GETTING THE DEAL THROUGH

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Japan

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1 Multilateral conventions

Is your country a contracting state to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards? Since when has the Convention been in force? Were any declarations or notifications made under articles I, X and XI of the Convention? What other multilateral conventions relating to international commercial and investment arbitration is your country a party to?

Japan acceded to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards on 20 June 1961, which took effect on 18 September 1961. A declaration was made under article I of the Convention, such that Japan, on the basis of reciprocity, will only apply the Convention to the recognition and enforcement of awards made in the territory of another contracting state.

Other multilateral conventions relating to international commercial and investment arbitration to which Japan is a party are:

- the Protocol on Arbitration Clauses, Geneva, 24 September 1923 (ratified by Japan in 1928);
- the Convention on the Execution of Foreign Arbitral Awards, Geneva, 26 September 1927 (ratified by Japan in 1952);
- the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, Washington, 18 March 1965 (ratified by Japan in 1967); and
- the Energy Charter Treaty, Lisbon, 17 December 1994 (ratified by Japan in 2002).

2 Bilateral treaties

Do bilateral investment treaties exist with other countries?

Japan is a party to 15 bilateral investment treaties as follows.

Country	Signed	Effectuated
Bangladesh	10 Nov 1998	25 Aug 1999
Cambodia	14 June 2007	31 July 2008
Egypt	28 Jan 1977	14 Jan 1978
Hong Kong	15 May 1997	18 June 1997
Laos	16 Jan 2008	3 Aug 2008
Mongolia	15 Feb 2001	24 Mar 2002
Pakistan	10 Mar 1998	29 May 2002
People's Republic of China	27 Aug 1988	14 May 1989
Republic of Korea	22 May 2002	1 Jan 2003
Peru	22 Nov 2008	10 Dec 2009
Russia	13 Nov 1998	27 May 2000
Sri Lanka	1 Mar 1982	7 Aug 1982
Turkey	12 Feb 1992	12 Mar 1993
Uzbekistan	15 Aug 2008	24 Sept 2009
Vietnam	14 Nov 2003	19 Dec 2004

3 Domestic arbitration law

What are the primary domestic sources of law relating to domestic and foreign arbitral proceedings, and recognition and enforcement of awards?

The primary domestic source of law relating to domestic and foreign arbitral proceedings and recognition and enforcement of awards in Japan is the Arbitration Law, Law No. 138 of 2003 (English translation at www.kantei.go.jp/foreign/policy/sihou/law032004_e.html). Although the Arbitration Law governs both domestic and foreign arbitral proceedings in Japan, the scope of its application is generally limited to arbitration taking place in the territory of Japan (article 3(1)).

4 Domestic arbitration and UNCITRAL

Is your domestic arbitration law based on the UNCITRAL Model Law? What are the major differences between your domestic arbitration law and the UNCITRAL Model Law?

Japan's Arbitration Law is based on the UNCITRAL Model Law (original 1985 version; the 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 article 13(4) of the Arbitration Law, which allows for arbitration agreements to be made by way of electromagnetic record (ie, e-mail), in contrast to the 1985 Model Law, which allows for agreements by facsimile but not electromagnetic record. Some of the other differences between Japan's Arbitration Law and the 1985 Model Law are described below.

5 Mandatory provisions

What are the mandatory domestic arbitration law provisions on procedure from which parties may not deviate?

The mandatory Arbitration Law provisions on procedure from which parties may not deviate include article 5, which outlines the jurisdiction of courts, article 13(2), which describes that arbitration agreements must be in written form and article 25, which stipulates the equal treatment of all parties.

6 Substantive law

Is there any rule in your domestic arbitration law that provides the arbitral tribunal with guidance as to which substantive law to apply to the merits of the dispute?

The parties to an arbitration may freely decide on the substantive law applicable to the case (Arbitration Law, article 36(1)). If the parties designate the laws of a given state as the law to be applied by an arbitral tribunal, unless otherwise expressed, this is construed as referring to substantive law rather than conflict of laws rules. However, if the parties fail to agree on the substantive law to be applied to the case, 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 (Arbitration Law, article 36(2)). This rule differs from that under the 1985 Model Law, in which the arbitral tribunal applies the law determined by the conflict of law rules that it considers applicable.

7 Arbitral institutions

What are the most prominent arbitral institutions situated in your country?

The Japan Commercial Arbitration Association (JCAA) is the most prominent arbitration institution in Japan (www.jcaa.or.jp/e/index-e.html). The JCAA has its own arbitration rules (JCAA Rules) and a list of arbitrators that can be accessed by parties; however, parties are not required to select arbitrators from the provided list. Parties may also elect to use the International Chamber of Commerce (ICC) to arbitrate a dispute. In addition, Japan has several bar associations that maintain their own arbitration systems and may be used by parties.

Arbitration agreement

8 Arbitrability

Are there any types of disputes that are not arbitrable?

The scope of disputes that are considered to qualify for arbitration includes all civil disputes where there exists a possibility of settlement between the parties, excluding those relating to divorce or separation (article 13(1)). Arbitration is not permitted for actions relating to personal status, such as cases requesting confirmation of paternity, or confirmation that a patent is invalid, as these cases are not generally capable of settlement. In addition, an arbitration agreement between a consumer and a business for future civil disputes can be cancelled by the consumer (article 3 of the Supplementary Provisions to the Arbitration Law). Further, an arbitration agreement between an individual worker and his or her employer for future labour disputes is null and void (article 4 of the Supplementary Provisions to the Arbitration Law).

9 Requirements

What formal and other requirements exist for an arbitration agreement?

The Arbitration Law stipulates that an arbitration agreement must be in writing and may 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)). It is not necessary that the document is 'a document signed by all parties', and to fulfil the requirement that the arbitration agreement is documented, it is considered sufficient if there is some type of evidence subsequent to the document recording the arbitration agreement (eg, a bill of lading). In addition, an arbitration agreement may be made by way of an electromagnetic record (eg, e-mail) (article 13(4)), which distinguishes the Arbitration Law from the 1985 Model Law.

10 Enforceability

In what circumstances is an arbitration agreement no longer enforceable?

The circumstances in which an arbitration agreement is no longer enforceable are generally the same as those under contract law. Termination or cancellation of the arbitration agreement itself, and legal incapacity or death of a party to the arbitration agreement (although in the case of death there is the possibility of succession) are the most common circumstances in which an arbitration agreement may become unenforceable.

11 Third parties – bound by arbitration agreement

In which instances can third parties or non-signatories be bound by an arbitration agreement?

The general contract law dictates the cases in which a third party can be bound by an arbitration agreement. For example, third parties or non-signatories can be bound by an arbitration agreement in cases of succession and assignment. In addition, some commentators opine that when a legal person, such as a stock corporation, is a party to an arbitration agreement, the legal representatives and other executive officers of such legal person should also be bound by the arbitration agreement if the arbitration agreement would otherwise not make any sense in resolving a dispute.

12 Third parties – participation

Does your domestic arbitration law make any provisions with respect to third-party participation in arbitration, such as joinder or third-party notice?

The Arbitration Law does not make any provisions with respect to third-party participation in arbitration. This issue is open for debate and is in practice resolved through consultation and agreement among the existing parties, the arbitrators and the third party in question on a case-by-case basis.

13 Groups of companies

Do courts and arbitral tribunals in your jurisdiction extend an arbitration agreement to non-signatory parent or subsidiary companies of a signatory company, provided that the non-signatory was somehow involved in the conclusion, performance or termination of the contract in dispute, under the 'group of companies' doctrine?

Neither parent nor subsidiary companies of a signatory company can be bound by an arbitration agreement, regardless of whether they were involved in the conclusion, performance or termination of the contract in dispute, under the 'group of companies' doctrine. However, it could be possible that the parent or subsidiary companies of a signatory company be construed as the real signatory company that should be bound by the arbitration agreement depending on the specific circumstances surrounding the case under the doctrine of 'piercing the corporate veil' or otherwise.

14 Multiparty arbitration agreements

What are the requirements for a valid multiparty arbitration agreement?

The Arbitration Law does not exclude the possibility of multiparty arbitration agreements. There are no special requirements for multiparty arbitration agreements to be valid.

Constitution of arbitral tribunal

15 Appointment of arbitrators

Are there any restrictions as to who may act as an arbitrator?

An arbitrator must be an impartial and independent party, possessing the qualifications agreed upon by the parties involved in the arbitration (article 18(1)). In the case where a sole or third arbitrator is appointed by the court, due regard must be had for whether or not it would be appropriate to appoint an arbitrator of a different nationality from the parties (article 17(6)(iii)).

16 Appointment of arbitrators

Failing prior agreement of the parties, what is the default mechanism for the appointment of arbitrators?

Under the Arbitration Law, when 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 the case of multiparty arbitration where the number of arbitrators has not been agreed upon between the parties, upon request the court will determine the number (article 16(3)). In addition, when the parties fail to agree on the procedure of appointing the arbitrators, when there are two parties in arbitration with three arbitrators, each party may appoint an arbitrator, and the two appointed arbitrators will appoint the third (article 17(2)). If there are two parties and a sole arbitrator and when the appointment of such arbitrator cannot be decided between the parties, the court will appoint an arbitrator upon the request of a party (article 17(3)). When the appointment of an arbitrator cannot be decided in multiparty arbitration, the court will appoint the arbitrator upon the request of a party (article 17(4)).

17 Challenge and replacement of arbitrators

On what grounds and how can an arbitrator be challenged and replaced? Please discuss in particular the grounds for challenge and replacement and the procedure, including challenge in court.

The Arbitration Law sets out two grounds on which an arbitrator can be challenged: the arbitrator does not possess qualifications agreed to by the parties; or circumstances exist that give rise to justifiable doubt as to the impartiality or independence of the arbitrator (article 18(1)). In addition, when a party appoints or makes recommendations regarding the appointment of an arbitrator, it may challenge the arbitrator only for reasons that it became aware of after the appointment (article 18(2)).

The parties may decide on the procedure for challenging an arbitrator (article 19(1)); failing an agreement, the arbitral tribunal will decide (article 19(2)). When there is no agreement on the procedure for challenge, the challenging party must request an arbitral tribunal for challenge within 15 days of the later of either the day on which it became aware of the constitution of the arbitral tribunal or the day on which it became aware of the existence of any of the circumstances constituting grounds for challenge. In addition, the party must submit a written request describing the reasons for the challenge to the arbitral tribunal (article 19(3)). If a challenge is denied, the challenging party may request a judicial review of the decision within 30 days of receipt of notice of the decision (article 19(4)). While a review of the challenge decision is pending before the court, the arbitral tribunal may commence or continue the proceedings and make an arbitral award (article 19(5)).

The removal of an arbitrator may be requested of the court on the grounds of the arbitrator's de jure or de facto inability or undue delay in performing its duties (article 20).

An arbitrator's mandate is terminated upon its death, resignation, the removal of the arbitrator upon agreement by the parties, a decision that grounds for challenge exist or a decision to remove an arbitrator (article 21(1)).

18 Relationship between parties and arbitrators

What is the relationship between parties and arbitrators? Please elaborate on the contractual relationship between parties and arbitrators, neutrality of party-appointed arbitrators, remuneration, and expenses and liability of arbitrators.

Each arbitrator is considered to have entered into an entrustment contract with all the parties, whether such arbitrator is party-appointed or not. Accordingly party-appointed arbitrators are also required to be neutral in performing their duties.

The arbitrators are compensated in accordance with the agreement of the parties; however, failing an agreement between the parties, the arbitral tribunal will determine appropriate compensation (article 47).

Any arbitrator who accepts or demands bribes, or any party that offers a bribe, will face criminal penalties (articles 50 to 54). Most of these provisions apply even if the crimes are committed outside Japan (article 55).

There are no provisions in the Arbitration Law for the civil liability of arbitrators; however, rule 13 of the JCAA Rules stipulates that arbitrators will not be liable to any person for an act or omission related to the arbitration unless it is shown to constitute wilful or gross negligence.

Jurisdiction

19 Court proceedings contrary to arbitration agreements

What is the procedure for disputes over jurisdiction if court proceedings are initiated despite an existing arbitration agreement, and what time limits exist for jurisdictional objections?

If an arbitration agreement exists, but court proceedings are initiated despite this, the court proceedings may be dismissed by a request of the defendant (Arbitration Law, article 14(1)). The request for dismissal may not be filed with the court after the defendant pleads on the substance of the dispute (article 14(1)(iii)). This contrasts with the 1985 Model Law, which prescribes that the court shall refer the parties to arbitration in the case of a party arguing the existence of an arbitration agreement. Even when an action is pending in court, an arbitral tribunal may commence or continue proceedings and make an arbitral award (article 14(2)).

20 Jurisdiction of arbitral tribunal

What is the procedure for disputes over jurisdiction of the arbitral tribunal once arbitral proceedings have been initiated and what time limits exist for jurisdictional objections?

An arbitral tribunal may rule on the existence or validity of an arbitration agreement or its own jurisdiction (article 23(1)). A plea that the arbitral tribunal does not have jurisdiction must be raised early, in most cases before the time at which 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 may ask a court for judicial review within 30 days of receipt of notice of the decision (article 23(5)).

Arbitral proceedings

21 Place and language of arbitration

Failing prior agreement of the parties, what is the default mechanism for the place of arbitration and the language of the arbitral proceedings?

If there is no agreement between the parties regarding the place (article 28(2)) or language (article 30(2)) of the arbitration, it will be decided by the arbitral tribunal. When deciding the place, the arbitral tribunal will consider the circumstances of the case, including the convenience of the parties.

22 Commencement of arbitration

How are arbitral proceedings initiated?

Under the Arbitration Law, the arbitral proceedings commence by one party giving the other party notice to refer their dispute to the arbitral proceedings (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 may submit all documentary evidence it considers to be relevant or may add a reference to the documentary evidence or other evidence it will submit (article 31(1)). The respondent shall follow the same rule as applicable to the claimant (article 31(2)). Each party may make amendments or additions to their statements during the course of arbitral proceedings; however the arbitral tribunal may refuse to allow the amendments or additions if they are made after the permitted time period (article 31(3)). These submissions may be made orally or in writing.

However, the JCAA Rules require that the claimant submit a written request for arbitration to commence arbitral proceedings to the JCAA, setting forth, in addition to the items required by the Arbitration Law, a reference to the arbitration agreement that is invoked, the contact information of the claimant or its agent and other items (rule 14). Signature is not required for this filing. The number of copies of the written request to be filed is the number of arbitrators (three if not yet determined) and the other party or parties plus one (rule 21).

23 Hearing

Is a hearing required and what rules apply?

The arbitral tribunal may (or if a party requests, must) hold oral hearings unless otherwise agreed by the parties. An oral hearing may be held for the presentation of evidence or for oral argument by the parties, provided these are carried out at an appropriate stage of the arbitral proceedings, sufficient advance notice of the time and place of hearings is given to the parties, a party supplying evidence to the tribunal must ensure that the other party is aware of the contents and the tribunal must ensure that all parties are aware of the contents of any expert report or other evidence (article 32).

24 Evidence

By what rules is the arbitral tribunal bound in establishing the facts of the case? What types of evidence are admitted and how is the taking of evidence conducted?

Under the Arbitration Law, each party is ensured equality and given a full opportunity to present its case in the arbitral proceedings (article 25). The JCAA Rules further require that written statements setting forth each party's case on the law and facts be submitted (rule 36). In addition, the arbitral tribunal may examine evidence that a party has not applied to present, which may take place other than at a hearing, and a party may request that the arbitral tribunal order the other party to produce documents that it possesses (rule 37). One or more experts may be appointed by the arbitral tribunal to advise on any necessary issues; if requested, parties will have the opportunity to put the questions to an expert in a hearing (rule 38). There is a tendency for arbitrators or parties who are familiar with international arbitration practice to apply or seek guidance from the IBA rules on the taking of evidence.

25 Court involvement

In what instances can the arbitral tribunal request assistance from a court and in what instances may courts intervene?

An application may be made by the arbitral tribunal or a party for a court to assist in taking evidence by any means considered necessary by the arbitral tribunal. The taking of evidence can relate to entrustment of investigation, examination of witnesses, expert testimony, investigation of documentary evidence or inspection (article 35). The court may assist with serving notice (article 12), appointment of an arbitrator (article 17), challenge of an arbitrator (article 19), removal of an arbitrator (article 20) and jurisdiction of the arbitral tribunal (article 23). A party may also apply to a court to set aside (article 44) or enforce (article 45) an arbitral award.

26 Confidentiality

Is confidentiality ensured?

Arbitral proceedings are generally not disclosed, but it depends on the agreement between the parties. The Arbitration Law does not have any express provisions prohibiting the disclosure of information related to arbitral proceedings, although it is interpreted that an arbitrator has a confidentiality duty to the parties of arbitral proceedings. The JCAA Rules, however, expressly stipulate that arbitral proceedings and records are to be closed to the public and arbitrators, officers and staff of the JCAA, the parties and their representatives may not disclose facts related to arbitration cases except where disclosure is required by law or court proceedings (rule 40).

Interim measures

27 Interim measures by the courts

What interim measures may be ordered by courts before and after arbitration proceedings have been initiated?

Before or during an arbitral proceeding, a party may request from a court an interim measure of protection in respect of a civil dispute that is the subject of the arbitration agreement (article 15). The types of interim measures that can be ordered by courts are the same as those permitted by the Civil Preservation Law (Law No. 91 of 1989) that applies to any types of disputes. These measures include orders of preliminary attachment or preliminary injunction.

28 Interim measures by the arbitral tribunal

What interim measures may the arbitral tribunal order after it is constituted? In which instances can security for costs be ordered by an arbitral tribunal?

At the request of a party, the arbitral tribunal may order any party to take an interim measure of protection to provide appropriate security; specifically, such 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 rendered (article 24, rule 48).

Awards

29 Decisions by the arbitral tribunal

Failing party agreement, is it sufficient if decisions by the arbitral tribunal are made by a majority of all its members or is a unanimous vote required? What are the consequences for the award if an arbitrator dissents?

Failing party agreement, any decision of the arbitral tribunal may be made by a majority of its members (article 37(2)). If an arbitrator refuses to take part in a vote or sign an arbitral award, the reason for any such omission must be stated in the award (article 39(1), rule 54(5)).

30 Dissenting opinions

How does your domestic arbitration law deal with dissenting opinions?

The Arbitration Law does not make any provisions relating to dissenting opinions. It seems that even if an arbitral award refers to dissenting opinions, this will not violate the Arbitration Law.

31 Form and content requirements

What form and content requirements exist for an award?

The arbitral award must be made in writing and include the signatures of the arbitrators who made the award, the reasons for such award and the date and place of the arbitration (article 39, rule 54).

The JCAA Rules also prescribe that the arbitral award must set out the total allocation of the administrative fee, arbitrators' remuneration and necessary expenses incurred during the proceedings as well as the contents of any settlement reached during the course of the arbitration (rule 54).

32 Time limit for award

Does the award have to be rendered within a certain time limit under your domestic arbitration law?

No time limit is stipulated for an award to be rendered under the Arbitration Law.

33 Date of award

For what time limits is the date of the award decisive and for what time limits is the date of delivery of the award decisive?

A party may not apply to set aside the arbitral award if more than three months have elapsed since the party received a notice of the award or after an enforcement decision (article 46) has become final and conclusive (article 44(2)). A party may request the arbitral tribunal to correct any errors in computation, clerical or typographical errors, or errors of a similar nature generally within 30 days of receipt of notice of the award (article 41(2)).

34 Types of awards

What types of awards are possible and what types of relief may the arbitral tribunal grant?

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. However, the arbitral tribunal may decide ex aequo et bono if the parties have expressly authorised it to do so (article 36(3)). Partial and interim awards are possible. Additionally, a party may request the arbitral tribunal to make an additional arbitral award in relation to claims presented in the arbitral proceedings but omitted from the award (article 43(1), rule 58).

35 Termination of proceedings

By what other means than an award can proceedings be terminated?

Arbitral proceedings can be terminated by a ruling to terminate the proceedings where the claimant withdraws its claim (unless the respondent objects to the withdrawal and the tribunal agrees); the parties agree to terminate the proceedings; a settlement is reached on the dispute which is the subject of the arbitral proceedings; or the arbitral tribunal finds that the continuation of the arbitral proceedings has become unnecessary or impossible (article 40). If parties reach a settlement during the arbitral proceedings, the tribunal may make a ruling on agreed terms, in which case the ruling has the same effect as an arbitral award (article 38).

36 Cost allocation and recovery

How are the costs of the arbitral proceedings allocated in awards? What costs are recoverable?

Parties may agree on the way in which costs for the proceedings are apportioned between them; failing an agreement, each party must bear the costs it has disbursed in relation to the proceedings. The parties may agree for the tribunal, in the award or in an independent ruling, to determine the apportionment between the parties of the costs disbursed during the course of the proceedings (article 49). The JCAA Rules include more detailed provisions regarding cost allocation in arbitral proceedings.

37 Interest

May interest be awarded for principal claims and for costs and at what rate?

If Japanese substantive law applies, interest may be awarded at a rate of 5 per cent per annum for claims to which the Civil Code (Law No. 89 of 1896) was applied and 6 per cent per annum for claims to which the Commercial Code (Law No. 48 of 1899) was applied unless other rates are agreed to by the parties.

Proceedings subsequent to issuance of award

38 Interpretation and correction of awards

Does the arbitral tribunal have the power to correct or interpret an award on its own or at the parties' initiative? What time limits apply?

The arbitral tribunal may correct an award on its own initiative or upon request by a party (article 41, rule 56). The arbitral tribunal may also interpret an award upon request by a party (article 42, rule 57). If a party requests the correction or interpretation of an award, the request must generally be made within 30 days of the receipt of notice of the arbitral award (article 41(2), article 42(3)); however, there is no time limit for an award corrected upon the initiative of the tribunal, which distinguishes the Arbitration Law from the 1985 Model Law.

39 Challenge of awards

How and on what grounds can awards be challenged and set aside?

There are limited grounds on which to set aside or challenge arbitral awards, which include: an invalid arbitration agreement; required notice to appoint arbitrators 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 for arbitration; or the award is in conflict with public policy (article 44(1)). These grounds are substantially identical to those stipulated by article 34(2) of the 1985 Model Law. A challenge may not be made if more than three months has elapsed from the date on which the challenging party received notice of the award or after an enforcement decision (article 46) has become final and conclusive (article 44(2)).

40 Levels of appeal

How many levels of appeal are there? How long does it generally take until a challenge is decided at each level? Approximately what costs are incurred at each level? How are costs apportioned among the parties?

As a general rule, a court decision on a petition for setting aside or challenging arbitral awards can be appealed only once (article 44(8)). Such appeal must be filed within two weeks of receipt of the decision (article 7). The challenge proceedings at the first instance usually take six months to one year, and the appeal proceedings usually take up to six months. Court fees for these processes are nominal (in many cases less than US$100) and shall be paid by the parties (as a general rule by a losing party). The parties also have to bear their respective attorneys' fees.

41 Recognition and enforcement

What requirements exist for recognition and enforcement of domestic and foreign awards, what grounds exist for refusing recognition and enforcement, and what is the procedure?

Domestic and foreign awards have the same effect as a final judgment (article 45) and are enforced in a Japanese court (article 46). A

Update and trends

Domestic arbitration regulation in Japan is stable and currently there is no specific movement to revise the domestic regulation. However, the Japanese government is very active in negotiating and concluding bilateral investment treaties and economic partnership agreements, which often contain provisions relating to arbitration for state-to-state disputes and state-to-investor disputes. Although Japan has never been a party to any international investment arbitration, the increase in bilateral investment treaties and economic partnership agreements could lead to a significant increase in investment arbitration cases between Japanese investors and foreign countries.

party seeking enforcement based on the arbitral award should apply to a court for an enforcement decision. The grounds for refusing to enforce domestic and foreign awards are the same as those of article 36(1) of the 1985 Model Law or article V of the New York Convention. Even if an award is granted in a state that has not signed or ratified the Convention, these enforcement rules apply. In that sense, the location of the arbitration is not an issue in the recognition or enforcement of awards. It is generally considered that Japanese courts look favourably upon enforcing awards.

42 Enforcement of foreign awards

What is the attitude of domestic courts to the enforcement of foreign awards set aside by the courts at the place of arbitration?

The languages employed in the relevant provisions in the Arbitration Law seem to be inconsistent. Article 45 seems to stipulate that foreign awards set aside by the courts at the place of arbitration shall not be recognised or enforced (article 45(1) and (2)(vii)). However, article 46 seems to stipulate that an enforcement decision may be issued for such foreign awards at the discretion of the courts (article 46(8)). Government officers in charge of drafting these provisions explained that the provisions should be interpreted to mean that courts shall have discretion as to whether such awards will be recognised and enforced, regardless of the language in the provisions. Accordingly, one can say that Japanese courts have discretion to recognise and enforce foreign awards set aside by the courts at the place of arbitration. There has been no court precedent that discusses this issue under the Arbitration Law as yet.

43 Cost of enforcement

What costs are incurred in enforcing awards?

To enforce an award that has been granted by an arbitral tribunal, but has not been performed voluntarily, a party generally has to file a petition for the enforcement decision with the court. The enforcement decision once rendered can be used for compulsory enforcement with the assistance of a judicial authority. The costs required for these procedures are generally borne by the party seeking enforcement of the award.

Other

44 Judicial system influence

What dominant features of your judicial system might exert an influence on an arbitrator from your country?

There is no US-style discovery in Japan; rather, the court may allow a limited exchange of documents and evidence. Written witness statements are common before testifying, and party officers may testify. Japanese legal practitioners are familiar with an adversarial witness examination (ie, direct and cross examination). These features are often reflected in arbitration proceedings conducted in Japan.

45 Regulation of activities

What particularities exist in your jurisdiction that a foreign practitioner should be aware of?

The Practising Attorney Law (Law No. 205 of 1949) stipulates that any person who is not a practising attorney (which means in this context a licensed Japanese attorney or bengoshi) or a special legal entity established by practising attorneys is prohibited from, for a fee and as an occupation, becoming involved in legal problems by giving legal advice, providing legal representation, arbitrating, etc (article 72).

However, the Special Measures Law concerning the Handling of Legal Business by Foreign Lawyers (Law No. 66 of 1986) provides that a foreign-qualified lawyer registered in Japan may perform representation in regard to the procedures for an international arbitration case (article 5-3), which is defined as a case of civil arbitration conducted in Japan and all or part of whose parties are persons who have addresses or main offices in foreign countries (article 2-11). In addition, foreign lawyers engaged in legal business in a foreign country (excluding a person who is employed and is providing services in Japan, based on his or her knowledge of foreign law) may perform representation in regard to the procedures for an international arbitration case (article 58-2).

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