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Why Claims Handling in Japan Is Different: Legal Boundaries Between Adjusters and Settlement Negotiation

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I. Introduction: Why Japan's Claims Process Surprises Overseas Professionals¹

Overseas insurers, manufacturers, and loss adjusters often approach claims in Japan with the reasonable expectation that the process will broadly resemble that of other major markets. Yet, in practice, claims handling in Japan frequently surprises even experienced professionals. One source of this surprise lies in the role of loss adjusters. In many jurisdictions, adjusters are routinely authorized to negotiate and conclude settlements on behalf of insurers under delegated authority, with legal counsel becoming involved only once a dispute escalates or litigation is anticipated. In Japan, however, this model does not translate seamlessly.

This article explains why Japanese law draws a clear boundary around settlement negotiation and how this boundary affects the role of loss adjusters. It then outlines what adjusters can effectively do within the Japanese framework and provides practical guidance

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for overseas insurers, manufacturers, and adjusters handling claims in Japan.

II. Japan's Legal Framework: The Attorney Act and the Prohibition of Settlement Negotiation

One of the most fundamental reasons why claims handling in Japan differs from that in many other jurisdictions lies in its legal framework governing who may engage in settlement negotiations. Under the Japanese Attorney Act (*Bengoshi Ho*), in principle, legal services are reserved exclusively for licensed attorneys. Article 72 of the Act prohibits any person who is not a qualified lawyer from engaging, on a business basis, in legal work such as representation, mediation, or settlement negotiation in relation to disputes involving legal rights and obligations.²

Dispute settlement negotiation is not viewed in Japan as a purely commercial or factual exercise. Rather, it is understood as an activity that directly affects the legal rights and obligations of the parties involved. For this reason, such negotiations fall within the scope of “legal work” under the Attorney Act.

This approach differs from jurisdictions where settlement negotiations are treated as an extension of claims handling or loss adjustment, and where insurers routinely delegate settlement authority to adjusters. In Japan, the law draws a clear line: factual investigation and damage assessment are permissible for non-lawyers, but negotiating a legally binding resolution for a third party is not.

As a result, the concept of “delegated settlement authority,” which is widely used in other countries, does not operate in the same way in Japan. Even if an insurer were to grant such authority contractually, the adjuster's actions could still raise concerns under the Attorney Act.

Overseas insurers and adjusters sometimes underestimate the legal risk associated with

² Article 72 of the Japanese Attorney Act provides as follows:

“No person other than an attorney or an attorney corporation may, for the purpose of obtaining compensation, engage as a business in the handling of legal matters, including litigation, non-contentious cases, and administrative appeals such as requests for review, requests for reinvestigation, or requests for reexamination, by way of legal opinions, representation, arbitration, settlement, or other legal services, nor may such person act as an intermediary in connection with such matters; provided, however, that this shall not apply where otherwise expressly permitted under this Act or other laws.”

settlement involvement in Japan. Attempts by non-lawyers to negotiate directly with claimants may be viewed as unauthorized legal practice. Violations of the Attorney Act may result in criminal sanctions³ and, at a minimum, can undermine the effectiveness of the settlement.⁴

III. What Adjusters Can Do in Japan: Scope of Investigation and Technical Roles

Although settlement negotiations are restricted in Japan, the role of loss adjusters remains central to the claims process. In practice, adjusters are often the first professionals to engage with an incident, and their work can form the factual foundation upon which subsequent decisions (legal, technical, and commercial) are made.

1. Fact-Finding and Cause Analysis

At the core of the adjuster's role in Japan is thorough fact-finding. This includes investigating the circumstances of the incident, identifying potential causes, and documenting the sequence of events in a manner that is both technically sound and defensible. In cases involving fires, product failures, or industrial accidents, this work often requires specialized technical knowledge and coordination with engineers or manufacturers. Given the emphasis placed on documentation in Japan, contemporaneous records, photographs, and site inspections are particularly important. The quality and speed of this initial investigation frequently determine how smoothly a claim progresses.

2. Damage Assessment and Quantification

Adjusters also play a key role in assessing and quantifying damages. This includes evaluating physical damage, calculating repair or replacement costs, and, where applicable, analyzing business interruption or consequential losses. In Japan, this process often

³ A violation of Article 72 of the Japanese Attorney Act may result in criminal sanctions under Article 77, item (iii), including imprisonment for up to two years or a fine of up to JPY 3,000,000.

⁴ A settlement agreement concluded in violation of Article 72 of the Japanese Attorney Act is not automatically void in all cases. Rather, its validity is determined on a case-by-case basis, taking into account the circumstances leading to the conclusion of the settlement.

By way of example, the Nagoya High Court found a settlement agreement to be invalid where, among other factors, there was no indication that the counterparty had confirmed whether the client truly understood the contents of the settlement, and where the counterparty was aware that entering into the settlement could give rise to issues under Article 72 of the Attorney Act. On this basis, the court held that the settlement agreement entered into with a third party in violation of Article 72 was invalid. Nagoya High Court, Kanazawa Branch, judgment of November 25, 2015; *Hanrei Jiho* No. 2310, p. 90.

involves close engagement with counterparties who may be cautious about sharing information. In this context, care must be taken to ensure that communications are not perceived as legal negotiation with the counterparty, as this may raise concerns under the Attorney Act.

3. Evidence Preservation and Documentation

Evidence preservation is another area where adjusters add significant value. Early identification and secure handling of relevant materials can be decisive, particularly in cases that later develop into disputes. Well-organized documentation not only supports coverage and liability analysis but also facilitates clear communication among insurers, counsel, and claimants.

4. Supporting Coverage Analysis Without Crossing Legal Boundaries

While adjusters in Japan do not make legal determinations, they may support coverage analysis by providing detailed factual findings relevant to policy interpretation. It is important, however, that this support remains within appropriate boundaries. Adjusters must avoid expressing legal conclusions or engaging in discussions that could be construed as settlement negotiation.

Taken together, these technical functions can form the factual backbone of claims resolution in Japan, provided they are properly coordinated with legal oversight.

IV. Practical Guidance for Overseas Insurers, Manufacturers, and Adjusters

For overseas insurers, manufacturers, and adjusters handling claims in Japan, the most effective approach is not to replicate practices used elsewhere, but to adopt a Japan-specific framework that reflects local legal and institutional realities. Japanese civil practice places considerable emphasis on the overall factual and contextual record surrounding a dispute. In civil proceedings, courts are not strictly confined to narrowly defined evidentiary categories, and judges have broad discretion to consider the totality of circumstances when assessing liability and damages.⁵ As a result, statements made during the claims handling or negotiation phase can later be interpreted in unintended ways. Explanations offered in good

⁵ By contrast, in criminal proceedings, the Japanese Code of Criminal Procedure prescribes strict evidentiary rules, and the categories of materials that may be admitted as evidence are significantly more limited.

faith, expressions of sympathy, or preliminary discussions on compensation may be construed as admissions of liability if a dispute ultimately proceeds to litigation.

This risk is often underestimated by overseas companies accustomed to systems where settlement discussions are separated from formal legal proceedings. In Japan, the boundary is less rigid. What is said at an early stage may carry lasting legal consequences.

As such, overseas organizations should resist the temptation to apply a uniform global claims protocol to Japan. Instead, a Japan-specific protocol should be developed, clearly defining the respective roles of adjusters, insurers, and legal counsel. Given that non-lawyers engaging in settlement negotiations in Japan may face regulatory and legal risk under the Attorney Act, such a protocol should address who communicates with claimants, how information is documented, and when legal review is required. When these roles are clearly defined and properly coordinated, claims in Japan can be handled not only safely, but efficiently.

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