

How to deal with Labor Tribunal Proceedings (Roudou-Shinpan) filed against your company by employees in Japan.

The system of Labor Tribunal Proceedings (hereinafter called "LTP") (in Japanese "Roudou-Shinpan" or "労働審判") began in April 2006 in Japan, and the number of LTP cases has been increasing year by year. Companies doing business in Japan thus need to be aware that an employee might suddenly file for LTP against your company and, in such case, your company will be served with documents from a Japanese court. In light of the tight schedule applied to LTP, it is very important to understand in advance the LTP system as well as how best to proceed. This article provides an overview of LTP in Japan as well as recommendations for how a company should respond upon being served.

1. Overview of LTP in Japan

(1) Introduction

LTP is a legal procedure overseen by Japanese courts involving mediation with regard to disputes concerning the rights and obligations of employers and individual employees. LTP is not mandatory prior to filing litigation in court, but the parties may voluntarily choose whether or not to use LTP. In LTP, the parties are not required to retain lawyers. Consequently, employees may represent themselves without retaining a lawyer in the LTP, which often occurs in Japan.

LTP is overseen by the relevant Japanese District Court, and in each case, a Labor Tribunal (hereinafter called "LT") is formed to handle the case with one presiding judge and two experts (from both the employer-side and employee-side) with specialized knowledge and experience regarding labor and employment-related matters. (Please note that such experts are not necessarily lawyers, and neither party can appoint or choose such experts.)

(2) Time Period of the Proceedings

Under Japanese law, LTP generally consists of up to only three sessions. It is said that the average time period for LTP is 74.8 days. Compared to the fact that the average time period for labor and employment litigation in Japan at the District Court level is 14.3 months, it is very probable that any given dispute regarding labor and employment-related matters would be settled much earlier in LTP than litigation.

(3) Written Answer

In LTP, the first hearing is set on a date within 40 days from the date of filing for LTP. Usually, the court designates the date before the Respondent receives the relevant documents and hesitates to change the designated date of the first hearing, even if the Respondent so requests. The most important point in this regard is for a Respondent to submit arguments, claims and evidence before the first hearing (usually one week before the first hearing).

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Moreover, except under special circumstances, the parties must submit supplemental written Answers and supplemental evidence before the second LTP hearing. The Respondent specifically needs to submit a written Answer to the LT, including its arguments, responses to alleged facts (i.e., admit, deny, or do not know), specific facts to support its arguments, expected issues, and important facts regarding such issues. Based upon the foregoing, it is clear that, if an employee files for LTP, and the employer does not expect it, the employer will have a very limited time to prepare arguments and evidence.

On the other hand, certain types of complicated cases will not be handled using LTP, and the LT may terminate the proceedings if it considers that the case is not appropriate for LTP.

(4) Mediation

In LTP, if there is a possibility of settlement between the parties through mediation, mediation will be conducted. If the parties reach a settlement after mediation in LTP, such settlement is deemed equivalent to a settlement in court litigation proceedings. This means that, if either party does not perform its obligation as agreed in the settlement, the other party may enforce the settlement by filing enforcement procedures in court. Relevant data suggests that approximately 70% of disputes in Japan are settled through LTP mediation.

In LTP hearings, as discussed in greater detail below, the LT will directly request each party to provide detailed facts regarding the dispute. Moreover, if the mediation is conducted, the LT requests parties to make prompt decisions as to the conditions of settlement, especially during the third and final hearing. Consequently, it is recommended that employees of the Respondent who know the specific facts of the matter and have authority to make settlement-related decisions participate in LTP hearings on behalf of the Respondent. The LT may request that the Respondent provide such employees, and if such employees do attend LTP hearings, they should be prepared to adequately answer questions from the LT as to the facts of the matter. (However, please note that, unlike

cross-examination in litigation, which is subject to strict rules, the LT asks questions to such employees in a more informal fashion.)

(5) Decision

If the parties cannot reach a settlement during LTP mediation, a Decision by LT will finally be issued (in Japanese “Shinpan” or “審判”). The decision may cover items such as the payment of money or other measures which the LT considers necessary to resolve the dispute.

If both parties accept the Decision, it will have the same effect as a settlement reached in court during litigation proceedings. On the other hand, if either party objects to the Decision (within two weeks from the date of delivery of the Decision), it will be invalidated, and the LTP proceedings will be automatically transferred to litigation proceedings (the written petition for the commencement of the LTP will be considered the Complaint in the litigation procedure). In the case of such transfer to litigation proceedings, there could potentially be three levels of appeal (i.e., to District Court, High Court, and Supreme Court) for the losing party. During litigation, settlement negotiations could be conducted either outside or inside the framework of court proceedings, but such negotiations could naturally take more time as compared to negotiations during LTP. (Please see the above-mentioned average relative duration of LTP and litigation proceedings.)

Moreover, please note that the litigation in Japan is conducted in open court and; therefore, the name of the company and type of the dispute will become public information.

It is also important to remember that, even if LTP is filed against a company, participation in LTP is not mandatory, and the company can choose not to participate. If the Respondent decides not to participate in LTP, the LT will render a default decision, usually in favor of the Petitioner. However, the Respondent may make an objection against such default decision. In such case, as mentioned above, the decision will be invalidated by such objection and the proceedings will be automatically transferred to the litigation proceedings. Consequently, if a party chooses not to

participate in LTP, such party must file an objection and proceed with litigation; otherwise, the decision of the LT will become enforceable.

(6) General Flow of LTP

In light of the foregoing, the general flow of LTP is as follows:

- **The First Hearing:** The LT will confirm the main issue(s) in the case and relevant evidence submitted by parties. The LT internally discusses the presented issues, and forms their initial impressions regarding the case. Based on such impressions, the LT will try to conduct mediation by making suggestions for conditions of settlement. (Such suggestions may be made after the second or third session.)
- **The Second and Third Hearings:** The LT will continue to try to mediate the dispute, and if a settlement cannot be reached, the LT will render a Decision.

2. Pros and Cons of LTP

In light of the foregoing, the pros and cons of LTP are as follows:

Pros	<ul style="list-style-type: none"> - Parties may seek a flexible settlement of the dispute which is not limited solely to the legal claims. - Unlike litigation, LTP is not open to the public. Therefore, the parties may seek settlement without publicly disclosing any information concerning the dispute. - LTP will generally end within three hearings, thus the dispute can be settled more quickly than in litigation.
Cons	<ul style="list-style-type: none"> - Even if both parties participate in LTP and a Decision by the LT is rendered, LTP may turn out to be pointless if either party makes an objection to the Decision. - If a party participates in LTP and seeks a settlement therein, the deadlines to prepare arguments and evidence are very tight, and thus there is the possibility that the best arguments and evidence to persuade the LT cannot be prepared in time.

3. What to do when an employee files for LTP against your company

If an employee files for LTP against your company, the first step is to immediately consult with an attorney licensed in Japan and decide whether or not to participate in the LTP in light of the pros and cons mentioned above.

As mentioned above, if your company wishes to settle the dispute quickly, or you want to avoid information regarding the dispute becoming public, it is recommended that your company participate in the LTP.

If you decide to participate in LTP, because the time to prepare your arguments and evidence before the first hearing is very limited, it is also recommended that you retain appropriate attorneys and provide them with the relevant information and documents as soon as possible so that your attorneys can review them, prepare the strongest arguments, and submit a written Answer by the first hearing.

A very important point, especially for foreign or foreign-affiliated companies in Japan, is that all documents submitted to the LT as well as Japanese courts must be in Japanese, or if in a foreign language, accompanied by a Japanese translation. Such documents submitted to the LT or courts include the power of attorney, written Answer, evidences, and other documents. Therefore, if your company wishes to submit evidence in the case which is not in English (e.g., an employment contract, employment rules, etc.), your company will need to prepare Japanese translations thereof before you submit same to the LT or court. Moreover, your lawyer must draft the written Answer which will also be submitted to the LT or court in Japanese. Therefore, if your company wishes to confirm internally such written Answer before submitting same to the LT or court, you might need a translation thereof as well. As translations often take a great deal more time than expected, if you receive the Petition for the commencement of LTP from the court, you must begin communicating with your attorney as soon as possible, considering the very short deadline before the first hearing and the translation process.

Lastly, in most cases, mediation and negotiations will be conducted during LTP, meaning that your company may be required to make quick decisions as to the settlement terms. Therefore, it is important to be thoroughly prepared to make such decisions during the mediation process. Even though you may not necessarily be required to make a decision immediately in the relevant hearing, considering the “third hearing rule” of LTP, your company may be required to make decisions relatively quickly, especially in the third session.