

附录二：

日本民事调解法

**Japanese Civil Conciliation Act**

**Chapter I General Provisions**

Section 1 General Rules

**Article 1**

The purpose of this Act is to achieve resolution of civil disputes based on compromise between the parties and in accordance with reason and the circumstances of the disputes.

**Article 2**

When a civil dispute arises, a party may file a petition for conciliation with a court.

**Article 3**

Except as otherwise provided, a conciliation case shall be under the jurisdiction of the summary court that has jurisdiction over the location of the domicile, residence, business office, or any other office of the respondent, or the district court or summary court agreed to by the parties.

**Article 4**

(1) If the court receives a petition for a case that is not under its jurisdiction, it must transfer such case to the district court, family court, or summary court that has jurisdiction; provided, however, that when the court finds it particularly necessary to the processing of the case, the court may transfer all or part of the case to another court with jurisdiction or process the case by itself, notwithstanding the provisions on territorial jurisdiction.

(2) Even if the court receives a petition for a case that is under its jurisdiction, when the court finds it appropriate to the processing of the case, it may transfer all or part of the case to another court with jurisdiction, notwithstanding the provisions on territorial jurisdiction. 3.

#### **Article 5**

(1) The court shall carry out the conciliation using a conciliation committee; provided, however, that when the court finds it appropriate, conciliation may be carried out by a judge alone.

(2) The court shall, upon the petition of a party, carry out the conciliation using a conciliation committee, notwithstanding the provision of the proviso to the preceding paragraph.

#### **Article 6**

A conciliation committee shall be composed of a chief conciliator and two or more civil conciliation commissioners.

#### **Article 7**

(1) The chief conciliator shall be a judge designated by a district court.

(2) Civil conciliation commissioners who is a member of a conciliation committee shall be designated by the court for each case.

#### **Article 8**

(1) Civil conciliation commissioners shall participate in the conciliation carried out by the conciliation committee, and shall, as ordered by the court, with regard to other conciliation cases, state their opinions based on their expert knowledge and experience, hear opinions from the persons concerned with the case in order to resolve the dispute as commissioned, and perform other necessary affairs as specified by the Supreme Court in order to process conciliation cases.

(2) Civil conciliation commissioners shall serve part-time, and necessary matters concerning their appointment and dismissal shall be specified by the Supreme Court.

### **Article 9**

Civil conciliation commissioners shall be paid an allowance as separately provided by law, and shall also be paid travel expenses, a daily allowance, and accommodation expenses as specified by the Supreme Court.

### **Article 10 Deleted**

### **Article 11**

(1) A person with an interest in the outcome of conciliation may participate in conciliation proceedings, with the permission of the conciliation committee.

(2) The conciliation committee, when it finds it appropriate, may have any person with an interest in the outcome of conciliation participate in conciliation proceedings.

### **Article 12**

(1) When the conciliation committee finds it particularly necessary for conciliation, as a pre-conciliation measure, the conciliation committee may, upon the petition of a party, order to prohibit the respondent or any other person concerned with the case from changing the existing state of or disposing of any property, or order them to cease and desist from any act that would make it impossible or extremely difficult to achieve the subject matter of the conciliation.

(2) The measure set forth in the preceding paragraph shall not be enforceable.

### **Article 13**

When the conciliation committee finds that a case is unsuitable for conciliation due to its nature, or finds that a party has filed a petition for conciliation for an unjust purpose and without due cause, the conciliation committee may decide not to carry out the conciliation and close the case.

### **Article 14**

If there is no likelihood of the parties reaching any agreement or if the conciliation committee finds that the agreement reached is inappropriate, and the court does not issue an order set forth in Article 17, the conciliation committee may decide the concilia-

tion to be unsuccessful and close the case.

#### **Article 15**

The provisions Article 11 to the preceding Article inclusive shall apply mutatis mutandis to cases where conciliation is carried out by a judge alone.

#### **Article 16**

When an agreement is reached between the parties during conciliation and it is entered in a record, the conciliation is deemed successful, and such entry shall have the same effect as a judicial settlement.

#### **Article 17**

If conciliation being carried out by a conciliation committee is unlikely to be successful, and the court finds it appropriate, it may, by its own authority and to an extent that does not contradict the objectives of the parties' petitions, issue a necessary order to resolve the case after hearing the opinions of the civil conciliation commissioners composing said conciliation committee, giving consideration to the equitable treatment of the interests of both parties, and taking into account all relevant circumstances. Through said order, the court may order the payment of money, delivery of an object, or any other provision of economic benefit.

#### **Article 18**

(1) A party or any interested person may raise an objection to an order set forth in the preceding Article. The period for raising such an objection shall be two weeks from the day on which the party receives notice of the order.

(2) If an objection to an order is raised within the period set forth in the preceding paragraph, such order shall cease to be effective.

(3) If no objection is raised within the period set forth in paragraph(1), the order set forth in said paragraph shall have the same effect as a judicial settlement.

#### **Article 19**

If a case is closed pursuant to the provision of Article 14 (including cases where

applied mutatis mutandis pursuant to Article 15) or if an order ceases to be effective pursuant to the provision of paragraph(2) of the preceding Article, and the petitioner then files an action with regard to the claim for which conciliation was sought within two weeks from the day on which he/she receives notice to that effect, such action shall be deemed to have been filed at the time of the filing of the petition for conciliation.

#### **Article 20**

(1) When the court in charge of the case finds it appropriate, it may, by its own authority, refer the case to conciliation and process the case itself or have the case processed by a court with jurisdiction; provided, however, that this shall not apply to cases if the parties do not agree thereto after the completion of proceedings to arrange the issues and evidence of the case.

(2) If the case is referred to conciliation pursuant to the provision of the preceding paragraph, and the conciliation is successful or an order set forth in Article 17 becomes final and binding, the action shall be deemed withdrawn.

(3) If the court in charge of a case carries out the conciliation process itself pursuant to the provision of paragraph(1), notwithstanding the provision of Article 7, paragraph(1), the chief conciliator shall be designated by the court in charge of the case from among the judges assigned thereto.

#### **Article 21**

An immediate appeal may be filed against an order made in conciliation proceedings, as specified for by the Rules of the Supreme Court. The period for filing such an appeal shall be two weeks.

#### **Article 22**

Except as otherwise provided, the provisions of Part I of the Non-Contentious Cases Procedures Act( Act No. 14 of 1898) shall apply mutatis mutandis to conciliation, unless contrary to the nature thereof; provided, however, that the provision of Article 15 of said Act shall be excluded.

### **Article 23**

In addition to what is provided for in this Act, necessary matters concerning conciliation shall be specified by the Supreme Court.

## **Section 2 Civil Conciliator**

### **Article 23 –2**

(1) A civil conciliator shall be appointed by the Supreme Court from among attorneys who have served in the capacity thereof for not less than five years.

(2) A civil conciliator shall perform the duties necessary for processing conciliation cases, as provided for by this Act.

(3) A civil conciliator shall hold office for two years, and may be reappointed.

(4) A civil conciliator shall serve part-time.

(5) A civil conciliator shall not be dismissed during his/her term of office, except in any of the cases listed in the following items:

(i) where the civil conciliator comes to fall under any of the items of Article 7 of the Attorney Act( Act No. 205 of 1949) ;

(ii) where the civil conciliator is found to be mentally or physical incompetent to perform his/her duties; or

(iii) where the civil conciliator is found to have breached his/her obligation in 9 the course of his/her duties or committed any other misconduct so as to render him/her unfit to serve as a civil conciliator.

(6) In addition to what is provided for in this Act, necessary matters concerning the appointment and dismissal of civil conciliators shall be specified by the Rules of the Supreme Court.

### **Article 23 –3**

(1) A civil conciliator shall handle conciliation cases, as designated by the court.

(2) A civil conciliator may, in the course of processing conciliation cases that he/she handles, exercise the powers in relation to civil conciliation or special conciliation (including the powers vested in the chief conciliator) provided as those to be exercised

by a judge under the provisions of this Act( including the provisions of the Non-Contentious Cases Procedures Act as applied mutatis mutandis pursuant to Article 22 ) and the provisions of the Act on Special Conciliation Proceedings for Expediting Arrangement of Specified Debts, ( Act No. 158 of 1999 ) ,and may also exercise the following powers :

( i ) the powers in relation to civil conciliation provided as those to be exercised by a court under the provisions of Article 4 ,the proviso to Article 5 ,paragraph( 1 ) ,Article 7 ,paragraph( 2 ) ,Article 8 ,paragraph( 1 ) ,Article 17 ,Article 28 as applied mutatis mutandis pursuant to Article 30( including cases where applied mutatis mutandis pursuant to Article 33 ) ,Article 34 ,and Article 35 ;

( ii ) the powers provided as those to be exercised by the court under the provisions of the Non-Contentious Cases Procedures Act as applied mutatis mutandis pursuant to Article 22( excluding the provision of Article 5 of said Act ) , which relate to civil conciliation; and

( iii ) the powers in relation to special conciliation prescribed as those to be exercised by the court in the provisions of the Act on Special Conciliation Proceedings for Expediting Arrangement of Specified Debts, etc.

( 3 ) A civil conciliator shall perform his/her duties independently.

( 4 ) A civil conciliator may ,when exercising his/her powers ,give a necessary order concerning his/her duties to a court clerk. In this case ,the provision of Article 60 , paragraph( 5 ) of the Court Act( Act No. 59 of 1947 ) shall apply mutatis mutandis to a court clerk who receives an order from a civil conciliator.

#### **Article 23 –4**

A civil conciliator shall be paid an allowance as separately provided for by law and also be paid travel expenses ,a daily allowance and accommodation charges as specified by the Supreme Court.

## Chapter II Special Provisions

### Section 1 Real Estate Conciliation

#### Article 24

A conciliation case involving a dispute over a lease or other relationship related to the use of a building lot or a building shall be under the jurisdiction of the summary court that has jurisdiction over the location of the building lot or the building in dispute, or the district court that has jurisdiction over said location as determined by agreement of the parties. 11.

#### Article 24 –2

(1) A person who intends to file an action to claim an increase or decrease in the amount of rent for land as set forth in Article 11 of the Act on Land and Building Leases( Act No. 90 of 1991 ) or to claim an increase or decrease in the amount of rent for a building as set forth in Article 32 of said Act shall first file a petition for conciliation.

(2) If a person files an action in a case set forth in the preceding paragraph without first filing a petition for conciliation, the court in charge of the case must refer the case to conciliation; provided, however, that this shall not apply when the court in charge of the case finds it unsuitable to refer the case to conciliation.

#### Article 24 –3

(1) In a conciliation case involving a claim set forth in paragraph (1) of the preceding Article, if there is no likelihood of any agreement being reached between the parties or if the conciliation committee finds that the agreement reached is inappropriate, and there is a written agreement between the parties to the effect that they would obey the terms of a conciliation determined by a conciliation committee( limited to such an agreement reached after the petition for conciliation was filed with regard to the conciliation case ), the conciliation committee may, upon petition, determine conciliation terms that are appropriate for resolution of the case.

(2) When the terms of a conciliation set forth in the preceding paragraph are en-



tered in a record, the conciliation is deemed successful, and such entry shall have the same effect as a judicial settlement.

## Section 2 Agricultural Conciliation

### **Article 25**

A conciliation case involving a dispute over a lease or other relationship related to the use of farmland, or land, buildings or other agricultural assets incidental to farm management (hereinafter referred to as “farmland, etc.”) shall be governed by the provisions of this Section, in addition to the provisions of the preceding Chapter.

### **Article 26**

A conciliation case set forth in the preceding Article shall be under the jurisdiction of the district court that has jurisdiction over the location of the farmland, etc. which is in dispute, or the summary court that has jurisdiction over said location as determined by agreement of the parties.

### **Article 27**

A ministerial or prefectural farmland official may state his/her opinions to the conciliation committee on a fixed appearance date or on an occasion other than such an appearance date.

### **Article 28**

When a conciliation committee intends to carry out conciliation, it shall hear the opinions of a ministerial or prefectural farmland official.

### **Article 29**

The provisions of the preceding two Articles shall apply mutatis mutandis to cases where conciliation is carried out by a judge alone.

### **Article 30**

The provision of Article 28 shall apply mutatis mutandis to cases where the court intends to transfer the case to another court or to process the case by itself pursuant to

the provision of the proviso to Article 4, paragraph (1) or paragraph (2) of said Article, or if the court intends to issue an order set forth in Article 17.

### Section 3 Commercial Conciliation

#### **Article 31**

The provisions of Article 24 – 3 shall apply *mutatis mutandis* to commercial conciliation cases.

### Section 4 Mining Pollution Conciliation

#### **Article 32**

A conciliation case involving a dispute over compensation for mining pollution as provided in the Mining Act( Act No. 289 of 1950) shall be under the jurisdiction of the district court that has jurisdiction over the place where the damage occurred.

#### **Article 33**

The provisions of Article 24 – 3 and Articles 27 to 30 shall apply *mutatis mutandis* to conciliation cases set forth in the preceding Article. In such cases, the phrase “ministerial or prefectural farmland official” in Articles 27 and 28 shall be deemed to be replaced with “Director-General of a Bureau of Economy, Trade and Industry.”

### Section 5 Traffic Accident Conciliation

#### **Article 33 – 2**

A conciliation case involving a dispute over compensation for damages for the death or physical injury of a person caused by the operation of an automobile shall be under the jurisdiction of the summary court that has jurisdiction over the location of the domicile or residence of the person claiming damages, in addition to the court as provided in Article 3.

## Section 6 Pollution Conciliation

**Article 33 –3**

A conciliation case involving a dispute over damages arising from pollution or infringement of a person's interest in enjoying sunlight, ventilation or other life interest shall be under the jurisdiction of the summary court that has jurisdiction over the place where the damage occurred or is likely to occur, in addition to the court as provided in Article 3.

**Chapter III Penal Provisions****Article 34**

If a person concerned with the case who is summoned to appear by the court or the conciliation committee fails to appear without justifiable grounds, the court shall punish him/her with a non-criminal fine of not more than 50,000 yen.

**Article 35**

If a party or participant does not comply with the measure ordered under the provisions of Article 12 (including cases where applied *mutatis mutandis* pursuant to Article 15) without justifiable grounds, the court shall punish him/her with a non-criminal fine of not more than 100,000 yen.

**Article 36**

(1) An order of a non-criminal fine under the preceding two Articles shall be executed based on a direction issued by a judge. Such direction shall have the same effect as an enforceable title of obligation.

(2) An order of a non-criminal fine is executed according to the provisions of the Civil Execution Act (Act No. 4 of 1979) and other laws and regulations concerning procedures for compulsory execution; provided, however, that it is not necessary to serve the order before executing it.

(3) In addition to what is provided for in the preceding two paragraphs, the provisions of Part V of the Non-Contentious Case Procedures Act shall apply *mutatis mutan-*

dis to an order of a non-criminal fine; provided, however, that the provisions of Articles 162 and 164 of said Act concerning a public prosecutor shall be excluded. 16.

#### **Article 37**

If a civil conciliation commissioner or a person who has held the post, divulges any particulars with respect to the proceedings of deliberations of the committee, or the opinions of the chief conciliator and civil conciliation commissioner or the number of opinions constituting the majority and the minority, he/she shall be punished by a fine of up to 300, 000 yen.

#### **Article 38**

If a civil conciliation commissioner or a person who has held the post, divulges any personal confidential information coming to the his/her knowledge in relation to the particulars handled thereby in the course of his/her duties without justifiable grounds, he/she shall be punished by imprisonment with work for up to one year or a fine of up to 500, 000 yen.