



The Legal 500 Country Comparative Guides

Japan

CLASS ACTIONS

Contributor

Nagashima Ohno & Tsunematsu



Oki Mori

Partner | oki_mori@noandt.com

Kiyoshi Sudo

Partner | kiyoshi_sudo@noandt.com

Mai Umezawa

Associate | mai_umezawa@noandt.com

This country-specific Q&A provides an overview of class actions laws and regulations applicable in Japan.

For a full list of jurisdictional Q&As visit legal500.com/guides

JAPAN

CLASS ACTIONS



1. Do you have a class action or collective redress mechanism? If so, please describe the mechanism.

Regarding consumer litigation, there exist special Acts¹ that permit particular consumer organizations certified by the Prime Minister to represent the interests of multiple consumers by bringing a claim as a plaintiff. Herein, we explain in detail the distinction between (i) litigation carried out by a Qualified Consumer Organization (a 'QCO') and (ii) court proceedings carried out by a Specified Qualified Consumer Organization (an 'SQCO'), which are special litigation proceedings created to protect consumer interests.

1. Qualified Consumer Organization Action:

The Consumer Contract Act was amended in 2006 (came into effect in 2007) and this amendment introduced a system which permits QCOs to bring litigations on behalf of consumers. QCOs may, in the interest of multiple unspecified consumers, file a petition for an injunction against certain acts of business operators or an order to take necessary measures to stop or prevent such acts (collectively, 'Injunction, etc.') (a petition that QCOs file for Injunction, etc., 'QCO Action')². Consumers can receive the benefits of such actions even if they did not participate therein.

2. Specified Qualified Consumer

Organization Actions: In October 2016, the Act on Special Measures Concerning Civil Court Proceedings for the Collective Redress for Property Damage, etc. Incurred by Consumers (Act No. 96 of 2013) (the 'Special Act'), permitting SQCOs to carry out court proceedings, came into effect.³ Based on the Special Act, SQCOs may file for Court Proceedings for Redress for Damage ('SQCO Action') against business operators⁴ in certain cases where similar monetary damage was incurred by a considerable number of consumers in relation to consumer contracts.

An SQCO Action involves the procedures outlined below.

First Stage

The first stage is the Litigation Seeking Declaratory Judgment on Common Obligations ('CO Litigation').⁵ In this stage, the court is tasked with confirming whether the defendant owes any monetary obligation to a considerable number of consumers ('Common Obligation') based on existing facts and legal causes common to those consumers. The consumers are not specifically identified yet. Consumers may not intervene in this stage.⁶

Second Stage

Only when (a) the Common Obligations of the defendant have been confirmed by the judgment in the CO Litigation (the first stage) in favour of the plaintiff SQCO; (b) the CO litigation finishes through a business operator's acknowledgement of the claim; or (c) the CO Litigation finishes through a settlement acknowledging the existence of the Common Obligation, does the second stage (Simple Determination Proceedings) begin. The purpose of this procedure is to determine the specific claims pertaining to the confirmed Common Obligations ('Target Claims') and the claims for settlement with respect to those identified Target Claims ('Settlement Claims'; together with Target Claims, collectively, 'Target Claims, etc.'; consumers who hold Target Claims, etc. collectively, 'Target Consumers, etc.'). In this stage, consumers may opt in via delegation to the plaintiff SQCO. In addition, the court confirms (i) whether or not any monetary obligations are owed by the defendant and (ii) the amount of damages in relation to each consumer. The first and second stage judgments do not bind consumers who did not opt in. If the court confirms that the consumers have the right to monetary relief from the defendant, the plaintiff SQCO collects money from the defendant and distributes it to each consumer.

2. Who may bring class action or collective

redress proceeding? (e.g. qualified entities, consumers etc)

Only QCOs may file a QCO Action. As of the end of March 2023, there are 23 certified QCOs.

Similarly, only SQCOs may carry out an SQCO Action (which includes both CO Litigation and Simple Determination Proceedings). As of the end of March 2023, there are four certified SQCOs.

3. Which courts deal with class actions or collective redress proceedings?

Both a QCO Action and an SQCO Action are conducted by general courts, in the same way that ordinary civil trials are conducted. With respect to jurisdiction, in addition to the locality that constitutes the general venue of the defendant, the Special Act permits an SQCO to file an action with several district courts of a certain scale when the number of the Target Consumers is expected to be over 500 or 1,000.

4. What types of conduct and causes of action can be relied upon as the basis for a class action or collective redress mechanism?

QCO Actions

QCOs may file a petition only for an Injunction, etc. to be taken concerning the unjust acts of business operators listed under the relevant Acts. For instance, under the relevant Acts, unjust solicitation, contracts of adhesion and false or exaggerated representations may be subject to a QCO Action.

SQCO Actions

While SQCO Actions do not limit the covered conduct and causes, the Special Act does limit the scope of the claims that may be brought in an SQCO Action. See our answer to question 5.

5. Are there any limitations of types of claims that may be brought on a collective basis?

• Claim Limitations

QCO Actions

QCOs may file a petition only for an Injunction, etc. to be taken concerning the unjust acts of business operators

listed under the relevant Acts.

SQCO Actions

SQCO Actions are limited to claims concerning consumer contracts.⁹ Therefore, for instance, SQCOs may not bring a claim for damages against the issuer of an annual securities report based on false information, because this does not involve a direct contract between the issuer and consumers.

In addition, SQCOs are only permitted to bring monetary claims.¹⁰ This means that SQCOs do not have the right to bring a claim for other relief, such as the recall, replacement, or repair of defective products.

Moreover, the claims that may be brought are limited to those that fall under the categories listed below:

1. performance of a contractual obligation;
2. unjust enrichment;
3. damages based on the non-performance of a contractual obligation;
4. damages based on a tort under the Civil Code; and
5. damages caused by employees with respect to the execution of business.¹²

As set forth in item (4), with respect to tort damages, SQCOs may only bring a claim for damages arising from tort under the provisions of the Civil Code; thus, a claim for tort damages under special acts such as the Product Liability Act may not be brought in an SQCO Action. Pursuant to an amendment of the Special Act, damages for mental suffering (so-called consolation money), which were excluded from the scope of the claims that could be made before the enforcement of the amended Special Act, are permissible when major facts that serve as the basis for calculating damages are common to a considerable number of consumers. Specifically, a claim for consolation money is permissible when (i) such claim is made together with a claim for property damage or (ii) the relevant harm was caused intentionally.

• Range of Possible Defendants

QCO Actions

In principle, a business operator, a trustee of the business operator, or an agent of the foregoing, who has been taking or is likely to take one of acts specified in the relevant Acts may be the defendant in a QCO Action.

SQCO Actions

As stated above, only a claim regarding a consumer contract may be brought in an SQCO Action; and, in

principle, the business operator (including sole proprietorships) that is party to the consumer contract is the defendant. For example, if products sold by retailers turn out to be defective, SQCOs may not sue the manufacturer of the products, but may sue the retailers who directly sold the products to consumers.

In addition, under the amended Special Act, the following individuals may also be considered as the defendant where a business operator's employee causes damage to a third party in the course of carrying out its duties:

1. an employee who caused damage to a third party in the course of duties due to intentional or gross negligence; and
2. business supervisor (the party who supervises the business on behalf of the business operator) who (a) failed to exercise reasonable care in appointing an employee, or (b) was intentionally or grossly negligent in supervising the business.

6. How frequently are class actions brought?

QCO Actions

As of end of April 2022, QCOs have sought Injunction, etc. against about 880 business operators since the introduction of QCO Actions in June 2007. It can be said that it is a well-established in practice. However, as of end of February 2023, QCO Actions were filed against only 84 business operators because most cases were resolved outside, and prior to the filing of, the QCO Actions.

SQCO Actions

As of April 5, 2023, SQCO Actions were filed against only six business operators in five cases since the Special Act took effect in October 2016. Refund requests by SQCOs outside the proceedings are also not as common as requests for an Injunction, etc. by QCOs.

7. What are the top three emerging business risks that are the focus of class action or collective redress litigation?

With respect to SQCO Actions, see the risks for business operators listed below.

1. With respect to QCO Actions, since such actions intend to prevent harm to consumers from future acts of business operators, when

a QCO files a QCO Action against a business operator, the business operator may be required to completely revise its terms and conditions or business models.

2. With respect to an SQCO Action, it is less difficult for consumers to join an SQCO Action than to file a lawsuit on their own; therefore, once an SQCO Action is filed, consumers who had previously given up on recovering damages are likely to join the action. In addition, in an SQCO Action, the claims of a considerable number of consumers are handled together. Thus, when a defendant business operator loses a case, it is possible for the defendant to have to spend a reasonable amount of money.
3. When a QCO Action or an SQCO Action is filed, it will tend to draw public attention; and therefore, the business operator's reputation will be damaged by the filing of action itself. In particular, because the number of SQCO Actions is still small, this damage may be greater in SQCO Actions.

8. Is your jurisdiction an "opt in" or "opt out" jurisdiction?

QCO Actions

Since QCO Actions intend to seek an Injunction, etc. to prevent harm to consumers from future acts of a business operator, parties to a QCO Action are the QCO and the defendant (e.g., a business operator); therefore, consumers are not required to take part in QCO Actions.

SQCO Actions

There is an opt-in process for SQCO Actions. Specifically, the first stage (the CO Litigation) is conducted by an SQCO as the main party to the proceedings, so consumers can neither opt in nor opt out. On the other hand, in the second stage (Simple Determination Proceedings), it is necessary for Target Consumers, etc. to delegate powers regarding the filing of proofs of claims and carrying out Simple Determination Proceedings to an SQCO in order to receive monetary payment through the SQCO Action.¹⁷

In order to provide the Target Consumers, etc. with a chance to join the SQCO Action, the Special Act stipulates the notice and public announcement of necessary information made by the court which had issued the judgement, the plaintiff SQCO, and the defendant business operator.

9. What is required (i.e. procedural formalities) in order to start a class action or collective redress claim?

• QCO Actions

QCOs must, in advance, notify a prospective defendant in a QCO Action by way of a written demand for Injunction, etc., and, in principle, may not bring a QCO Action until one week after this written demand has been received.¹⁸

• SQCO Actions

In SQCO actions, there are no special procedural requirements to be fulfilled prior to the filing.

However, for a case to be filed as a CO Litigation, the following substantive requirements must be met:

Multiplicity

An SQCO Action must relate to damages suffered by a considerable number of consumers.¹⁹ In a case where there are likely to be several victims (i.e., more than a dozen), it is considered that the case satisfies this requirement.

Commonality

An SQCO Action must be based on facts and legal causes common to a considerable number of consumers.²⁰ It is considered that if an essential part of the facts and fundamental legal causes are common, then this requirement is satisfied and it is not necessary for the causation and damage suffered by each consumer to be common.

Predominance

If it is likely that the court would be required to substantively examine each Target Consumer, etc. in Simple Determination Proceedings to determine matters such as the damage or loss suffered by each Target Consumer, etc. and causation, the court will dismiss the CO Litigation for failure to meet the predominance requirement.²¹ The following cases are not considered to satisfy this requirement:

- where it is difficult to determine whether the product purchased by each consumer is defective even though the malfunction of a certain product has been confirmed in the CO Litigation to be the result of a defect;
- when an insurance company refuses to pay insurance money regarding non-life insurance, and it is difficult to determine whether the

insured event occurred; and

- where comparative negligence is at issue, and it is difficult to determine the degree of negligence of each consumer.

10. What remedies are available to claimants in class action or collective redress proceedings?

While plaintiffs may seek various types of relief in normal lawsuits, QCOs may seek only Injunction, etc. to be taken concerning the unjust acts of business operators. SQCOs may seek only monetary payment. Nevertheless, it is possible for QCOs/SQCOs to seek other types of relief by settling with the business operator in the course of a QCO Action/an SQCO Action.

11. Are punitive or exemplary damages available for class actions or collective redress proceedings?

No system to seek punitive or exemplary damages exists in Japan. Therefore, in SQCO Actions, as well as in the ordinary civil lawsuit, the judge awards only actual damages.

12. Are class actions or collective redress proceedings subject to juries? If so, what is the role of juries?

Japan has not adopted the jury system in civil court proceedings. Thus, both QCO and SQCO Actions are conducted by judges only.

13. What is the measure of damages for class actions or collective redress proceedings?

In SQCO Actions, the permitted claims for damages exclude secondary losses, loss of profit, and damages owing to harm done to the life or body of a person. Consequently, if an SQCO brings a claim for damages arising out of defects, in principle, the claim is limited to an amount equivalent to the purchase price of the product and default interest.

14. Are there any jurisdictional obstacles to class actions or collective redress proceedings?

An overseas business operator may become a defendant

in a QCO or an SQCO Action when Japanese courts have international jurisdiction pursuant to the Code of Civil Procedure. This is the case where, for example, the place of performance of the obligation is within Japan; when the action is against a business operator who conducts business in Japan and the claim involves the business that the business operator conducts in Japan; and when the tort occurred in Japan.

15. Are there any limits on the nationality or domicile of claimants in class actions or collective redress proceedings?

With respect to the certification of a QCO and an SQCO, it might theoretically be possible for a foreign organization to be certified as a QCO or an SQCO if it meets certain requirements (e.g., having its principal office in Japan). However, no foreign organization has received such certification as a QCO or an SQCO as of the end of March 2023.

In a QCO Action, the claimant may only be a QCO in Japan, so cross-border issues, such as participation in litigation by overseas consumers, do not arise.

Only consumers who delegate powers to the SQCO are bound by the judgment. If consumers overseas are dissatisfied with a judgment in the CO Litigation in an SQCO Action, they are not bound by the judgment unless they opt-in to the Simple Determination Proceedings.

16. Do any international laws (e.g. EU Representative Actions Directive) impact the conduct of class actions or collective redress proceedings? If so, how?

We believe no there is no international law impact on either QCO or SQCO Actions.

17. Is there any mechanism for the collective settlement of class actions or collective redress proceedings?

- **Settlement between a QCO and a Defendant**

There are no special requirements or restrictions on settlement in QCO Actions. However, QCOs may not receive any economic benefit for exercising their right to demand an Injunction, etc., in the form of a contribution or donation or under any other name, in principle.²⁴ Therefore, a QCO may not enter into a settlement agreement by which the defendant pays money to the QCO. On the other hand, it is possible to prescribe a

clause that stipulates, in the settlement, that a penalty that will be imposed if an obligation owed by the defendant is not fulfilled.²⁵

When a QCO and a defendant enter into a settlement agreement, they are not required to obtain court approval.

- **Settlement between an SQCO and a Defendant**

Regulations regarding Settlement

Prior to the enforcement of the amended Special Act, in CO Litigations, an SQCO and a defendant could enter into a settlement only with respect to the existence of a Common Obligation. In addition, an SQCO may not enter into an out-of-court settlement with the defendant before delegation by the Target Consumers in Simple Determination Proceedings. On the other hand, it is out of the scope of the Special Act for an SQCO to settle with a defendant out-of-court. Therefore, unless the settlement disposes of the substantive rights of the Target Consumers, the SQCO may enter into an out-of-court settlement agreement that contains a clause concerning the withdrawal of the SQCO Action.

The amended Special Act abolished previous limits on the scope of settlement in CO Litigation and enabled various settlements to be made. For example, it has become possible to make (i) a settlement in which the settlement money is paid without determining the existence of a Common Obligation (the responsibility of a defendant) or (ii) a settlement in which relief may be sought in a manner other than the payment of money, such as repair of defect or replacement of a product. Additionally, when a CO Litigation is concluded in a settlement, it has become possible to realise the contents of such settlement without proceeding to Simple Determination Proceedings. Moreover, if a settlement in the CO Litigation stipulates that an SQCO will not file an SQCO Action regarding the Common Obligation, such agreement shall also be effective against other SQCOs.

As to settlement in Simple Determination Proceedings, there are no special restrictions; and it is also possible for an SQCO to enter into an out-of-court settlement.

As with the settlement agreement between a SQCO and a business operator, when an SQCO and a defendant enter into a settlement agreement, they are not required to obtain court approval.

Range of Binding Power of Settlement

In principle, a settlement between a business operator

and a QCO or an SQCO, in a QCO Action or an SQCO Action, does not bind consumers since a settlement is not valid against third parties.³¹ If, however, a defendant and an SQCO enter into a settlement regarding the existence of Common Obligations of the defendant in CO Litigation in an SQCO Action, and consumers opt in to the Simple Determination Proceedings, the settlement binds these consumers.³² Therefore, if consumers are dissatisfied with the settlement in the CO Litigation, they can seek redress of damages on their own by bringing an action individually unless they opt in to the Simple Determination Proceedings.

18. Is there any judicial oversight for settlements of class actions or collective redress mechanisms?

There is no judicial oversight by the court for settlements of QCO Actions or SQCO Actions. However, with respect to an SQCO Action, since settlements in CO Litigations are the basis for Target Claims in Simple Determination Proceedings and have a significant impact on Target Consumers, when an SQCO intends to enter into a settlement, the SQCO must make a report to the Prime Minister. If the SQCO conspires with the defendant and enters into a settlement that is detrimental to the interests of Target Consumers, the Prime Minister may, among other things, revoke the SQCO's certification.

19. How do class actions or collective redress proceedings typically interact with regulatory enforcement findings? e.g. competition or financial regulators?

The Special Act stipulates a system to provide an SQCO with information obtained by administrative agencies. Specifically, at the request of an SQCO, the Consumer Affairs Agency may provide the SQCO with documents prepared with respect to a disposition under the Act on Specified Commercial Transactions or the Act on Deposit Transaction Agreements to the extent necessary for the proper pursuit of an SQCO Action. The SQCO may not use the documents for any purpose other than the SQCO Action. This system is currently available only for documents prepared with respect to a disposition under these two Acts, but not for other laws such as the Act against Unjustifiable Premiums and Misleading Representations.

On the other hand, while there is a possibility that regulators such as the Consumer Affairs Agency may refer to publicly available information about QCO Actions or SQCO Actions in the course of regulation and

enforcement, there is no statutory system in place for the QCOs or SQCOs to provide information to the regulators.

20. Are class actions or collective redress proceedings being brought for 'ESG' matters? If so, how are those claims being framed?

We believe that neither QCO nor SQCO Actions have been used for ESG matters to date.

21. Is litigation funding for class actions or collective redress proceedings permitted?

Although third-party funding is not prohibited under Japanese law, it is not common in Japan. However, the National Consumer Affairs Centre of Japan may provide security in place of an SQCO to prevent financial problems from discouraging the SQCO from filing a petition for an order for provisional seizure prior to the SQCO Action. There is no other official legal aid available for a QCO Action and an SQCO Action.

22. Are contingency fee arrangements permissible for the funding of class actions or collective redress proceedings?

It is necessary to consider two matters: the fees for a QCO or an SQCO owed by consumers; and the fees for attorneys-in-fact paid by a QCO or an SQCO.

Fees for a QCO or an SQCO

The relief in respect of QCO Actions is an Injunction, etc. taken by the defendant business operator. Consumers never participate in a QCO Action regardless of the result. Therefore, there is no possibility that a QCO will receive any fees from consumers.

With respect to SQCO Actions, an SQCO may receive a payment regarding remuneration or expenses relevant to an SQCO Action, and there is no prohibition against contingency fees. However, the secretary general of the Consumer Affairs Agency confirms the amount or the calculation method of the remuneration or expenses above in the application procedure for the certification as an SQCO.³⁸ Certification may not be granted or may be rescinded where it is found that the consumer organisation intends to charge excessive fees.³⁹ The Consumer Affairs Agency released a guideline that states that, in respect of the fees for the procedures after filing proofs of claims, SQCOs should allocate more

than half of collected monies to the delegating consumers.

Fees for attorneys-in-fact

There is no statutory restriction.

23. Can a court make an 'adverse costs' order against the unsuccessful party in class actions or collective redress proceedings?

With respect to attorneys' fees, there is no special rule regarding QCO and SQCO Actions.

Attorneys' fees

In Japanese litigation, generally the litigation costs consist only of procedural expenses, such as the fees for the filing, and attorneys' fees are not included. The parties should pay their respective attorneys' fees.

Litigation costs

With respect to litigation costs, in principle, the losing party bears these pursuant to the Code of Civil Procedure.

However, the Special Act prescribes that the parties bear their own expenses (such expenses, 'Individual Expenses') in Simple Determination Proceedings in an SQCO Action (other than the fees for the filing of proofs of claims, or petitions pertaining to a filed claim in Simple Determination Proceedings). As to these Individual Expenses, the court determines the burden of expenses according to the principle under the Code of Civil Procedure.

24. Are there any proposals for the reform of class actions or collective redress proceedings? If so, what are those proposals?

With respect to QCO Actions, there are no reform proposals.

Regarding SQCO Actions, the government was to review the status of enforcement of the Special Act within three years of the passage of same, and to make any changes it deemed necessary following such review. Accordingly, the Consumer Affairs Agency engaged in discussions with experts and solicited public opinions; thereafter, considering that SQCO Actions did not gain much momentum and needed to be more effective, the Special Act was revised in June 2022. The amended Special Act will come into force on 1 October 2023.

Contributors

Oki Mori
Partner

oki_mori@noandt.com



Kiyoshi Sudo
Partner

kiyoshi_sudo@noandt.com



Mai Umezawa
Associate

mai_umezawa@noandt.com

