Japan

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GENERAL

1. Please give a brief overview of the use of commercial arbitration in your jurisdiction, including any recent trends. What are the general advantages and disadvantages of arbitration compared to court litigation in your jurisdiction?

The Arbitration Law (*Law No. 138 of 2003*) (English translation at *www.kantei.go.jp/foreign/policy/sihou/law032004_e.html*), which replaced a law dating from 1890, came into effect on 1 March 2004. Although the Arbitration Law has not dramatically increased the traditionally low use of commercial arbitration, government and arbitration practitioners have recently shown a strong desire to promote the use of commercial arbitration.

Generally, arbitration has various advantages compared to litigation, which include:

- **Parties' initiative.** Parties can appoint specialists, whom both parties think are reliable, to determine the procedural rules for resolution of their dispute. This is particularly significant in cross-border disputes, where parties have little information on court procedures and litigation practices of other jurisdictions.
- **Confidentiality.** Arbitration proceedings are generally closed to the public, which makes arbitration a preferable means to resolving disputes of a private or confidential nature. In principle, litigation is open to the public, and parties to litigation cannot request the proceedings to be held in private.
- **Speed.** Since there is no appeal against an arbitral award unless the parties otherwise agree, arbitration proceedings may be faster than court litigation. (Since court proceedings are rather expeditious, arbitration proceedings are not necessarily faster than court proceedings in the first instance. However, taking appeals into consideration, arbitration proceedings are faster than court proceedings in Japan.)

2. Which arbitration organisations are commonly used to resolve large commercial disputes in your jurisdiction? Please give details of both arbitral institutions and professional/industry bodies, including the website address of each organisation.

The following arbitral institutions are commonly used to resolve large commercial disputes in Japan (*see box, Main arbitration organisations*):

- The Japan Commercial Arbitration Association (JCAA) (*www.jcaa.or.jp/e/index-e.html*).
- International Chamber of Commerce (ICC) (*www.iccwbo.org*).

Some Japanese bar associations also provide arbitration services.

In addition, there are professional/industry bodies commonly used to resolve special types of commercial disputes. These bodies include the:

- Japan Shipping Exchange, Inc (*www.jseinc.org/index_en.html*).
- Japan Intellectual Property Arbitration Center (*www.ip-adr.gr.jp/english/index.html*).

3. What legislation applies to arbitration in your jurisdiction? To what extent has your jurisdiction adopted the UNCITRAL Model Law on International Commercial Arbitration 1985 (UNCITRAL Model Law)?

The Arbitration Law applies to arbitrations in Japan. Unless otherwise specified, all references in this chapter are to the Arbitration Law.

Japan's Arbitration Law is based on the UNCITRAL Model Law (original 1985 version) (1985 Model Law). Although many of the provisions of the Arbitration Law are nearly identical to the 1985 Model Law, there are some differences such as:

- **Form of arbitration agreements (*Article 13(4)*).** Arbitration agreements can be made by electromagnetic record (for example, e-mail). In contrast, the 1985 Model Law allows agreements by facsimile but not electromagnetic record (*see Question 7*).
- **Enforcement of arbitration agreements (*Article 14(1)*).** If a court proceeding is initiated in breach of an arbitration agreement, the court proceeding is dismissed on the defendant's request. In contrast, the 1985 Model Law states that the court refers the parties to arbitration (*see Question 17*).

(For further details of the differences between the Arbitration Law and the 1985 Model Law, see *Questions 7 and 17*.)

4. Are there any mandatory legislative provisions (for example, relating to removal of arbitrators, challenge of awards and arbitrability)? If yes, please summarise their effect.

Although the Arbitration Law allows parties to have broad autonomy, there are mandatory provisions such as the court's jurisdiction to, on a party's request:

- Decide on challenges to arbitrators (*Article 19(4)*).

- Remove arbitrators (*Article 20*).

In relation to rules of procedure, the Arbitration Law has minimal mandatory rules, including:

- Equal treatment of all parties and due process (*Article 25*).
- Tribunal's authority on kompetenz-kompetenz (*Article 23(1)*).
- Time limitation on the disputing tribunal's jurisdiction (*Article 23(2)*).
- Prior notice of oral hearings (*Article 32(3)*).
- Accessibility to other party's briefs and evidence (*Article 32(4)*).
- Form of awards (except for the necessity of describing reasons for awards) (*Article 39*).
- Completion of arbitral proceedings (*Article 40*).
- Grounds and procedure to set aside arbitral awards (*Article 44*).

A mandatory provision also stipulates the scope of arbitrable disputes, which includes all civil disputes where there is a possibility of settlement between the parties (excluding those relating to divorce or separation) (*Article 13(1)*). The following disputes are generally considered not to be arbitrable:

- Actions relating to personal status, such as cases requesting confirmation of paternity.
- Disputes relating to the validity of intellectual property (IP) rights (for example, a patent).

In addition, an agreement between a consumer and a business to arbitrate future civil disputes can be cancelled by the consumer (*Article 3, Supplementary Provisions to the Arbitration Law*). An agreement between an individual worker and his employer to arbitrate future labour disputes is null and void (*Article 4, Supplementary Provisions to the Arbitration Law*).

5. Are there any requirements relating to independence or impartiality?

An arbitrator must be impartial and independent, possessing the qualifications agreed by the parties to the arbitration agreement (*Article 18(1)*). If a single or a third arbitrator is appointed by the court on request from a party to the arbitration, due regard must be had for whether it would be appropriate to appoint an arbitrator of a different nationality from the parties (*Article 17(6)(iii)*). Arbitrators and arbitrator candidates must disclose any facts which may raise doubts as to their impartiality or independence (*Articles 18(3) and 18(4)*).

6. Does the law of limitation apply to arbitration proceedings? If yes, briefly state the usual length of limitation period(s) and what triggers or interrupts it in the context of commercial arbitration.

In Japan, the law of limitation is considered to be a matter of substantive law and causes extinction of rights. Therefore, when Japanese substantive law applies, the law of limitation also applies in arbitration proceedings.

The usual length of limitation periods under Japanese substantive law is as follows:

- A claim under the Civil Code is extinguished after ten years from the date the claim has become exercisable.
- A claim under the Commercial Code is extinguished after five years from the date the claim has become exercisable.
- A claim for damages in tort is extinguished if three years have passed from the date the victim discovers the damages and the identity of the perpetrator. The same will apply if 20 years have passed from the time of the tortious act.

In addition, there are provisions in Japanese law which provide for short-term prescription periods for specific types of right. For example:

- A claim for lawyers' fees is extinguished after two years from the date the relevant case is finalised.
- A claim for transportation costs is barred after one year from the date the claim becomes exercisable.

Prescription is interrupted on the issuance of:

- A claim from a party that has the right.
- Attachment, provisional seizure or provisional disposition by a party having the right.
- Acknowledgment of the right by the obligor.

ARBITRATION AGREEMENTS

7. For an arbitration agreement to be enforceable:

- **What substantive and/or formal requirements must be satisfied?**
- **Is a separate arbitration agreement required or is a clause in the main contract sufficient?**

For the purposes of the Arbitration Law, an arbitration agreement means an agreement by the parties to submit, to one or more arbitrators, the resolution of all or certain civil disputes which have arisen or may arise in respect of a defined legal relationship (whether contractual or not), and to abide by the award of the arbitrator(s) (*Article 2(1)*).

An arbitration agreement must be in writing and can be in the form of a document signed by all parties, letters or telegrams sent between the parties, including facsimile, or other written instrument (*Article 13(2)*). The document does not need to be signed by all parties. Only some evidence, subsequent to the document recording the arbitration agreement (for example, a bill of lading), is necessary to fulfil the requirement of documenting an arbitration agreement. In addition, an arbitration agreement can be made by an electromagnetic record (for example, e-mail) (*Article 13(4)*), which is different from the 1985 Model Law.

When an arbitration clause is included in the main contract, the arbitration clause is considered to satisfy the requirements for an

arbitration agreement to be in writing. A separate agreement is not required under Japanese law.

8. Do statutory rules apply to the arbitration agreement? For example, are there restrictions on the number, qualifications/characteristics or selection of arbitrators?

The Arbitration Law stipulates some statutory rules, which apply to arbitration agreements, such as:

- An arbitration agreement must be in writing (*see Question 7*).
- Some dispute matters are considered not to be arbitrable (*see Question 4*).

There are no restrictions on the number, qualifications/characteristics or selection of arbitrators, but arbitrators must be impartial and independent (*Article 18*).

9. In what circumstances can a third party be joined to an arbitration, or otherwise be bound by an arbitration award? Please give brief details.

This is a matter of interpretation of the arbitration agreement. Under Japanese conflict of law principles, the effect of an international arbitration agreement is determined by the substantive law to which the parties explicitly or impliedly agreed (*Nihon Kyoiku Sha K.K. v. Feld, 51-8 Minshu 3657 (Sup. Ct., Sept. 4, 1997)*). If Japanese substantive law applies, general contract law dictates the cases in which a third party can be joined to or be bound by an arbitration agreement. For example, third parties or non-signatories can be bound by an arbitration agreement on succession and assignment. However, the group of companies doctrine does not apply to the scope of an arbitration agreement. Therefore, neither parent nor subsidiary companies of a signatory company can be bound by an arbitration agreement solely because of their relationship with the signatory company.

PROCEDURE

10. Does the applicable legislation provide default rules governing the appointment and removal of arbitrators, and the start of arbitral proceedings?

Number of arbitrators

The Arbitration Law provides default rules on the number of arbitrators. If there are two parties and no agreement has been reached as to the number of arbitrators, the arbitral tribunal will be a panel of three arbitrators (*Article 16(2)*). In multi-party arbitration, where the number of arbitrators has not been agreed between the parties, the court determines the number on the request of a party (*Article 16(3)*).

Appointment of arbitrators

The Arbitration Law also stipulates default rules on the procedure for appointing arbitrators. If the parties fail to agree on the procedure for appointing arbitrators, and there are two parties to an arbitration proceeding with a panel of three arbitrators, each party can appoint an arbitrator, and the two appointed arbitrators appoint the third (*Article 17(2)*). If there are two parties to an arbitration proceeding using a sole arbitrator, and if the parties fail to agree on the appointment of the arbitrator, the court appoints the arbitrator on the request of a party (*Article 17(3)*). If the appointment of arbitrator(s) cannot be decided in multi-party arbitration, the court appoints the arbitrator(s) on a party's request (*Article 17(4)*).

Challenge and removal of arbitrators

The Arbitration Law also provides default rules on challenging arbitrators. When the parties fail to agree on the procedure for challenging an arbitrator, the arbitral tribunal decides on the challenge (*Article 19(2)*). When there is no agreement on the procedure governing a challenge, the challenging party must file a request to challenge an arbitrator with the arbitral tribunal within 15 days of the later of the day on which the party became aware either of the:

- Constitution of the arbitral tribunal.
- Existence of any of the circumstances constituting grounds for a challenge.

In addition, the party must submit a written request describing the reasons for the challenge to the arbitral tribunal (*Article 19(3)*).

There are some mandatory rules relating to the challenge and removal of arbitrators. If a challenge is denied, the challenging party can request judicial review of the decision within 30 days of receiving the decision (*Article 19(4)*). The removal of an arbitrator can also be requested in court on the grounds of the arbitrator's *de jure* or *de facto* inability or undue delay in performing his duties (*Article 20*).

Commencement of arbitral proceedings

The Arbitration Law also provides default rules governing the commencement of arbitral proceedings. Arbitral proceedings are commenced by one party giving the other party notice of referring a dispute to arbitration (*Article 29(1)*). The claimant must, within the time limit prescribed by the arbitral tribunal, state the relief or remedy sought, the facts supporting its claim and the points at issue. The claimant can submit all documentary evidence it considers to be relevant or add a reference to the documentary evidence or other evidence it will submit (*Article 31(1)*). The respondent follows the same rules applicable to the claimant (*Article 31(2)*).

Each party can make amendments or additions to their statements during the arbitral proceedings. However, the arbitral tribunal can refuse to allow the amendments or additions if they are made after a delay (*Article 31(3)*). These submissions can be made orally or in writing.

11. What procedural rules are arbitrators likely to follow? Can the parties determine the procedural rules that apply? Does the legislation provide any default rules governing procedure?

The Arbitration Law grants parties broad autonomy relating to arbitration proceedings, and the arbitral tribunal has broad discretion on procedural rules. Arbitrators follow the procedural rules agreed by the parties unless the rules violate the provisions

of the Arbitration Law relating to public policy (*Article 26(1)*). The provisions relating to public policy include equal treatment of the parties (*Article 25(1)*) and due process (*Article 25(2)*) (*see Question 4*).

If the parties fail to agree on the procedural rules to govern the proceeding, the arbitrators can conduct the arbitral proceedings in such a manner as they consider appropriate, subject to the default rules stipulated in the Arbitration Law (*Article 26(2)*), which include:

- Waiver of the right to object after delay (*Article 27*).
- Arbitral tribunal's discretion to decide the place of arbitration (*Article 28(2)*).
- Commencement of arbitral proceedings (Article 29(1)) (*see Question 10, Commencement of arbitral proceedings*).
- Arbitral tribunal's discretion to determine the language to be used in the arbitral proceedings (*Article 30(2)*).
- Time restrictions on parties' statements (*Article 31*) (*see Question 10*).
- Arbitral tribunal's discretion to hold oral hearings (*Article 32(1)*).
- Default of a party (*Article 33*).
- Arbitral tribunal's discretion to appoint experts (*Article 34*).
- Arbitral tribunal's discretion to request the court's assistance in taking evidence (*Article 35*).

12. What procedural powers does the arbitrator have? If there is no express agreement, can the arbitrator order disclosure of documents and attendance of witnesses (factual or expert)?

An arbitral tribunal has the powers prescribed in an arbitration agreement (*Article 26(1)*). In addition, unless the parties otherwise agree, an arbitral tribunal has the powers stipulated in the default rules of the Arbitration Law such as the power to:

- Decide the place of arbitration (*Article 28(2)*).
- Determine the language to be used in the arbitral proceedings (*Article 30(2)*).
- Appoint experts (*Article 34*).
- Request the court's assistance in taking evidence (*Article 35*).

In addition, an arbitral tribunal has the power to conduct arbitral proceedings in such a manner as it considers appropriate (*Article 26(2)*).

There is no provision in the Arbitration Law which prohibits arbitrators from ordering disclosure of documents and attendance of witnesses. However, full documentary disclosure is not common among arbitration practitioners in Japan, unless expressly agreed by the parties (*see Question 13*). In addition, the arbitral tribunal cannot force witnesses to attend the arbitration proceeding. If an arbitral tribunal is required to force attendance of witnesses, the arbitral tribunal must request the court's assistance (*Article 35*).

EVIDENCE

13. What documents must the parties disclose to the other parties and/or the arbitrator(s)? Can the parties determine the rules on disclosure? How, in practice, does the scope of disclosure compare with disclosure in litigation?

The parties are free to agree on the rules of procedure (*Article 26(1)*), and if parties fail to agree on these rules, the arbitral tribunal can conduct the arbitral proceedings in a manner it considers appropriate (*Article 26(2)*). Therefore, the scope of documents which the parties should disclose is determined by an arbitration agreement and the arbitral tribunal's discretion.

In practice, arbitration practitioners in Japan generally do not conduct full documentary disclosure. This is because the rules of procedure in Japanese civil litigation do not allow extensive disclosure, and arbitration practitioners are generally accustomed to such rules of procedure. Instead, the arbitral tribunal can request that parties produce specific documents which closely relate to the issues to be determined, when these issues have been clarified by the exchange of factual and legal statements between the parties. Therefore, the scope of disclosure in arbitration in Japan appears to be similar to the scope of disclosure in Japanese litigation, which makes the arbitration proceedings more efficient and succinct.

CONFIDENTIALITY

14. Is arbitration confidential?

Confidentiality of arbitration depends on the agreement between the parties, but arbitral proceedings are generally not disclosed and are confidential. The Arbitration Law does not expressly prohibit the disclosure of information related to arbitral proceedings, although it is interpreted that an arbitrator has a duty of confidentiality to the parties to arbitral proceedings. Arbitration institutions in Japan also respect the confidential nature of arbitration. For example, the JCAA rules expressly stipulate that both (*Rule 40*):

- Arbitral proceedings and records are to be closed to the public.
- The arbitrators, officers and staff of the JCAA, the parties and their representatives cannot disclose facts related to arbitration cases, except where disclosure is required by law or court proceedings.

COURTS AND ARBITRATION

15. Will the local courts intervene to assist arbitration proceedings? For example, by granting an injunction or compelling witnesses to attend?

Before or during an arbitral proceeding, a court can order certain interim relief relating to a civil dispute subject to an arbitration agreement, on a party's request (*Article 15*). The Civil Preservation Law (*Law No. 91 of 1989*) sets out the types of interim measures that can be ordered by courts.

In addition, a court can assist in taking evidence by any means considered necessary by the arbitral tribunal, on request from

the arbitral tribunal or a party. The taking of evidence can relate to entrustment of investigation, examination of witnesses, expert testimony and investigation of documentary evidence or inspection (*Article 35*).

The court can assist with:

- Serving notice (*Article 12*).
- Appointing an arbitrator (*Article 17*).
- Challenging an arbitrator (*Article 19*).
- Removing an arbitrator (*Article 20*).
- Deciding the jurisdiction of the arbitral tribunal (*Article 23*).

A party can also apply to a court to set aside (*Article 44*) or enforce (*Article 45*) an arbitral award.

16. What is the risk of a local court intervening to frustrate the arbitration? Can a party delay proceedings by frequent court applications?

It is unclear whether a Japanese court can issue an injunction order against arbitral proceedings under the Civil Preservation Law.

However, even if a case relating to an arbitration agreement is brought to a court, an arbitral tribunal can commence or continue arbitral proceedings (*Article 14(2)*). In addition, arbitral proceedings can be commenced or continued even if a case relating to challenge is pending before a court (*Article 19(5)*). Therefore, a party cannot delay arbitral proceedings by frequent court applications.

17. What remedies are available where a party starts court proceedings in breach of an arbitration agreement, or initiates arbitration in breach of a valid jurisdiction clause?

When court proceedings are initiated in breach of an arbitration agreement, they will be dismissed on the defendant's request (*Article 14(1)*). A request for dismissal cannot be filed with the court after the defendant pleads on the substance of the dispute (*Article 14(1)(iii)*). This is in contrast with the 1985 Model Law, which prescribes that the court will refer the parties to arbitration if a party argues the existence of an arbitration agreement. Even when an action is pending in court, an arbitral tribunal can commence or continue proceedings and make an arbitral award (*Article 14(2)*) (*see Question 16*).

If a party initiates arbitration despite a valid jurisdiction clause, it is unlikely that an arbitral tribunal will be formed due to a lack of a valid arbitration agreement. If, however, an arbitral tribunal is constituted, the respondent can claim that the arbitral tribunal does not have jurisdiction, even if the respondent has appointed an arbitrator. The arbitral tribunal can decide on the claim, and if the arbitral tribunal rules that it has jurisdiction, the respondent can, within 30 days of receiving notice of the ruling, request the court to adjudicate the matter (*Article 23*) (*see Question 19*).

18. Will the local courts grant an injunction to restrain proceedings started overseas in breach of an arbitration agreement?

Under the Civil Preservation Law, it is doubtful whether a Japanese court can grant an injunction to restrain proceedings started overseas in breach of an arbitration agreement. At present, there has been no report of a Japanese court granting such an injunction.

19. What remedies are available where one party denies that the tribunal has jurisdiction to determine the dispute(s)? Does your jurisdiction recognise the concepts of separability and/or kompetenz-kompetenz? Does the tribunal or the local court determine issues of jurisdiction?

If one party denies the arbitral tribunal's jurisdiction, the arbitral tribunal can rule on the existence or validity of an arbitration agreement or its own jurisdiction (kompetenz-kompetenz) (*Article 23(1)*). A plea that the arbitral tribunal does not have jurisdiction must be raised early, in most cases, before the first written statement on the substance of the dispute is submitted to the tribunal (*Article 23(2)*). If the arbitral tribunal decides that it has jurisdiction, a party can ask a court for judicial review within 30 days of receipt of the decision (*Article 23(5)*).

The Arbitration Law recognises the concept of severability. Even if contractual provisions (excluding the arbitration agreement) in a contract containing an arbitration agreement are found to be invalid, the validity of the arbitration agreement is not necessarily affected (*Article 13(6)*).

REMEDIES

20. What interim remedies are available from the tribunal? Can the tribunal award:

- **Security for costs?**
- **Security or other interim measures?**

At the request of a party, the arbitral tribunal can order any party to provide an interim measure of protection that the arbitral tribunal considers necessary in relation to the subject matter of the dispute. The interim measure is designed to maintain the condition or value of the subject matter of the dispute, or to lessen any disadvantage that may arise for a party until an arbitral award is made (*Article 24(1)*). The arbitral tribunal can also order any party to provide appropriate security in connection with this measure (*Article 24(2)*).

In addition, the arbitral tribunal can order either or both parties to deposit estimated arbitration costs as determined by the tribunal, unless otherwise agreed by the parties (*Article 48(1)*).

21. What final remedies are available from the tribunal? For example, can the tribunal award damages, injunctions, declarations, costs and interest?

There are no specific restrictions applicable to the types of awards or relief to be granted by the arbitral tribunal, provided they are derived from the applicable substantive law. Where Japanese substantive law applies to the merit of the case, the arbitral tribunal can award the following:

- Damages.
- Injunctive relief.
- Declaratory relief.

Interest can be awarded at 5% a year for claims to which the Civil Code applies, and 6% a year for claims to which the Commercial Code applies, unless other rates are agreed by the parties.

The parties can also agree that the tribunal, in the award or in an independent ruling, will apportion the costs disbursed during the proceedings between the parties (*Article 49(3)*).

APPEALS AND CHALLENGES

22. Can arbitration proceedings and awards be appealed or challenged in the local courts? If yes, please briefly outline the grounds and procedure. Can the parties effectively exclude any rights of appeal or challenge?

Arbitral awards cannot be appealed unless the parties agree otherwise. However, arbitral awards can be set aside or challenged in local courts. There are limited grounds to set aside or challenge arbitral awards, including (*Article 44(1)*):

- An invalid arbitration agreement.
- The required notice was not given to a party.
- A party was unable to present its case.
- The award relates to matters beyond the scope of the arbitration agreement or claims of the arbitration.
- The composition of the tribunal or proceeding was not in accordance with the parties' agreement.
- The award was based on a dispute not qualifying as a subject matter for arbitration.
- The award is in conflict with public policy.

A challenge cannot be made if more than three months have lapsed from the date on which the challenging party received notice of the award, or after the enforcement decision (*Article 46*) has become final and conclusive (*Article 44(2)*). In the challenge proceeding, a court holds an oral hearing or oral proceeding, which the parties can attend, before making a decision (*Article 44(5)*).

When a court decision on a petition to set aside or challenge an arbitral award is made, the parties can appeal the decision (*Article 44(8)*). Generally, the appeal can be made only once. In addition, the appeal must be filed within two weeks of receiving the decision (*Article 7*). The challenge proceedings at the first instance usually last from half a year to one year, and the appeal proceedings usually last from several months to half a year. Court fees for these processes are nominal (in many cases, less than US$100 (about EUR75)), which are paid by the parties (generally, by the unsuccessful party). The parties must also bear their respective attorneys' fees.

Since these provisions relating to setting aside or challenging arbitral awards are mandatory, the parties cannot effectively exclude rights to set aside or challenge arbitration awards.

MAIN ARBITRATION ORGANISATIONS

The Japan Commercial Arbitration Association (JCAA)

Main activities. JCAA is responsible for arbitration, conciliation and mediation concerning commercial disputes, advice and provision of information relating to international transactions, and issuance and guarantee affairs of ATA Carnets (official forms for customs clearances) under the ATA Convention on temporary admission of goods.

W *www.jcaa.or.jp/e/index-e.html*

International Chamber of Commerce (ICC)

Main activities. ICC is involved in a variety of activities relating to international business, including setting rules and standards relating to international commerce and arbitration of international business disputes.

W *www.iccwbo.org*

COSTS

23. What legal fee structures can be used? For example, hourly rates and task-based billing? Are fees fixed by law?

There are no provisions in the Arbitration Law which restrict legal fee structures to be used in arbitration proceedings. Parties can agree on remuneration of arbitrators and the manner in which costs for the proceedings are apportioned between them (*Articles 47(1) and 49(1)*). In practice, since parties usually agree on institutional arbitration, remuneration of arbitrators will be determined by the rules of the arbitration institution selected by the parties. The Arbitration Law is silent as to the fees payable to attorneys representing the parties. Therefore, the parties can agree on legal fee structures with their respective attorneys, including hourly rates and task-based billing. The Lawyers Act of Japan does not prohibit any specific fee arrangements, which can be freely determined between attorneys and clients.

24. Does the unsuccessful party have to pay the successful party's costs? How does the tribunal usually calculate any costs award and what factors does it consider?

The parties can agree on the manner in which costs for the proceedings are apportioned between them. In the absence of an agreement, each party must bear the costs it has incurred in relation to the proceedings. The parties can agree that the arbitral tribunal, in the award or in an independent ruling, determine the apportionment between the parties of the costs incurred during the proceedings (*Article 49*). Therefore, it depends on the arbitration agreement whether the unsuccessful party will pay the successful party's costs.

Since parties usually agree on institutional arbitration, arbitral tribunals usually calculate costs in accordance with the rules of the arbitration institution. Generally, arbitral tribunals consider the following factors:

- Remuneration of arbitrators.
- Costs arising from arbitration proceedings, including, but not limited to, remuneration of experts.
- Management fees of the arbitration institution.

ENFORCEMENT

25. To what extent is an arbitration award made in your jurisdiction enforceable in the local courts? Please briefly outline the enforcement procedure.

Both domestic and foreign arbitration awards (regardless of whether they were made by a signatory to the New York Convention) have the same effect as a final judgment (*Article 45*) and are enforced in a Japanese court (*Article 46*), subject to the same limitations as the New York Convention. It is generally considered that Japanese courts look favourably on enforcing awards.

A party seeking enforcement based on an arbitral award can apply to a court for an enforcement decision (*Article 46(1)*). When an enforcement decision is made by the court, the arbitral award can be enforced in accordance with the general enforcement procedure (*Article 45(1)*) under the Civil Execution Act (*Law No. 4 of 1979*).

26. To what extent is an arbitration award made in your jurisdiction enforceable in other jurisdictions? Is your jurisdiction party to international treaties relating to this issue such as the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention)?

The New York Convention became effective in Japan in 1961, with a reservation of reciprocity.

Since Japan is a signatory to the New York Convention, arbitration awards made in Japan are enforceable in the territories of other signatories of the New York Convention, subject to the limitations in the New York Convention.

27. To what extent is a foreign arbitration award enforceable in your jurisdiction? Please briefly outline the enforcement procedure.

Since the New York Convention has direct effect in Japan, with a reservation of reciprocity, arbitration awards made in the territories of the signatories of the New York Convention are enforceable in Japan, subject to the limitations in the New York Convention.

Under the Arbitration Law, both domestic and foreign arbitration awards (regardless of whether they were made in a signatory state to the New York Convention) have the same effect as a final judgment (*Article 45*) and are enforced in Japanese courts (*Article 46*), subject to the same limitations as the New York Convention.

One of the limitations stipulated in the Arbitration Law is that the contents of awards should not be contrary to public policy of Japan (*Article 45(2)(ix)*). For example, punitive damages that exceed compensatory damages would be against Japanese public policy, and therefore not enforceable in Japan.

The enforcement procedure of foreign arbitration awards is the same as that of domestic arbitration awards (*see Question 25*).

28. How long do enforcement proceedings in the local court take? Is there any expedited procedure?

Generally, if the obligor does not raise any questions about the enforceability of the arbitration award, an enforcement decision will be made by the court within two months. However, if the obligor poses such questions, the enforcement proceedings will require substantially more time. There is no expedited procedure for their enforcement.

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