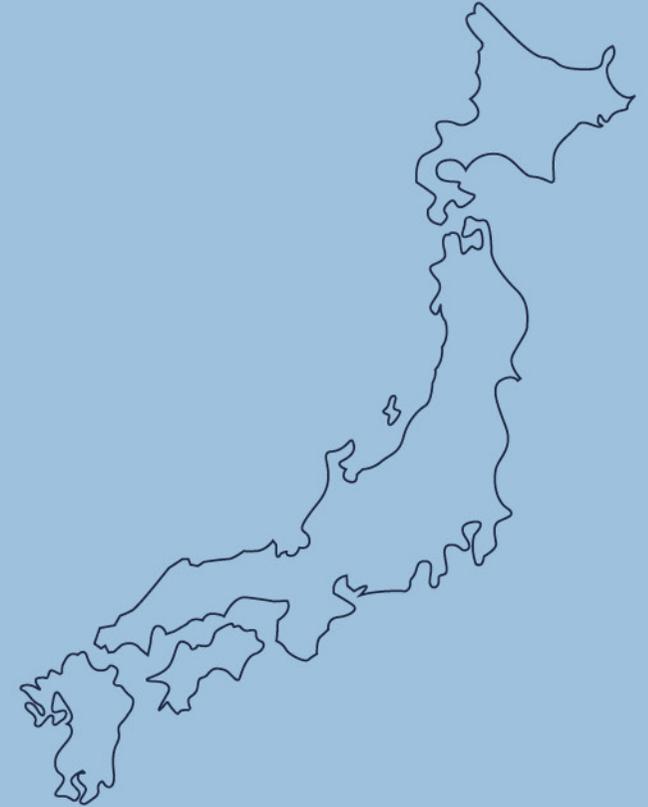
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New Technologies
— New Justice

NEW TECHNOLOGIES = NEW LAW

National regulations

Japan





HELŚIŃSKA FUNDACJA
PRAW CZŁOWIEKA

A QUESTIONNAIRE FOR LAWYERS FROM

DIFFERENT JURISDICTIONS

The Helsinki Foundation for Human Rights and the Clifford Chance Foundation are implementing the project *New technologies = new law. The rules of procedure of our time or a threat to human rights?*. The project aims to identify the main opportunities and threats associated with the increasing impact of new technologies and Artificial Intelligence on the justice system. This questionnaire is designed to explore the solutions existing in different countries and will provide a foundation for further research within the project.

Country	JAPAN
Date	27 November 2020, complemented 23 December 2020
Submitted by (name of the contact person)	Tatsuhiko Kamiyama Natsuko Sugihara Machiko Ishii

PRE-TRIAL PHASE

1.	Is it required to use any alternative forms of dispute resolution in the country where the Office operates, before a case is brought to court? Can such alternative forms (e.g. mediation, negotiations) be conducted online?	<p>Generally, it is not required to use any alternative forms of dispute resolution before a case is brought to court for litigation under Japanese law. However, there are some special cases which require certain procedures to be conducted before bringing such cases to court for litigation.</p> <p>As regards cases concerning family affairs (excluding certain specifically designated cases), a petition for mediation must be filed first with a family court before filing an action for litigation at court.¹</p> <p>As regards cases in respect of claims for an increase or decrease in the amount of rent for land or buildings, a petition for mediation must be filed first at court before filing an action for litigation at court.²</p> <p>As regards administrative case litigation (e.g., litigation for an appeal against the exercise of public authority by an administrative agency, or litigation relating to a legal relationship under public law), if a specific law stipulates that no litigation can be commenced until a certain administrative review by an administrative agency is made (e.g., tax related law), such litigation cannot be commenced until such administrative review is conducted.³</p>
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¹ Japan, Article 257, Article 244 of the Domestic Relations Case Procedure Act (家事事件手続法(平成 23 年 5 月 25 日法律第 52 号)), Act No. 52 of 25 May 2011.

² Japan, Article 24-2 of the Civil Conciliation Act (民事調停法(昭和 26 年 6 月 9 日法律第 222 号)), Act No. 222 of 9 June 1951.

³ Japan, Proviso to Article 8, Paragraph 1 of the Administrative Case Litigation Act (行政事件訴訟法(昭和 37 年 5 月 16 日法律第 139 号)), Act No. 129 of 16 May 1962.

		<p>Although part of the procedures of the alternative forms of dispute resolution described above can be conducted by telephone conference or video conference (such video conference can be participated in only from a courtroom) when the relevant court permits, they cannot be conducted online at the moment.⁴⁵ However, as explained below, from February 2020, the courts commenced trials for using MS Teams for certain procedures in civil litigation for the arrangement of issues and evidence and thus such trials may be extended to the alternative forms of dispute resolutions above in the near future.</p>
<p>ACCESS TO COURTS AND NEW TECHNOLOGIES</p>		
<p>2.</p>	<p>Is it possible to remotely participate in a court hearing in the country where the Office operates? If so, please indicate in what types of cases remote participation is possible, or what requirements entities must meet to be able to do so. Please also indicate which participants in the trial (parties, witnesses, experts, etc.) have the opportunity to participate remotely in a court hearing. Please specify if remote participation is mandatory or optional (at the request of the parties).</p>	<p>Basically, it is not permitted to remotely participate in a court hearing under Japanese law. However, there are some specific procedures for the arrangement of issues and evidence, for the discussion of the litigation schedule, or for the examination of witnesses, which can be participated in remotely as described below. Such remote participation is not mandatory.</p> <p><u>Civil litigation</u></p> <ul style="list-style-type: none"> • The parties (in some procedures, only one party) can participate in procedures for the arrangement of issues and evidence (the process of specifying the issues and evidence, such as what facts are under dispute between the parties and what kind of examination of evidence is to be conducted in order to prove such facts) or for discussion of the litigation schedule by telephone conference or video conference (such video conference can be participated in only from a court located in another place), when the court

⁴ Japan, Article 22 of the Civil Conciliation Act (民事調停法(昭和 26 年 6 月 9 日法律第 222 号)), Act No. 222 of 9 June 1951. Japan, Article 47 of the Non-Contentious Case Procedures Act (非訟事件手続法(平成 23 年 5 月 25 日法律第 51 号)), Act No. 51 of 25 May 2011.

⁵ Japan, Article 258, and Article 54 of the Domestic Relations Case Procedure Act (家事事件手続法(平成 23 年 5 月 25 日法律第 52 号)), Act No. 52 of 25 May 2011.

		<p>permits.⁶ In addition, as mentioned in the answer to question 1 above, from February 2020, the courts commenced trials for using MS Teams for procedures for the arrangement of issues and evidence.</p> <ul style="list-style-type: none"> • The examination of a witness can be conducted by video conference (in which the witness participates in the court hearing from another court through the court's video conference system), if (i) the witness resides in a distant location or (ii) the witness's mental wellbeing is likely to be negatively affected if forced to testify live in a courtroom.⁷ In addition, only for small claims litigation at a summary court, examination of a witness by telephone conference in which the witness testifies over the telephone is available, if a party requests and the court considers it appropriate.⁸ • For litigation in which a technical advisor is involved to assist judges (e.g., medical cases, architectural cases), such technical advisor can participate in court hearings by telephone conference or video conference (such video conference can be participated in only from a court located in another place), if the court considers it appropriate.⁹ • When an expert witness states an opinion, such statement can be expressed by video conference (in which such expert witness
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⁶ Japan, Article 170 Paragraph 3, and Article 176 Paragraph 3 of the Code of Civil Procedure (民事訴訟法(平成 8 年 6 月 26 日法律第 109 号)), Act No. 109 of 26 June 1996. Japan, Article 96 Paragraph 1 of the Rules of Civil Procedure (民事訴訟規則(平成 8 年 12 月 17 日最高裁判所規則第 5 号)), Rules of the Supreme Court No. 5 of 17 December 1996.

⁷ Japan, Article 204 of the Code of Civil Procedure (民事訴訟法(平成 8 年 6 月 26 日法律第 109 号)), Act No. 109 of 26 June 1996. Japan, Article 123 of the Rules of Civil Procedure (民事訴訟規則(平成 8 年 12 月 17 日最高裁判所規則第 5 号)), Rules of the Supreme Court No. 5 of 17 December 1996.

⁸ Japan, Article 372 Paragraph 3 of the Code of Civil Procedure (民事訴訟法(平成 8 年 6 月 26 日法律第 109 号)), Act No. 109 of 26 June 1996. Japan, Article 226 of the Rules of Civil Procedure (民事訴訟規則(平成 8 年 12 月 17 日最高裁判所規則第 5 号)), Rules of the Supreme Court No. 5 of 17 December 1996.

⁹ Japan, Article 92-3 of the Code of Civil Procedure (民事訴訟法(平成 8 年 6 月 26 日法律第 109 号)), Act No. 109 of 26 June 1996.

		<p>participates in the court hearing from another court through the video conference system of the court), if the court considers it appropriate.¹⁰</p> <p><u>Criminal cases</u></p> <ul style="list-style-type: none"> • Examination of a witness can be conducted by video conference (in which the witness participates in the court hearing from another court through the video conference system of the court), if a) (i) the witness's mental wellbeing is likely to be significantly negatively affected by going to the same site as where the courtroom is located, (ii) any act which may damage or frighten the witness may be conducted due to the witness's attendance at the site, or (iii) it is quite difficult for the witness to attend the site, and b) the court considers it appropriate to adopt such method.¹¹ <p>On 21 February 2020, the Ministry of Justice of Japan established a special committee to discuss the implementation of Information Technologies in civil litigation processes and they are currently discussing it toward the future amendment of the relevant laws. Although the Special Committee has not unambiguously clarified when their works will be finalized, as they are still scheduled to hold meetings after April 2021 as well, we expect their works will be finalized by around April 2021. For completeness of information, in June 2019 the Cabinet decided that the Japanese government would take measures with a view to revising the Civil Procedure Code by 2022.</p>
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¹⁰ Japan, Article 215-3 of the Code of Civil Procedure (民事訴訟法(平成 8 年 6 月 26 日法律第 109 号)), Act No. 109 of 26 June 1996. Japan, Article 132-5 of the Rules of Civil Procedure (民事訴訟規則(平成 8 年 12 月 17 日最高裁判所規則第 5 号)), Rules of the Supreme Court No. 5 of 17 December 1996.

¹¹ Japan, Article 157-6, Paragraph 2 of the Code of Criminal Procedure (刑事訴訟法(昭和 23 年 7 月 10 日法律第 131 号)), Act No. 131 of 10 July 1948. Japan, Article 107-3 of the Rule of Criminal Procedure (刑事訴訟規則(昭和 23 年 12 月 1 日最高裁判所規則第 32 号)), Rules of the Supreme Court No. 32 of 1 December 1948.

		Also, the deliberations of the committee have covered the following: the on-line submission of complaints, etc., the inspection of case records based on the premise of computerization of case records, the delivery of litigation materials on-line, the establishment of a system for electronic payment of fees, etc.
3.	If you have answered question 2 in the affirmative, please indicate whether the location of a person remotely attending a court hearing is legally regulated. If so, please indicate specific requirements.	No, other than that, as described in the answer to question 2 above, a video conference can be participated in only from a court.
4.	If you have answered question 2 in the affirmative, please indicate whether the remote participation takes the form of a video conference.	As described in the answer to question 2 above, a video conference is available for some procedures.
5.	If you have answered question 4 in the affirmative, please indicate what video conferencing platform is used. Is it a commonly available platform (such as Skype, Zoom, MS Teams), or is it a platform specifically developed for the courts?	As described in the answer to question 2 above, a video conference from another court or MS Teams from a lawyer's office is available for some procedures. By 14 December 2020, MS Teams had been introduced by the Intellectual Property High Court and 50 District Courts throughout Japan in civil litigation. Lawyers can participate in video conferences via MS Teams when civil litigation is conducted by these courts, and the applicable procedures for using video conference are the "procedures for the arrangement of issues" mentioned above. Currently, such video conferencing is not set out under the Civil Procedure Code, and whether the courts use such video conferencing in each case depends on each court's discretion, and also courts cannot force lawyers who do not want to use video conferencing to do so.
6.	If it is possible to participate remotely in a court hearing in a form other than a video conference (e.g. via an audio link or a telephone call), please indicate the form(s) available.	As described in the answer to question 2 above, a telephone conference is available for some procedures.

7.	When remote participation is possible, please indicate if all remote participants can be watched during the entire duration of a court hearing.	As described in the answer to question 2 above, all remote participants can be watched during that procedure if a video conference participated in from another court is used.
8.	When remote participation is possible, please indicate how confidential discussions between the attorneys and the parties can be carried out.	As regards the remote participations described in the answer to question 2, there is no such specific treatment for confidential discussions.
9.	Please indicate how it is possible to submit documents while remotely attending a court hearing.	As regards civil litigation, except for certain important documents, most documents can be submitted to the court and sent to the counterparty by facsimile. ¹² There is no special treatment for the submission of documents while remotely attending a court hearing, but the use of facsimile to send documents for examination of a witness and a statement of an expert witness in civil litigation is stipulated. ¹³
10.	Is it possible to submit pleadings electronically in the country where the Office operates? If so, please indicate in what types of cases pleadings can be submitted electronically.	Only pleadings for certain demands for payment of money or claims for delivery of securities or other fungibles can be submitted electronically through an online system operated by the courts. ¹⁴
11.	If you have answered question 10 in the affirmative, please indicate how the pleadings are submitted (e.g. by e-mail or via a special platform), what additional formal requirements are imposed on the pleadings and how the identity of the person	As described in the answer to question 10 above, such pleadings are submitted via a special platform operated by the courts. In order to use such submission of pleadings, it is necessary to download specific software and to acquire an electronic certificate regarding electronic signatures from any

¹² Japan, Article 3, and Article 47 Paragraph 1 of the Rules of Civil Procedure (民事訴訟規則(平成 8 年 12 月 17 日最高裁判所規則第 5 号)), Rules of the Supreme Court No. 5 of 17 December 1996.

¹³ Japan, Article 123 Paragraph 3, Article 132-5 Paragraph 2, and Article 226 Paragraph 4 of the Rules of Civil Procedure (民事訴訟規則(平成 8 年 12 月 17 日最高裁判所規則第 5 号)), Rules of the Supreme Court No. 5 of 17 December 1996.

¹⁴ Japan, Articles 397 to 402 of the Code of Civil Procedure (民事訴訟法(平成 8 年 6 月 26 日法律第 109 号)), Act No. 109 of 26 June 1996.

	submitting a pleading is verified to prevent impersonation of a party to the proceedings.	of the relevant public authorities or designated operators (for identification of the person). ¹⁵
12.	Please indicate if the parties (or their attorneys) have remote access to the case file in the country where the Office operates? If so, please indicate the type of remote access.	No. However, in the proceedings using the special platform in the answers to questions 10 and 11, the claimant could see the status of the proceedings through such platform.
ARTIFICIAL INTELLIGENCE AND COURTS		
13.	Do the courts in the country where the Office operates use any tools that incorporate Artificial Intelligence? If so, please indicate whether such tools are used exclusively for back-office purposes or (also) in external contacts (e.g. chatbots)?	Based on the public information available to us, the courts are not using any tools that incorporate Artificial Intelligence at the moment.
14.	Does the justice system in the country where the Office operates use Artificial Intelligence tools to identify groups of individuals who are more likely to commit a given type of crime (e.g. tax offences)?	No, based on the public information available to us.
15.	Please indicate if in the country where the Office operates the parties have general access to tools facilitating the submission of a pleading in simple cases (e.g. by completing an online form available on the court's website)?	Not as such, however, the courts publish general explanations/instructions about legal proceedings at court and the relevant template documents on their websites.

¹⁵ Japan, Article 3 of the Rules regarding Demand for Payment using Electronic Data Processing Systems set out in Article 132-10 Paragraph 1 of the Code of Civil Procedure (民事訴訟法第 132 条の 10 第 1 項に規定する電子情報処理組織を用いて取り扱う督促手続に関する規則(平成 18 年 7 月 26 日最高裁判所規則第 10 号)), Rules of the Supreme Court No. 10 of 26 July 2006.

16.	Has the justice system in the country where the Office operates automated a certain range of its functions (e.g. certain administrative activities)? If so, please indicate what technologies are used for automation purposes?	No, not to the extent we know.
ONLINE COURTS		
17.	Are there any court proceedings in the country where the Office operates that are entirely conducted online? If so, please indicate which types of proceedings are conducted online (e.g. small claims cases, family cases, etc.) and specify if the online mode of such proceedings is mandatory or optional (at the request of the parties).	No. However, as described in the answers to questions 10 and 11, pleadings for certain demands for payment of money or claims for delivery of securities or other fungibles can be submitted electronically through the online system operated by the courts. The use of this online system is optional for the claimant.
18.	Are there any online courts (courts accessible only via the Internet, whose proceedings are conducted exclusively and entirely online) in the country where the Office operates? If so, please indicate the scope of jurisdiction of such courts.	No.
19.	If you have answered question 17 or 18 in the affirmative, please indicate if appellate proceedings are also conducted online.	No.
PROCEDURAL GUARNATEES AND NEW TECHNOLOGIES		

20.	If you have answered question 17 or 18 in the affirmative, please indicate whether the country where the Office operates has implemented any mechanisms aimed to grant legally required levels of the access to court to digitally excluded persons. Please indicate specified mechanisms (e.g. possibility of conducting the proceedings, otherwise held online, in traditional form due to justified request of the party).	N/A
21.	If you have answered question 17 or 18 in the affirmative, please indicate how the principle of open proceedings is ensured.	N/A
22.	If you have answered question 17 or 18 in the affirmative, please indicate how is the sensitive data from those proceedings being archived.	N/A
23.	Has the Court of the highest instance in the country where the Office operates produced any rulings on the standards of procedural fairness of the online proceedings?	No.
24.	Are there any legal regulations in the country where the Office operates in place concerning the participation of persons deprived of liberty in online proceedings? In particular, are there any legal requirements concerning the surroundings and the conditions of the participation of the accused in online proceedings in order to avoid indirect infringements on the presumption of innocence rule?	No.
25.	Is there any particular category of cases in country where the Office operates, that requires party to be physically present in the courtroom during the proceedings (e.g. pre-trial detention proceedings),	N/A. There is no basic admissibility of online proceedings.

	despite basic admissibility of the online proceedings and online participation of the parties in those proceedings?	
26.	Is the AI based software being used during the evidence proceedings in the country where the Office operates?	No.
27.	Has the country where the Office operates implemented any specific legislation concerning the access to assigned counsel (legal aid counsel/public defender) in online proceedings?	No.
28.	Are there any trainings dedicated to technical aspects of the participation in online proceedings being organized for judges, prosecutors and other legal professionals in the country where the Office operates?	No.
29.	Are new technologies used to alleviate the stress associated with participating in court proceedings that may potentially be experienced by vulnerable persons (e.g. victims of violent crimes, children) in the country where the Office operates? If so, please indicate how such technologies are used.	As described in the answer to question 2 above, a video conference system is used for the examination of those kinds of witnesses.
30.	Please indicate if any solutions are used in the country where the Office operates to adjust the digital tools for accessing courts to the needs of persons with disabilities, the elderly or those with difficulties in operating a computer. If yes, please specify these solutions.	As described in the answer to question 2 above, a video conference system is used for the examination of those kinds of witnesses.
31.	Please indicate if in the country where the Office operates the parties have general access to	N/A

	guidebooks covering the technical and legal aspects of the participation in online proceedings.	
32.	Has the country where the Office operates implemented any separate legal procedures concerning the proceedings in case of the computer or the Internet malfunction on either the parties or the Court behalf?	No.
33.	If you have answered question 32 in the affirmative, please indicate what are the actions taken to limit the possibility of parties deliberately obstructing the court proceedings (e.g. by intentionally disconnecting the Internet) without infringing on the parties rights in the case of genuine technical difficulties.	N/A
ADDITIONAL INFORMATION		
34.	If in the country in which the Office operates, the judiciary uses new technologies in a form that has not yet been included in any of the above questions or answers, please indicate it.	N/A.

New Technologies — New Justice is a joint project of the Helsinki Foundation for Human Rights and Clifford Chance.

In today's world, new technologies are present in virtually all spheres of life – and they are also becoming increasingly important for the modern justice system. The project seeks to examine the actual presence of new technologies in the justice system of Poland and around the world, as well as to identify the main risks associated with modern legal technologies and the most promising solutions to these risks. The advancing digitalisation of the justice system and the digital modernisation of the legal system is an inevitable consequence of the need to ensure that the legal system keeps up with the times. That is why the Helsinki Foundation for Human Rights and Clifford Chance work to identify solutions for improving the justice system to ensure that the rights and freedoms of individuals are not only respected but also exercised more easily.

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