QUESTIONNAIRE

ALTERNATIVE DISPUTE RESOLUTION AS A MEANS OF IMPROVING THE DELIVERY OF JUSTICE AND REDUCING THE DELAYS IN CIVIL PROCEDURE

I

Question 1

What alternative means are used in your legal system for resolving civil law disputes outside normal court procedures?

Mediation (a process in which the parties engage a mediator or conciliator to encourage and assist them towards agreeing a solution)

Arbitration (a process in which the parties agree to submit their dispute to a binding decision by an arbiter)

Non-binding arbitration (a process in which the parties obtain a decision on their dispute but which is non-binding and does not prevent litigation)

Other methods [please describe]

Major alternative dispute resolution procedures available in Japan include conciliation and arbitration (except for non-binding arbitration).

These ADR procedures are divided into three types: (i) conciliation procedures for civil and domestic disputes brought to court (judicial ADR); (ii) ADR procedures conducted by administrative organizations such as the Environmental Dispute Coordination Commission, the Labor Relations Commission, and the Committee for Adjustment of Construction Work Disputes (administrative ADR); (iii) ADR procedures conducted by private organizations such as arbitration centers operated by bar associations, PL centers, and the Japan Center for Settlement of Traffic Accident Disputes (private ADR).

Question 2

(a) Are any of the alternative means used in your country subject to special regulation by statutory provisions?

(b) Does a mediator or an arbiter require to have a particular qualification or to have undergone professional training?

(c) If a mediator requires to undergo training, who provides such training?

(d) Is there a professional organization of mediators which lays down rules of professional conduct?

Concerning (a):
Conciliation procedures for civil and domestic disputes that are available at court are regulated by the Law for Conciliation of Civil Affairs and the Law for Adjudgment of Domestic Relations respectively. Agreements reached in these conciliation procedures have the same effect as court judgments. Civil conciliation procedures under the Law for Conciliation of Civil Affairs are available for civil disputes in general, with special provisions only applicable to particular types of disputes, such as disputes over commercial affairs, housing land and buildings, and traffic affairs. Separate from the conciliation procedures under the Law for Conciliation of Civil Affairs, the "specific conciliation procedures" are also provided to reduce liabilities of debtors in danger of bankruptcy or grant a grace period to them so as to help them recover from their financial difficulties. Furthermore, the labor tribunal system will start in April 2006. Under this new system, a Labor Tribunal Commission consisting of one judge and two rodoshinpan-in (lay judges) will hear disputes over labor relations between the employer and the employees, and work toward arranging conciliation if it is possible or make a judgment if such an attempt fails. Family affairs conciliation procedures under the Law for Adjudgment of Domestic Relations are available for disputes over personnel and domestic relations.

Administrative ADR procedures are subject to laws and regulations applicable to individual ADR organizations.

Private ADR procedures were not subject to any laws or regulations in the past. However, the "Law for Promotion of the Use of Alternative Dispute Resolution Procedures" (ADR Basic Law) was enacted in 2004 and is scheduled to come into force in 2007. This new law will encourage the development of infrastructure for private ADR.

In the arbitration procedures, the parties are in principle expected to resolve disputes voluntarily. The Arbitration Law sets forth rules for the whole process of the procedures in accordance with international standards.

Concerning (b) and (c):
For the purpose of reflecting the common sense of the public in conciliation, conciliation commissioners in charge of the civil and family affairs conciliation procedures at court are appointed from among lay people with abundant experience in society. They are not required to have any special legal qualification (but participate in training at court after appointment). For conciliation of disputes over medical affairs and construction where technical knowledge is required for resolution, conciliation commissioners are appointed from among experts in the relevant fields such as medical practitioners and registered architects. Rodoshinpan-in (lay judges) who will serve as members of the Labor Tribunal Commission will be appointed from among experts with technical knowledge and experience in labor affairs.

For private ADR procedures, persons other than lawyers were previously unable to
deal with conciliation cases because they were prohibited from dealing with legal affairs. However, following the establishment of the ADR Basic Law, ADR organizations recognized by the government as satisfying certain requirements, such as having established systems for consulting lawyers and methods for appointing appropriate conciliation commissioners, will be able to appoint persons other than lawyers as conciliation commissioners. Under the new law, private ADR organizations will be responsible for setting the qualifications and requirements for conciliation commissioners and providing them with training.

Concerning (d)
In Japan, there is no professional organization of conciliation commissioners which lays down rules of professional conduct.

Question 3
(a) Insofar as alternative dispute resolution procedures are available and are in use in your country, what are the principal areas of law (for example family law, building or construction law, medical negligence claims, consumer cases, etc) in which disputes are settled by the alternative procedures?
(b) Are there any types of civil law dispute which cannot be resolved by such alternative means but must be decided by a court?

Concerning (a)
Civil conciliation procedures conducted at court are available for civil disputes in general, including disputes over loans, sales, leaseholds, and traffic accidents. The labor tribunal system will be available for labor disputes between the employer and employees. Family affairs conciliation procedures are available for personal and domestic disputes in areas such as divorce, support, and partition of estate.
Administrative ADR procedures are available for disputes as provided by laws and regulations applicable to individual ADR organizations.
Private ADR procedures are not subject to any law in terms of the scope of disputes; individual ADR organizations may determine the scope of disputes that they deal with depending on their technical capabilities (for instance, the Japan Center for Settlement of Traffic Accident Disputes deal with disputes over traffic accidents).

Concerning (b)
Civil disputes that can be resolved by agreement between the parties may be suitable for ADR procedures, but disputes that cannot be resolved by agreements such as administrative cases are not suitable for ADR procedures.

Question 4
(a) Is any publicly funded system of mediation available in your country? In particular, is there any mediation service annexed or attached to the courts?
(b) If so, for what types of civil law dispute is publicly funded mediation available?

Conciliation procedures available at court are civil conciliation and family affairs conciliation. Costs for using these conciliation procedures, including the application fee, should be borne by the parties as in the case of litigation. However, in order to ensure speedy resolution of disputes by simple procedures, the application fee for conciliation procedures is smaller than that for litigation. Conciliation commissioners work as part-time civil servants, so the government bears personnel expenses for conciliation commissioners.

Civil conciliation procedures are available for civil disputes in general and family affairs conciliation procedures are available for personal and domestic disputes, so it is not that conciliation services are just available for certain specific types of disputes.

Question 5
(a) To what extent, and by what means, are the courts in your system able to encourage or to require parties to attempt mediation or some other form of alternative dispute resolution either as a preliminary to commencing any litigation or in the course of ordinary court proceedings?
(b) Is the court administration able to assist litigants, or potential litigants, in using alternative dispute resolution procedures by, for example, explaining the various possibilities of alternative dispute resolution or providing information about mediators or arbiters?

Concerning (a):
Disputes to claim an increase or decrease in rent and personal and domestic disputes are suitable for amicable resolution through conciliation; therefore, for such types of disputes, conciliation should in principle be attempted prior to initiating litigation (the Conciliation First Principle). The court may also ex officio refer other types of disputes to conciliation even in the course of litigation if it considers it appropriate to do so. Recently, disputes over technical issues such as construction-related disputes have been referred to conciliation aiming to resolve disputes with the use of technical knowledge of expert conciliation commissioners.

Concerning (b):
The website of the Courts of Japan provides necessary information for not only legal proceedings but also conciliation procedures. Furthermore, summary courts and family courts that are more easily accessible to the public provide users with over-the-counter
information on various procedures including conciliation depending on their needs, and give users advice to help select appropriate procedures to resolve their disputes. However, courts do not provide information on individual judges or conciliation commissioners in charge.

Question 6
(a) Has the use of alternative dispute resolution procedures in your country been increasing in recent years?
(b) If so; -
(i) are there any particular reasons for the increase in use of alternative dispute resolution procedures?
(ii) has the increase in use sufficiently reduced the burden of work on the courts to allow the courts to improve the delivery of justice?
(iii) has any alteration been made to the rules of procedure or the practices of the courts in response to the increase in the use of alternative dispute resolution?

The number of civil conciliation cases at courts has been increasing every year since the latter half of the 1990s, and it reached 600,000 in 2003. Due to a prolonged and deepened economic recession in Japan, there has been a rapid increase in the number of applications for conciliation procedures filed by heavy debtor to request a reduction in their liabilities or the grant of a grace period so as to avoid bankruptcy. This has rather increased the burden of work for the courts, but the smooth operation of conciliation services has been achieved by increasing the number of conciliation commissioners. Since 2004, the number of civil conciliation cases has been on a downward trend, dropping to about 440,000.

Meanwhile, the number of family affairs conciliation cases consistently increased after surpassing 100,000 in 1996, and reached a record high of about 136,000 in 2003. In 2004, the number slightly dropped to about 133,000 but remained at a high level.
Thus, conciliation procedures at court have been frequently used and widely accepted by the public, whereas conciliation and arbitration procedures in the private sector have not been sufficiently used (the number of private and administrative ADR cases in the last year: about 7,500 cases by the Japan Center for Settlement of Traffic Accident Disputes; about 1,200 cases by the arbitration centers operated by bar associations; about 260 cases by the Committee for Adjustment of Construction Work Disputes).
Under such circumstances, the ADR Basic Law was enacted in 2004 with the objective of promoting the use of private ADR procedures. The new law is scheduled to come into force in 2007 and is expected to promote the use of private ADR procedures.

Question 7
In your system does the court provide any procedures in which a judge acts as a
mediator?

In the civil and family affairs conciliation procedures at court, judges as legal professionals take part in the procedures with conciliation commissioners who are appointed from among lay people. This is aimed at finding a resolution that is appropriate from a legal perspective while reflecting the public's perception of common sense.

Question 8
Are there any proposals to change the law relating to alternative dispute resolution procedures?

The ADR Basic Law was enacted in 2004 and is scheduled to come into force in 2007. At present, there is no plan for further legal revision concerning ADR procedures.

II Which points would you wish to discuss in detail?

We would like to discuss what kind of ADR procedures are available in other countries and to what extent such procedures are used, and also discuss what kind of institutional or operational measures are taken to promote the use of ADR procedures.

III What subject do you suggest for the next meeting?