Legal 500
Country Comparative Guides 2024

Japan
International Arbitration

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

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Japan: International Arbitration

1. What legislation applies to arbitration in your country? Are there any mandatory laws?

The Arbitration Act (Act No. 138 of 1 August 2003) (the "Arbitration Act") regulates both domestic and international arbitral procedures seated in Japan. In April 2023, the Arbitration Act was amended as outlined in Question 5, and entered into force on April 1, 2024. This amendment is to incorporate changes adopted in UNCITRAL Model Law 2006.

In addition, specific rules on court proceedings relating to arbitration are found in the Supreme Court Rules on Procedures of Arbitration-Related Cases (Rules of the Supreme Court No. 27 of 26 November 2003).

Arbitration is a dispute resolution mechanism based on the principle of party autonomy and therefore most matters relating to the conduct of arbitration may be agreed between the parties. However, as set forth in Article 26(1) of the Arbitration Act, there are provisions in the Arbitration Act under which agreements between the parties may not prevail based on public policy; these include, for example, equal treatment of all parties and rights to full opportunity for a party to present its case (Article 25 of the Arbitration Act).

2. Is your country a signatory to the New York Convention? Are there any reservations to the general obligations of the Convention?

Yes, Japan is a signatory to the New York Convention (the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958), and reserves the principle of reciprocity.

3. What other arbitration-related treaties and conventions is your country a party to?

Japan is a party to the Geneva Protocol on Arbitration Clauses 1923, the Geneva Convention on the Execution of Foreign Arbitral Awards 1927 and the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention).

Japan is also a party to a number of bilateral treaties including provisions for recognition and enforcement of international arbitral awards, such as the Treaty of Friendship, Commerce and Navigation between Japan and the United States of America (1953), the Treaty of Commerce and Navigation between Japan and Great Britain (1962), Japan-China Trade Agreement (1974), and Japan Germany Commerce and Navigation Treaty (1982).

In addition, in June 2023, the Diet of Japan approved the Japanese government to sign the UN Convention on International Settlement Agreements Resulting from Mediation (the "Singapore Convention"), and which entered into force with respect to Japan on April 1, 2024, although Singapore Convention relates to mediation.

See also Question 5 and 8.

4. Is the law governing international arbitration in your country based on the UNCITRAL Model Law? Are there significant differences between the two?

Yes, the Arbitration Act is mostly based on the UNCITRAL Model Law 1985. However, it deviates from the model law for some matters, including special treatment of disputes relating to consumers or individual employees (Article 3 and Article 4 of the Supplementary Provisions to the Arbitration Act), and authority for arbitrators to assist settlement negotiations based on written agreement by all the parties (Article 38 of the Arbitration Act).

In addition, as mentioned in Question 1, in 2023, the Arbitration Act was amended to incorporate changes adopted in UNCITRAL Model Law 2006, and the amended Arbitration Act entered into force on April 1, 2024.

5. Are there any impending plans to reform the arbitration laws in your country?

Yes, the Arbitration Act was amended in June 2023 to comply with amendments adopted in UNCITRAL Model Law 2006 and be consistent with the most recent international standard of arbitration. The amended Arbitration Act entered into force on April 1, 2024. The key parts of the amended Arbitration Act are as follows:

Interim measures

Major amendments were made to interim measures.

Article 24 of the prior Arbitration Act provides an arbitral tribunal with broad discretion to order necessary interim measures, but it did not explicitly identify specific measures that the arbitral tribunal can render nor conditions for issuing such measures. The amended Arbitration Act clearly provides for five categories of interim measures as well as laying down conditions for ordering such measures.

In addition, interim measures ordered by an arbitral tribunal were not enforceable by Japanese courts under the prior Arbitration Act. Therefore, the amended Arbitration Act sets out procedures and mechanisms to enforce the interim measures and provide limited grounds to refuse the enforcement. Under the amended Arbitration Act, the Japanese court is given the power to impose a penalty fee on a party that has breached or will likely breach certain types of interim measures (e.g. an interim measure ordered by an arbitral tribunal prohibiting disposition of property necessary for payment of monetary debt).

For more details of those interim measures, please see Question 27.

By the way, the amended Arbitration Act is silent on enforcement of interim measures ordered by emergency arbitrators. This reflects the facts that the UNCITRAL Model Law 2006 does not contain stipulations for enforcement of such measures by emergency arbitrators either and that under the arbitration rules of major arbitral institutions, interim measures ordered by emergency arbitrators are not binding on the arbitral tribunals and the arbitral tribunals may modify such measures.

Requirement for arbitration agreement to be in writing

Under the prior Arbitration Act, there was some uncertainty as to when the "in writing" requirement is satisfied – for example, it is not clear whether a voice recording of an arbitration agreement is acceptable or not. Under Article 13(6) of the amended Arbitration Act, it becomes that an arbitration agreement is deemed to be made in writing where a non-written agreement between the parties makes reference to a document or electronic record which includes a clause of an arbitration agreement.

Procedures for arbitration-related cases

Under the Article 5(2) of the amended Arbitration Act, the Tokyo District Court or the Osaka District Court may exercise additional jurisdiction over cases pertaining to the procedures carried out by the court pursuant to the Arbitration Act if the seat of the arbitration is in Japan.

The extra jurisdiction of those courts will be given in addition to the jurisdiction of the district courts provided by Article 5(1) of the Arbitration Act, in order to further strengthen the arbitration-related experience of the Tokyo and Osaka District Courts.

In addition, previously all documentary evidence needs to be translated into the Japanese language for arbitration-related lawsuits before Japanese courts. Under Article 46(2) of the amended Arbitration Act, this burden of translation will be mitigated and the court has a reasonable discretion to allow for submission of documentary evidence in its original language.

The amended Arbitration Act is largely based on the UNCITRAL Model Law 2006, is expected to enhance the merits of international arbitration seated in Japan, and entered into force on April 1, 2024.

6. What arbitral institutions (if any) exist in your country? When were their rules last amended? Are any amendments being considered?

Major arbitral institutions in Japan and their latest arbitration rules are as follows:

- The Japan Commercial Arbitration Association (**"JCAA"**) – the Commercial Arbitration Rules 2021 (**"JCAA Rules"**), Interactive Arbitration Rules 2021, both effective 1 July, 2021;
- The Japan Intellectual Property Arbitration Center – the Rules for Arbitral Proceedings last amended 1 April, 2024;
- The International Arbitration Center in Tokyo – the IACT Arbitration Rules adopted on 1 September, 2018 and the IACT Expedited Arbitration Rules adopted on February 12, 2024;
- Japan Sports Arbitration Agency – Sports Arbitration Rules effective on 1 April, 2021; and
- The Japan Shipping Exchange, Inc. (the Tokyo Maritime Arbitration Commission (TOMAC)) – the Rules of Arbitration of Tokyo Maritime Arbitration Commission (TOMAC) of The Japan Shipping Exchange, Inc. effective from April 1, 202

JCAA is currently the leading arbitral institution in Japan. The Japan International Dispute Resolution Center (JIDRC) was established in February 2018 as an agency to contribute to the furthering of international arbitration and international mediation in Japan, and is actively promoting international arbitration in Japan.

7. Is there a specialist arbitration court in your country?

No, there is no special arbitration court in Japan.

8. What are the validity requirements for an arbitration agreement under the laws of your country?

The Definition of the Arbitration Agreement

For an arbitration agreement to be valid, it first needs to fall under the definition of arbitration agreement. Article 2(1) of the Arbitration Act provides that arbitration agreement means an agreement to refer the resolution of all or part of civil disputes which have already arisen or which may arise in the future in respect of a certain legal relationship to one or more arbitrators, and to accept the award made therefor. As such, the parties must agree that one or more third parties will hear certain legal disputes and that the parties will accept a decision made by such third parties as final. It is not required that an arbitration agreement sets forth an arbitral institution (i.e. ad hoc arbitration is acceptable), governing law, or seat of arbitration.

Requirement of Arbitrability

Disputes subject to an arbitration agreement must be arbitrable. In this regard, Article 13(1) of the Arbitration Act provides that except when otherwise stipulated in laws and regulations, an arbitration agreement is valid only where the subject thereof is a civil dispute that may be settled between the parties.

Accordingly, some disputes are excluded from the scope of arbitrable cases. For example, disputes over divorce or dissolution of an adoptive relationship are explicitly excluded from the subject of arbitration agreement. Also, an arbitration agreement concerning a dispute between an individual employee and an employer over working conditions and other matters concerning a labor relationship is invalid, and an arbitration agreement for a future dispute between a consumer and a business operator may be terminated by the consumer (Article 3 and 4 of the Supplementary Provisions of the Arbitration Act).

Requirement for arbitration agreement to be in writing

An arbitration agreement must be in writing, such as in the form of a document signed by all the parties, letters or telegrams exchanged between the parties or other documents (Article 13(2) of the Arbitration Act).

Further, under Article 13(6) of the amended Arbitration Act, an arbitration agreement is deemed to be made in writing where a non-written agreement between the parties makes reference to a document or electronic record which includes a clause of an arbitration agreement.

See also Question 5.

9. Are arbitration clauses considered separable from the main contract?

Yes. Article 13(7) of the Arbitration Act provides for the principle of the separability of an arbitration agreement. Accordingly, an arbitration clause is generally treated as an agreement independent of the main contract. However, in limited circumstances, for example where a party enters into a main contract under duress, not only the terms in the main contract but also the arbitration agreement stipulated therein would be considered invalid or voidable.

10. Do the courts of your country apply a validation principle under which an arbitration agreement should be considered valid and enforceable if it would be so considered under at least one of the national laws potentially applicable to it?

No. The courts in Japanese do not apply the validity principle.

11. Is there anything particular to note in your jurisdiction with regard to multi-party or multi-contract arbitration?

The Arbitration Act does not provide for a proceeding for joinder or consolidation of multiple claims and parties. Since arbitration is a dispute resolution mechanism based on agreement between the parties, an arbitral tribunal in principle has no authority to order third parties to become involved in the case in hand or to order the consolidation of relevant cases.

On the other hand, Article 57 of the JCAA Rules provides for conditions for consolidation. Where a party to an arbitral proceeding requests consolidation in writing and the arbitral tribunal of the proceeding finds it necessary, the arbitral tribunal may consolidate and hear the arbitral proceeding pending before it with another arbitral proceeding for which no arbitral tribunal has been constituted, if:

i. the claims under the pending arbitral proceeding and the arbitral proceeding to be consolidated arise under the same arbitration agreement, and if the parties are different between those proceedings, the parties to the arbitral proceeding to be consolidated so agree in writing; or
ii. the parties to those proceedings are identical and:

    a. the legal or factual issues are identical or of the same kind;
    b. the arbitration agreements based on which those arbitral proceedings are filed provide for arbitration under the JCAA commercial arbitration rules or at the JCAA; and
    c. the arbitral proceedings are capable of being conducted in a single proceeding, taking into account the places of arbitration, the number of arbitrators, languages of the arbitration and other issues set forth in the arbitration agreements.

Arbitral proceedings may be consolidated even after arbitral tribunals have been constituted for both of the proceedings, if all the parties and all the arbitrators agree to such consolidation.

Multi-party arbitration agreements are enforceable under the Arbitration Act. With regard to appointment of arbitrators, Article 17(4) of the Arbitration Act provides that if there are three or more parties to the case, arbitrators shall be appointed based upon the agreement of all the parties, and if the parties fail to reach such agreement, the court shall appoint the arbitrators at the request of a party.

12. In what instances can third parties or non-signatories be bound by an arbitration agreement? Are there any recent court decisions on these issues?

In principle, the effect of an arbitration agreement is limited to the parties or signatories of the agreement, and does not extend to third parties or non-signatories.

However, there are some exceptions to this principle.

First, since a general successor of a party to an arbitration agreement (for example, where a company absorbs another as part of a merger where the company that was absorbed was a party to an arbitration agreement) may be deemed to be the same party, the arbitration agreement shall be extended to the general successor, unless there is a contrary agreement between the original parties to the arbitration agreement or the rights and obligations subject to the succession are personal.

Second, it is also generally understood that the effect of the arbitration agreement signed by a representative of an association or foundation without its own rights and abilities (Kenrinoryoku-naki-shadan) extends to their members.

Third, if a representative or officer of a corporation enters into or performs a contract containing an arbitration agreement on behalf of the corporation (i.e. the corporation is the party to the contract), such representative or officer might also be bound by the arbitration agreement. There is a lower court precedent which held that where a Japanese corporation and a British corporation entered into an agency contract including an arbitration clause, the arbitration clause should be applied to the president and directors of the UK corporation as well as to the UK corporation itself. The main reasoning of the court was that it was desirable to judge the appropriateness of the claims against the president, directors and the corporation in a unified manner.

Fourth, there is split in court precedents as to whether a person who acquired a right under a main contract including an arbitration clause, but not the whole contract, is bound by the arbitration clause. Some court precedents decided that it was and others that it was not.

13. Are any types of dispute considered non-arbitrable? Has there been any evolution in this regard in recent years?

As a general explanation, please see Question 8.

There is an increasing trend to admit arbitrability for a broad range of civil disputes. For instance, although a dispute concerning the validity of a patent itself is normally considered to be non-arbitrable, basically an arbitral tribunal may determine the validity of the patent, if it is necessary to resolve the referred dispute concerning the patent license agreement. Also, it is generally accepted that claims for injunctions and for damages arising from violation of the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade (Anti-Monopoly Act) are arbitrable and may be the subject of arbitration.

14. Are there any recent court decisions in your country concerning the choice of law applicable

to an arbitration agreement where no such law has been specified by the Parties?

Where an arbitration agreement does not explicitly stipulate a governing law, the Tokyo District Court decision of 19 June, 2020 (2018 (Wa) No.10883) applied Article 7 of the Act on General Rules for Application of Laws and held that as a starting point, the governing law of the arbitration agreement should be determined based on the parties' agreement. The court held that the parties to the arbitration agreement, the plaintiff and a U.K. registered company, had implicitly agreed that the law applicable to the arbitration agreement should be the law of England & Wales, because the governing law of the main contract was the law of England & Wales and the seat of arbitration was the United Kingdom. The district court made clear that it was following the decision of the Supreme Court of Japan of 4 September 1997 (Minshu vol. 51 No.8 p.3657).

In addition, the decision by the Tokyo District Court on 15 April 2021 (2019 (Wa) No. 13402) relates to a case where in a charter party the parties agreed to resolve all disputes by arbitration seated in Singapore pursuant to the 1996 Arbitration Act and the general rules of the London Maritime Arbitrators Association. The governing law of the charter party was English law. Under those facts, the court applied Article 7 of the Act on General Rules for Application of Laws and found that the parties impliedly agreed on English law to govern the arbitration agreement. In this case, the court, by its interpretation of English law, extended the scope of the arbitration agreement to contractual and tort claims relating to the charter party as well as to a party who had just signed the charter party as a "guarantor".

15. How is the law applicable to the substance determined? Is there a specific set of choice of law rules in your country?

The parties to an arbitration proceeding may agree on the substantive law applicable to the case (Article 36(1) of the Arbitration Act). If the parties designate the law of a state to be applied by an arbitral tribunal, such designation would be deemed as referring to the substantive law rather than conflict of law rules of that state, unless agreed otherwise by the parties.

If there is no such agreement between the parties, the arbitral tribunal will apply the substantive law of the state with which the civil dispute subject to the arbitral proceedings is most closely connected (Article 36(2) of the Arbitration Act).

16. In your country, are there any restrictions in the appointment of arbitrators?

The Arbitration Act does not impose any restrictions concerning the qualifications of arbitrators. In particular, there are no nationality or citizenship requirements in respect of appointment of arbitrators, unless otherwise agreed by the parties. An arbitrator does not have to be legally qualified, and it is not unusual in Japan for a law professor to serve as an arbitrator.

If the candidate arbitrators have doubts over their own impartiality or independence, they must disclose the relevant information or circumstances (Article 18(3) and (4) of the Arbitration Act). Practitioners in Japan often refer to the IBA Guidelines on Conflicts of Interest in International Arbitration when considering impartiality and independence.

17. Are there any default requirements as to the selection of a tribunal?

Normally arbitration rules of an arbitral institution agreed by the parties govern the procedures for selecting a tribunal (Article 17(1) of the Arbitration Act). The court will appoint arbitrators at the request of a party if either party fails to comply with the agreed process for appointment of its arbitrator (Article 17(5) of the Arbitration Act).

In cases where the parties agree on neither an arbitral institution nor a method for appointment of arbitrators, then if there are two parties and three arbitrators are requested, the parties will each appoint one arbitrator, and the two arbitrators appointed by the parties will then appoint the third arbitrator (Article 17(2) of the Arbitration Act). Should a party fail to appoint an arbitrator within 30 days of receipt of a request to appoint an arbitrator by the other party who has already appointed an arbitrator, the court must appoint the arbitrator at the request of that other party. If the two arbitrators appointed by the parties fail to appoint the third arbitrator within 30 days of their appointment, the court must appoint the third arbitrator at the request of either party (Article 17(2) of the Arbitration Act).

If there are two parties and one arbitrator is requested, the court will appoint the arbitrator at the request of a party when the parties failed to reach an agreement for appointment of the sole arbitrator (Article 17(3) of the Arbitration Act). If there are three parties or more, the court will appoint arbitrator(s) at the request of a party (Article 17(4) of the Arbitration Act).

18. Can the local courts intervene in the selection of arbitrators? If so, how?

Please see Question 17.

19. Can the appointment of an arbitrator be challenged? What are the grounds for such challenge? What is the procedure for such challenge?

A party may challenge the appointment of an arbitrator if (a) the arbitrator does not meet the qualifications agreed by the parties, or (b) there is reasonable doubt over the impartiality or independence of the arbitrator (Article 18(1) of the Arbitration Act).

The parties may agree on procedures for challenging the appointment of arbitrators (Article 19(1) of the Arbitration Act). In the absence of such agreement, the arbitral tribunal will make a decision on the challenge at the request of a party (Article 19(2) of the Arbitration Act). In such a case, a party that intends to challenge the appointment must submit to the arbitral tribunal a written application within 15 days of becoming aware of (i) the constitution of the arbitral tribunal or (ii) the existence of any grounds for the challenge, whichever comes later (Article 19(3) of the Arbitration Act).

If the challenge is dismissed, the party that made the challenge may file an application to challenge the appointment of the arbitrator with the court within 30 days of receipt of notice of the decision on the challenge (Article 19(4) of the Arbitration Act). If the court rejects this challenge then no further appeal to a higher court is available for any party (Article 7 of the Arbitration Act). This is so that the dispute over the appointment of the arbitrator may be revolved swiftly.

On the other hand, if the composition of the arbitral tribunal violates Japanese laws and regulations or agreements by the parties, there is possibility that the party may file an application with the court to set aside an arbitral award rendered by the arbitral tribunal (Article 44(1) (vi) of the Arbitration Act).

20. Have there been any recent developments concerning the duty of independence and impartiality of the arbitrators, including the duty of disclosure?

An important Supreme Court decision was rendered on 12 December 2017 (Minshu, Vol. 71, No. 10, p. 2016). In that case, an arbitral award was rendered by an arbitral tribunal, made up of a panel of three arbitrators, including a partner from the Singapore office of an international law firm (the "Arbitrator"), in relation to a JCAA arbitration among U.S. corporations X1 and X2, and Japanese corporation Y1 and Singapore corporation Y2. An application for setting aside the arbitral award was filed on the grounds that the Arbitrator failed to disclose the fact that a colleague at the San Francisco office of the same international law firm had acted as counsel for an affiliate company of Y1 in respect of a class action in the United States ("Fact of Potential Conflict").

In relation to the legal issue of whether the Arbitrator breached the duty of disclosure under Article 18(4) of the Arbitration Act, the Supreme Court of Japan decided as follows:

- The abstract advance disclosure submitted by the Arbitrator shall not be regarded as disclosure of the Fact of Potential Conflict – the Arbitrator's written statement upon his appointment as the arbitrator that an attorney at his law firm might in the future advise or represent the parties to the arbitration and/or their affiliated companies in relation to cases unrelated to the arbitration at issue, was not sufficient disclosure;
- The duty to disclose is ongoing in nature and the Arbitrator assumed the duty of disclosure for facts concerning his impartiality or independence until the end of the arbitral proceeding, irrespective of requests by a party; and
- The Arbitrator must disclose to the parties not only facts that he was aware of, but also what could usually be found by a reasonable investigation into the existence or nonexistence of the facts relating to his impartiality and independence.

The case was remanded to the Osaka High Court for further factual examination and the High Court decided on 11 March 2019 that the Arbitrator did not breach the duty of disclosure under Article 18(4) of the Arbitration Act.

21. What happens in the case of a truncated tribunal? Is the tribunal able to continue with the proceedings?

Article 22 of the Arbitration Act allows the parties to agree on a method to fill a vacancy when the duties of an arbitrator are terminated. If there is no such agreement,

the same method of appointment used for the previous arbitrator will be adopted for appointment of a successor arbitrator. The tribunal will continue with the proceedings upon such appointment.

On the other hand, under Article 37 of the JCAA Rules, where an arbitrator ceases to perform his or her duties after the closing of the arbitral proceedings but before an arbitral award is rendered, the arbitral tribunal may render an arbitral award without a substitute arbitrator being appointed, if the JCAA, after giving the remaining arbitrators and the Parties an opportunity to comment, considers it appropriate.

22. Are arbitrators immune from liability?

The Arbitration Act does not include provisions for immunity of arbitrators. It is generally understood that some liabilities of arbitrators may be exempted but in light of public policy arbitrators will likely be liable for their intentional acts or acts of gross negligence even if the arbitration agreement has a stipulation for immunity for such liability.

In this regard, Article 13 of the JCAA Rules provide for immunity for arbitrators, setting out that no arbitrators shall be liable for any act or omission in connection with the arbitral proceedings unless such act or omission is shown to constitute willful misconduct or gross negligence.

23. Is the principle of competence-competence recognised in your country?

Yes. The principle of competence-competence is recognized in Japan. An arbitral tribunal may address issues of whether its authority is legitimate (Article 23(1) of the Arbitration Act). If the arbitral tribunal decides that it has jurisdiction in an independent decision made prior to an arbitral award, a party may still ask a court for judicial review of that decision as long as the party files such a petition with the court within 30 days from the receipt of that decision although, such judicial review does not necessarily interrupt the arbitral procedure (Article 23(5) of the Arbitration Act).

24. What is the approach of local courts towards a party commencing litigation in apparent breach of an arbitration agreement?

Pursuant to Article 14(1) of the Arbitration Act, if the defendant requests so, Japanese courts must dismiss the litigation without prejudice based on the existence of the arbitration agreement, except where:

i. the arbitration agreement is invalid due to nullity, rescission or for any other reasons;
ii. it is impossible to carry out an arbitration procedure based on the arbitration agreement; or
iii. the request was made after the party making the request presented oral arguments on the merits of its case or made statements on the merits in preparatory proceedings.

25. What happens when a respondent fails to participate in the arbitration? Can the local courts compel participation?

The respondent must state its defense with respect to claims made by the claimant within the period determined by the arbitral tribunal (Article 31(2) of the Arbitration Act). If the respondent fails to provide a defense, the arbitral tribunal shall continue the arbitral proceedings, unless otherwise agreed by the parties (Article 33(2) of the Arbitration Act. Article 44(1) of the JCAA Rules provides the same rule.). If the respondent fails to appear at an oral hearing or to submit required documentary evidence, then, unless agreed otherwise by the parties or the respondent has justifiable grounds for failure to do so, the arbitral tribunal may render an arbitral award based upon the evidence that has been presented to it up to that time (Article 33(3) of the Arbitration Act. The same rule is set out in Article 44(2) of the JCAA Rules.). Even if the respondent fails to participate in the arbitral proceedings, the local court has no authority to compel his/her participation against his/her will under the Arbitration Act.

26. Can third parties voluntarily join arbitration proceedings? If all parties agree to the intervention, is the tribunal bound by this agreement? If all parties do not agree to the intervention, can the tribunal allow for it?

The Arbitration Act is silent on joinder. Although it would be decided on a case-by-case basis, even if all parties agree to the joinder, the arbitral tribunal would still retain its discretion to deny the joinder if the tribunal finds reasonable grounds to do so. If all parties do not agree to the joinder, the arbitral tribunal will not be able to allow for the joinder.

In this regard, the JCAA Rules allow third-party participation and the joinder of parties in certain

conditions, such as, for example, when all claims are made under the same arbitration agreement or all parties and the third party have agreed in writing to the joinder (Article 56(1) of JCAA Rules). Even when the requirement under the JCAA Rules is met, the arbitral tribunal may deny joinder if the arbitral tribunal finds it inappropriate due to expected delay in the arbitral proceedings or any other reasonable grounds (Article 56(5) of the JCAA Rules).

In practice, issues regarding the participation of a third party are most likely to be resolved through consultation and agreement among the parties, the third party and the arbitral tribunal based on the specific circumstances.

27. What interim measures are available? Will local courts issue interim measures pending the constitution of the tribunal?

The parties have three options as interim measures, which are interim measures issued (i) by an arbitral tribunal (after the constitution of an arbitral tribunal) under the Arbitration Act, (ii) by courts of law under the Civil Provisional Remedies Act (Law No.91 of 1989), and, if the JCAA Rules are applicable, (iii) by an emergency arbitrator (pending the constitution of an arbitral tribunal) under the JCAA Rules. The Japanese law does not preclude or restrict the court's power to issue interim measures due to the mere fact that the arbitral tribunal is given the power to issue same. Theoretically, unless otherwise agreed, the parties may seek both the arbitral tribunal's interim measures and the court's interim measures on the same subject matter. Which interim measures prevails will be decided on a case-by-case basis.

Interim measures by an arbitration tribunal: Article 24(1) of the Arbitration Act provides that, unless otherwise agreed by the parties, and until an arbitral award is made, an arbitral tribunal may, upon the petition of a party, order the other party to take the following measures:.

a. to prohibit the disposal of or any other change to properties necessary for the payment of money;
b. to prohibit the disposal of or any other change to any properties which are the subject matter of the claim;
c. to prevent the detrimental damage or imminent danger arising, take necessary measures for such prevention, or restore the status quo of the property or relationship of rights;
d. to prohibit from taking actions that would obstruct the arbitral proceedings in the arbitration procedure; and/or
e. to prohibit from taking actions such as disposing of, erasing or altering evidence necessary for the proceedings in the arbitration procedure.

A party filing a petition for interim measures set forth above is required to make a prima facie showing of (i) the existence of the rights that must be preserved and (ii) the fact constituting the grounds for the petition (Article 24(2) of the Arbitration Act).

The arbitral tribunal may also order the party filing a petition for interim measures to provide appropriate security in connection with those interim measures (Article 24(3) of the Arbitration Act).

The interim measures issued by an arbitral tribunal is enforceable in Japan. To enforce the interim measures issued for (c), the applicant files a petition with the court for an approval order of execution of the interims measures (Article 47(1) (i) of the Arbitration Act). To enforce the interim measures issued for (a), (b), (d) and (e), the applicant files a petition with the court for an approval order of execution of a penalty payment order for violation or likely violation of the interim measures (Articles 47(1) (ii) and 49(1) of the Arbitration Act). The court may dismiss these petitions only when it finds that any of the grounds set forth in Article 47(7) of the Arbitration Act exist.

Interim measures by courts of law: Before or during an arbitral proceeding, a party may file a court petition for a provisional order with regard to a civil dispute that may be the subject of the arbitration agreement (Article 15 of the Arbitration Act). The Arbitration Act does not provide any procedures for specific interim measures by the court; these are handled in accordance with the Civil Provisional Remedies Act (Law No. 91 of 1989). The interim measures issued by courts can be enforced on a provisional basis in accordance with the Civil Execution Act (Law No. 4 of 1979).

Interim measures by an emergency arbitrator: The JCAA Rules set out detailed interim measures that the emergency arbitrator may order, subject to certain conditions being satisfied (Articles 75 through 79 of the JCAA Rules). The interim measures issued by an emergency arbitrator does not fall into the interim measures provided under the Arbitration Act, and there is no provision in the Arbitration Act for the enforceability by the court of interim measures issued by an emergency arbitrator. Therefore, based on literal interpretation of the Arbitration Act, the interim measures issued by an

emergency arbitrator appear to be unenforceable in Japan.

28. Are anti-suit and/or anti-arbitration injunctions available and enforceable in your country?

As stated in Question 27, the arbitral tribunal may, upon the petition of a party, order the other party to take the measures to prohibit from taking actions that would obstruct the proceedings in the arbitration procedure (Article 24(1) (iv) of the Arbitration Act). What these measures include specifically is not provided in the Arbitration Act, but it is said that an anti-suit injunction may be issued under this provision, if a party has filed a litigation in court with the aim of delaying the arbitral proceedings and thereby obstructing the arbitral proceedings. As stated in Question 27, such an anti-suit injunction issued by an arbitral tribunal is enforceable in Japan (Articles 47 and 48 of the Arbitration Act).

On the other hand, the availability of anti-arbitration injunctions by local courts is still under discussion.

29. Are there particular rules governing evidentiary matters in arbitration? Will the local courts in your jurisdiction play any role in the obtaining of evidence? Can local courts compel witnesses to participate in arbitration proceedings?

Generally, the rules which the arbitral tribunal should observe in respect of both arbitration procedure in general evidentiary matters specifically, shall be aligned with the agreement of the parties (Article 26(1) of the Arbitration Act). If there is no such agreement by the parties, the arbitral tribunal has the power to carry out the arbitral procedure in such a manner as it finds appropriate, unless this manner is in violation of the Arbitration Act (Article 26(2) of the Arbitration Act). Such power includes determination of the admissibility of evidence, necessity of examination, and weight of evidence (Article 26(3) of the Arbitration Act). The IBA Rules on the Taking of Evidence in International Commercial Arbitration are recognized as the primary guidelines used for arbitrators in Japan.

The arbitral tribunal, or a party who has obtained consent from the arbitral tribunal, may request court assistance in taking evidence pursuant to the Code of Civil Procedure (Law No.109 of 1996), unless otherwise agreed by the parties (Article 35(1) (2) of the Arbitration Act). The taking of evidence can include examination of witnesses and experts, production of documents, the commission of an examination, and inspection (Article 35(1) of the Arbitration Act). The Code of Civil Procedure governs actual procedures and the effects of court orders. During such procedure in court, based on permission by the presiding judge, the arbitrators may ask factual witness and expert witnesses questions (Article 35(5) of the Arbitration Act).

30. What ethical codes and other professional standards, if any, apply to counsel and arbitrators conducting proceedings in your country?

An attorney-at-law qualified in Japan and a registered foreign attorneys are subject to the ethical codes for practicing (the Basic Rules on the Duties of Practicing Attorneys and Gaikokuho-jimu-bengoshi Basic Rules on the Duties of Practicing Attorney) administered by Japan Federation of Bar Associations. These codes apply when they are acting as counsel or arbitrators, whether in or outside Japan. Apart from these ethical codes there are no other special ethical rules that are applicable to counsels or arbitrators in international arbitrations in Japan.

Some arbitration practitioners in Japan do take into consideration the IBA Guidelines on Party Representation in International Arbitration. The Arbitration Act does require arbitrators to be impartial and independent (Article 18(1) (ii) of the Arbitration Act) and provides for criminal offences relating to bribes to arbitrators (Articles 53 to 55 of the Arbitration Act). Also, the Japan Association of Arbitrators issued the Code of Ethics for arbitrators in 2008.

31. In your country, are there any rules with respect to the confidentiality of arbitration proceedings?

The Arbitration Act is silent on the confidentiality of information regarding arbitral proceedings. However, in practice, binding confidentiality obligations are generally incorporated in arbitration agreements. In addition, the rules of most arbitration institutions expressly require that arbitral proceedings and records be kept confidential from the public (e.g., Article 42(1) of JCAA Rules).

32. How are the costs of arbitration proceedings

estimated and allocated? Can pre- and post-award interest be included on the principal claim and costs incurred?

The Arbitration Act has only generic provisions on fees and no specific fee structure is stipulated by it. The parties may agree on how to apportion the cost of the arbitration procedure, including legal fees, between them (Article 52(1) of the Arbitration Act).

If the parties agree on arbitration before the JCAA, its website provides automatic calculator of the arbitration costs based on rules, number of arbitrators and the amount of the claim (https://www.jcaa.or.jp/en/arbitration/costs.html). The arbitral tribunal may apportion the costs of the arbitration, including reasonable legal fees of counsel, between the parties, taking into account the parties' conducts throughout the course of the arbitral proceedings, the determination on the merits of the dispute, and any relevant circumstances (Article 80(2) of the JCAA Rules. See Article 52(3) of the Arbitration Act). It is generally recognized that a large number of arbitral awards under the JCAA Rules have adopted the principle of "costs follow the event".

In the absence of agreement, each party must bear its own costs in relation to the proceedings (Article 52(2) of the Arbitration Act); the unsuccessful party is not obligated to pay the successful party's costs.

Whether pre- and post-award interest can be awarded on the principal claim and costs incurred will be determined based on the applicable substantive law. Under Japanese law, depending on the facts of the cases, it is permissible to grant pre- and post-award interest on the principal claim. The current statutory interest rate is 3 % per annum for both commercial and civil claims, which is subject to periodic review every three year.

33. What legal requirements are there in your country for the recognition and enforcement of an award? Is there a requirement that the award be reasoned, i.e. substantiated and motivated?

An arbitral award is deemed to have the same effect as a final and binding judgment in Japan (Article 45(1) of the Arbitration Act). The arbitral award is automatically recognized unless it falls under one of the items set forth in Article 45(2) of the Arbitration Act.

An arbitral award must be reasoned; provided, however, that such requirement does not apply to cases where the parties have agreed otherwise (Article 39(2) of the Arbitration Act). An arbitral award shall be in writing and carry the arbitrator's/arbitrators' signature on it (Article 39(1) of the Arbitration Act). The date and the seat on which the arbitral award has been made shall be provided in an arbitral award (Article 39(3) of the Arbitration Act).

In order to enforce an arbitral award in Japan, a party who seeks enforcement must file a petition, together with a copy of the arbitral award and the Japanese translation thereof, with the competent court for an execution order (Article 46(1) (2) of the Arbitration Act). If the court finds it appropriate, after hearing the opinions of the respondent, the Japanese translation of the arbitral award, in whole or in part, is not required to submit (Article 46(2) of the Arbitration Act). An execution order will be granted unless an exception under Article 45(2) of the Arbitration Act is found by the court (Article 46(7) to (9) of the Arbitration Act). Article 45(2) of the Arbitration Act sets out substantially the same legal requirements for enforcement as those provided under the New York Convention.

34. What is the estimated timeframe for the recognition and enforcement of an award? May a party bring a motion for the recognition and enforcement of an award on an ex parte basis?

It will typically take several months for the enforcement procedures at the court of first-instance to acquire an execution order. If a party attempts to enforce an arbitral award against assets in Japan of the other party and the other party does not have business premises or other office in Japan, the formal international service of the written application will be required. In such case, enforcement procedures will take a significant amount of time.

Under the Arbitration Act, an *ex parte* procedure is not available for enforcement of an arbitral award (Articles 46(9) and 44(4) of the Arbitration Act).

35. Does the arbitration law of your country provide a different standard of review for recognition and enforcement of a foreign award compared with a domestic award?

No, the same standard of review applies for both domestic and foreign awards.

36. Does the law impose limits on the available

remedies? Are some remedies not enforceable by the local courts?

The Arbitration Act does not stipulate the specific types of remedy available. The arbitral tribunal can award any remedy that would be available in court litigation on the same dispute; this may include damages, injunctions, declarations and awards of interest. If those remedies are contrary to the public policy of Japan, such remedies are not enforceable by the local courts (Articles 46(7) and 45(2) (ix) of the Arbitration Act). For example, arbitral tribunal's order to pay punitive damages or debts of gambling, or delivery of goods prohibited under the laws will likely be deemed in violation of the public policy of Japan and thus unlikely be enforceable in Japan.

37. Can arbitration awards be appealed or challenged in local courts? What are the grounds and procedure?

The Arbitration Act does not stipulate an appeal mechanism in local courts once an arbitral award is recognized to be final.

However, arbitral awards can be challenged and set aside in Japanese courts if the seat of the arbitration is in Japan (Articles 3(1) and 44(1) of the Arbitration Act). Article 44(1) limits the grounds for setting aside arbitral awards to the following:

- the arbitration agreement is invalid due to the limited capacity of a party;
- the arbitration agreement is invalid on grounds other than the limited capacity of a party pursuant to the laws and regulations designated by the agreement of the parties as those which should be applied to the arbitration agreement;
- the requisite notice under the arbitration proceeding, including the one for appointment of arbitrators, was not given to one party;
- one party was unable to defend its case;
- the subject matter of the award is beyond the scope of the arbitration agreement or claims of the arbitration;
- the composition of the tribunal or arbitration proceeding was not in accordance with Japanese laws or the parties' agreement;
- the award was concerned with a dispute not qualifying as a subject for arbitration pursuant to Japanese laws; or
- the award is against public policy in Japan.

Parties may not challenge an award when an execution order has become final and binding or more than 3 months have elapsed after receiving notice of the award, whichever comes first (Article 44(2) of the Arbitration Act). The local court must hold a hearing which both parties can attend, to adjudicate on any challenge (Article 44(4) of the Arbitration Act), but will not re-evaluate the merits of the case.

38. Can the parties waive any rights of appeal or challenge to an award by agreement before the dispute arises (such as in the arbitration clause)?

The Arbitration Act does not stipulate whether it is possible to waive any rights to challenge an arbitral award by agreement before the dispute arises. Although the Code of Civil Procedure allows parties to waive the right to appeal to the High Court (i.e., the court of second instance in Japan), an agreement to waive all the rights to claim for setting-aside an arbitral award under Article 44 of the Arbitration Act is likely to be considered invalid. Issues such as whether an arbitral award violates the public policy of Japan are closely connected to just and proper dispute resolution by arbitration.

39. In what instances can third parties or non-signatories be bound by an award? To what extent might a third party challenge the recognition of an award?

Arbitral awards will not bind third parties or non-signatories who did not participate in the arbitral proceedings. As such, third parties and non-signatories may not apply for setting aside an arbitral award.

Please also see Question 12.

40. Have there been any recent court decisions in your jurisdiction considering third party funding in connection with arbitration proceedings?

No, we are not aware of any court precedents considering third party funding in connection with arbitration proceedings. The Attorney Act and the Trust Act may be relevant to validity of third party funding, but it is generally understood that if third party funding is operated appropriately, these acts do not prohibit parties from relying on third party funding.

41. Is emergency arbitrator relief available in your country? Are decisions made by emergency

arbitrators readily enforceable?

The Arbitration Act does not have any explicit provisions for emergency arbitrators. However, Article 75 through Article 79 of the JCAA Rules set out requirements and procedures for appointment of emergency arbitrators.

Interim measures issued by an emergency arbitrator does not fall into the interim measures provided under the Arbitration Act, and there is no provision in the Arbitration Act for the enforceability by the court of interim measures issued by an emergency arbitrator. Therefore, based on literal interpretation of the Arbitration Act, the interim measures issued by an emergency arbitrator appear to be unenforceable in Japan.

42. Are there arbitral laws or arbitration institutional rules in your country providing for simplified or expedited procedures for claims under a certain value? Are they often used?

The Arbitration Act is silent on simplified or expedited procedures, but Part 2 (Article 83 to Article 90) of the JCAA Rules provides for expedited arbitration procedures. Unless the parties agree otherwise or there are circumstances that make it clearly inappropriate to apply the expedited procedures, arbitration before the JCAA may be conducted under an expedited procedure if: (a) the amount in dispute is JPY300 million or less; or (b) a party notifies the JCAA in writing of the agreement by the parties to submit the dispute to expedited arbitration procedures (Article 84(1) and (3) of the JCAA Rules). Under expedited procedures, the arbitral tribunal will make reasonable efforts to render an arbitral award within 6 months from the date of the constitution of the tribunal or within 3 months where the amount in dispute is JPY 50 million or less (Article 88 of the JCAA Rules). Expedited procedures are often used for JCAA administered arbitration.

43. Is diversity in the choice of arbitrators and counsel (e.g. gender, age, origin) actively promoted in your country? If so, how?

Yes. Japan actively promotes diversity of arbitrators and counsel. For example, JCAA international arbitration from 2019 to 2023 reportedly had 43% of non-Japanese arbitrators.

44. Have there been any recent court decisions in your country considering the setting aside of an award that has been enforced in another jurisdiction or vice versa?

We are not aware of any such court decisions in Japan. As a matter of law, even if an arbitral award were enforced in another jurisdiction, the Japanese courts would decide whether to set aside such award on a case-by-case basis pursuant to the Arbitration Act.

On the other hand, although the court in Japan is not necessarily obliged to refuse to make an enforcement decision for an arbitral award set aside by the courts in the seat of arbitration (Article 46(7) of the Arbitration Act and Article V.1. (e) of the New York Convention), the Arbitration Act as a basic rule prevents the enforcement of a foreign arbitral award that has been set aside at the seat of arbitration (Article 46(7) and Article 45(2) (vii) of the Arbitration Act).

45. Have there been any recent court decisions in your country considering the issue of corruption? What standard do local courts apply for proving of corruption? Which party bears the burden of proving corruption?

We are not aware of recent court decisions on the issue of corruption in relation to arbitration. If an arbitrator has received a bribe, the award rendered by the arbitrator may be set aside under Article 44 of the Arbitration Act and may not be recognized or enforced under Article 45 of the Arbitration Act as being contrary to public policy.

The issue of corruption by judges is not common in the courts in Japan. Japan was ranked 16th out of 180 countries in Transparency International's Corruption Perceptions Index (2023).

46. What measures, if any, have arbitral institutions in your country taken in response to the COVID-19 pandemic?

The COVID-19 pandemic has prompted JCAA to take up online hearing, instead of in-person hearing, in many more cases than before (called virtual remote hearing, Article 50(3) of the JCAA Rules).

47. Have arbitral institutions in your country implemented reforms towards greater use of technology and a more cost-effective conduct of

arbitrations? Have there been any recent developments regarding virtual hearings?

JCAA introduced the Interactive Rules in 2019 in the expectation of making JCAA arbitration more cost effective. Parties can opt for the Interactive Rules instead of the normal Commercial Arbitration Rules. Under the Interactive Rules the tribunal is obliged to 'dialogue' with the parties by expressing its preliminary views to the parties prior to its decision as to whether witness examination will be conducted (Article 56). It is expected to enable the parties to focus on the genuine issues and thereby saves substantial time. The Interactive Rules also provide fixed remuneration of arbitrators, no matter how much time the arbitrator has spent for the case, rather than the hourly charging under the Commercial Arbitration Rules (Articles 94 and 95).

Please see Question 46 for recent developments regarding virtual hearings.

48. Have there been any recent developments in your jurisdiction with regard to disputes on climate change and/or human rights?

There have been civil lawsuits in Japan relating to climate change. For example, it was reported that in August 2024, a group of young people in Japan filed a civil lawsuit with Nagoya District Court against 10 major thermal power generation companies, requiring those companies to reduce carbon dioxide emissions to certain amounts based on the standards required by science.

Human right issues are becoming increasingly important in order to conduct business in Japan. Recent developments in the area of human rights in business contain a variety of themes including insufficient wages, sexual and other forms of harassment, environment and climate change, and protection of foreign workers.

49. Do the courts in your jurisdiction consider international economic sanctions as part of their international public policy? Have there been any recent decisions in your country considering the impact of sanctions on international arbitration proceedings?

The Arbitration Act provides that being contrary to Japanese public policy amounts to grounds for setting aside an arbitral award (Article 44(1)(viii) of the Arbitration Act) as well as for refusing to issue an execution order, whether the seat of the arbitration is in Japan or outside Japan (Article 45(2) (ix) of the Arbitration Act). Being contrary to international public policy is not set out in the Arbitration Act as grounds for setting aside an arbitral award or for refusing to issue an execution order. It may be that compliance with international economic sanctions is considered as part of Japanese public policy, but we are not aware of any recent decisions on this issue in Japan.

50. Has your country implemented any rules or regulations regarding the use of artificial intelligence, generative artificial intelligence or large language models in the context of international arbitration?

No. Japan does not implement any rules or regulations on such fields in the context of international arbitration.

In relation to the use of Artificial Intelligence (AI) in the context of mediation, arbitration, and other alternative dispute resolution (collectively, "ADR"), in March 2022, Japanese government developed and published a basic policy on the promotion of Online Dispute Resolution (ODR), in which ADR procedures are conducted online using digital technology. In the policy, with a view to realizing ODR using AI, the possibility of various uses of Artificial Intelligence (AI) and issues related to ethics and other issues that may arise with the use of AI are being examined from various perspectives.

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