

# ARBITRATION

## Japan



# Arbitration

Consulting editors

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Quick reference guide enabling side-by-side comparison of local insights, including into applicable laws, conventions and treaties, and prominent local arbitral institutions; arbitration agreements; constitution, jurisdiction and competence of arbitral tribunals; arbitral proceedings; interim measures and sanctioning powers; awards; proceedings subsequent to issuance of award; influence of local legal traditions on arbitrators; professional or ethical rules; third-party funding; regulation of activities.

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**LAWS AND INSTITUTIONS****Multilateral conventions relating to arbitration**

Is your jurisdiction 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).

*Law stated - 06 March 2023*

**Bilateral investment treaties**

Do bilateral investment treaties exist with other countries?

Japan is a party to 36 bilateral investment treaties (BITs) as follows:

Country	Signed	Entry into force
Argentina	1 December 2018	–
Armenia	14 February 2018	15 May 2019
Bangladesh	10 November 1998	25 August 1999
Bahrain	23 June 2022	–
Cambodia	14 June 2007	31 July 2008
China*	27 August 1988	14 May 1989
Colombia	12 September 2011	11 September 2015
Côte d'Ivoire	13 January 2020	26 March 2021
Egypt	28 January 1977	14 January 1978
Hong Kong	15 May 1997	18 June 1997
Georgia	29 January 2021	23 July 2021
Iran	5 February 2016	26 April 2017

Iraq	7 June 2012	25 February 2014
Israel	1 February 2017	5 October 2017
Jordan	11 November 2018	1 August 2020
Kazakhstan	23 October 2014	25 October 2015
Kenya	28 August 2016	14 September 2017
Korea*	22 March 2002	1 January 2003
Kuwait	22 March 2012	24 January 2014
Laos	16 January 2008	3 August 2008
Morocco	8 January 2020	23 April 2022
Mozambique	1 June 2013	29 August 2014
Myanmar	15 December 2013	7 August 2014
Oman	19 June 2015	21 July 2017
Pakistan	10 March 1998	29 May 2002
Papua New Guinea	26 April 2011	17 January 2014
Peru	21 November 2008	10 December 2009
Russia	13 November 1998	27 May 2000
Saudi Arabia	30 April 2013	7 April 2017
Sri Lanka	1 March 1982	4 August 1982
Turkey	12 February 1992	12 March 1993
UAE	30 April 2018	26 August 2020
Ukraine	5 February 2015	26 November 2015
Uruguay	26 January 2015	14 April 2017
Uzbekistan	15 August 2008	24 September 2009
Vietnam	14 November 2003	19 December 2004

\* Japan, China and Korea entered into a trilateral investment treaty on 13 May 2012, which took effect on 17 May 2014.

Additionally, Japan has entered into the following economic partnership (EPA) agreements and free trade agreements (FTAs) that have sections addressing investment:

Country	Signed	Entry into force
Australia*	July 2014	January 2015
Brunei	June 2007	July 2008
Chile	March 2007	September 2007
EU**	July 2018	February 2019
India	February 2011	August 2011
Indonesia	August 2007	July 2008
Malaysia	December 2005	July 2006



Mexico	September 2004	April 2005
Mongolia	February 2015	June 2016
Philippines*	September 2006	December 2008
Singapore	January 2002	November 2002
Switzerland	February 2009	September 2009
Thailand	April 2007	November 2007
United Kingdom***	October 2020	January 2021

\* The investment chapters of the Japan–Australia EPA and the Japan–Philippines EPA do not provide for investor-state dispute settlement.

\*\* The Japan–EU EPA does not include the protection of investment since negotiations are still ongoing for a future investment agreement.

\*\*\* The Japan–United Kingdom EPA does not include the protection of investment. However, it includes a provision that when one party signs an international agreement with an investment chapter containing provisions for investment protection or investor-state dispute settlement procedures, the other party may request a review of this point by the parties.

In addition, after the United States withdrew from a proposed Transpacific Strategic Economic Partnership Agreement (TPP), the remaining 11 signatories signed a revised version of the agreement, renamed the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), which entered into force on 30 December 2018.

Also, Australia, Brunei, Cambodia, China, Indonesia, Japan, Laos, Malaysia, Myanmar, New Zealand, the Philippines, Singapore, South Korea, Thailand and Vietnam signed the Regional Comprehensive Economic Partnership (RCEP), which entered into force on 1 January 2022. While the RCEP does not stipulate an investor-state dispute settlement mechanism at this time, it provides instead that the parties should discuss this topic within two years of the date of the RCEP's entry into force.

Japan is a member country of the Energy Charter Treaty, which Japan signed on 16 June 1995 and ratified on 23 July 2002 (it entered into force on 21 October 2002).

*Law stated - 06 March 2023*

## 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 Act (Act No.138 of 2003) (English translation at <https://www.japaneselawtranslation.go.jp/ja/laws/view/2784> ). Although the Arbitration Act governs both domestic and international arbitral proceedings, the scope of its application (except for the recognition and enforcement of foreign arbitral awards in Japan) is generally limited to arbitration taking place in the territory of Japan (the Arbitration Act, article 3(1)).

*Law stated - 06 March 2023*

## 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 Act is based on the UNCITRAL Model Law of 1985 (the 1985 Model Law). Although many of the provisions of the Arbitration Act are nearly identical to the 1985 Model Law, there are some differences, such as article 13(4) of the Arbitration Act, which expressly allows for arbitration agreements to be made by way of 'electromagnetic record' (which would include email). By contrast, the 1985 Model Law expressly recognises only documents 'signed by the parties or in an exchange of letters, telex, telegrams or other means of telecommunication'. It is thus unclear whether an email exchange would qualify. Some of the other differences between Japan's Arbitration Act and the 1985 Model Law are described in subsequent questions.

*Law stated - 06 March 2023*

## Mandatory provisions

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

Provisions of the Arbitration Act that are considered mandatory and may not be deviated from even by party agreement 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.

*Law stated - 06 March 2023*

## 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 Act, 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 without regard to 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 Act, 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 laws rules that it considers applicable.

*Law stated - 06 March 2023*

## Arbitral institutions

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

The Japan Commercial Arbitration Association (JCAA) is the most prominent arbitration institution in Japan. The JCAA has its own arbitration rules, the JCAA Commercial Arbitration Rules (the JCAA Rules), the latest amendments to which took effect on 1 July 2021.

## ARBITRATION AGREEMENT

### Arbitrability

Are there any types of disputes that are not arbitrable?

Generally, any civil dispute that can legally be settled between the parties can be submitted to arbitration, though there are exceptions – for example, disputes relating to divorce or dissolution of adoptive relation (see Arbitration Act, article 13(1)). Matters that cannot be resolved by party agreement (ie, that would not be arbitrable) include requesting confirmation of paternity or a confirmation of a patent's invalidity. It is also worth noting that 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 Act). Furthermore, 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 Act).

Law stated - 06 March 2023

### Requirements

What formal and other requirements exist for an arbitration agreement?

The Arbitration Act stipulates that 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 (including those sent by facsimile device or other communication measures for parties at a distance which provides the recipient with a written record of the communicated content), or other documents' (article 13(2)). It is not necessary that the document be 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, email) (article 13(4)).

Law stated - 06 March 2023

### 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, or the 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.

Law stated - 06 March 2023

### Separability

Are there any provisions on the separability of arbitration agreements from the main agreement?

Article 13(6) of the Arbitration Act provides that in regard to a single contract containing an arbitration agreement, even if the clauses of the contract other than that of the arbitration agreement are not valid due to nullity, rescission or for

any other reason, the validity of the arbitration agreement shall not be impaired automatically. This provision is basically the same as the second and third sentences of article 16(1) of the 1985 Model Law.

*Law stated - 06 March 2023*

### **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.

*Law stated - 06 March 2023*

### **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 Act 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 or as provided in the applicable arbitration rules that the parties have agreed to.

*Law stated - 06 March 2023*

### **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?

Where Japanese law governs an arbitration agreement, neither a parent company nor subsidiary companies of a signatory company would be bound by the 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 company 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.

*Law stated - 06 March 2023*

### **Multiparty arbitration agreements**

## What are the requirements for a valid multiparty arbitration agreement?

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

*Law stated - 06 March 2023*

## Consolidation

### Can an arbitral tribunal in your jurisdiction consolidate separate arbitral proceedings? In which circumstances?

The Arbitration Act does not deal expressly with the issue of consolidation. On the other hand, article 57 of the Japan Commercial Arbitration Association Rules provides that the arbitral tribunal may, at the written request of a party and when it finds it necessary, consolidate and hear the pending claim(s) with the other claim(s) (as to which no arbitral tribunal has been constituted) in specified circumstances.

*Law stated - 06 March 2023*

## CONSTITUTION OF ARBITRAL TRIBUNAL

### Eligibility of arbitrators

#### Are there any restrictions as to who may act as an arbitrator? Would any contractually stipulated requirement for arbitrators based on nationality, religion or gender be recognised by the courts in your jurisdiction?

An arbitrator must be an impartial and independent party, possessing the qualifications agreed upon by the parties involved in the arbitration (Arbitration Act, article 18(1)). If a sole or third arbitrator is appointed by the court, due regard must be had for whether it would be appropriate to appoint an arbitrator of a different nationality from the parties (Arbitration Act, article 17(6)(iii)). Retired judges may act as arbitrators. Arbitrators need not be selected from a particular list of arbitrators unless otherwise agreed upon by the parties to arbitration. It is highly likely that courts in Japan will recognise any contractually stipulated requirements for arbitrators based on nationality, religion or gender as a matter of party autonomy, although the validity and enforceability of these types of requirements have yet to be judicially tested in Japan.

*Law stated - 06 March 2023*

### Background of arbitrators

#### Who regularly sit as arbitrators in your jurisdiction?

With respect to commercial arbitration in Japan, practising lawyers and law professors regularly sit as arbitrators. Although there is a general interest in Japan regarding diversity on the basis of gender and other characteristics of arbitrators, there have not been many formal efforts to this effect.

*Law stated - 06 March 2023*

## Default appointment of arbitrators

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

Under the Arbitration Act, where 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 number will be determined by a court (article 16(3)). In addition, when the parties fail to agree on the procedure of appointing the arbitrators:

- where there are two parties in an arbitration with three arbitrators, (1) each party may appoint an arbitrator, and (2) the two appointed arbitrators will appoint the third, provided that if such appointments are not made within a 30-day period, a court may make the appointment upon a petition by a party who has already appointed an arbitrator (for the appointment (1)) or either party (for the appointment (2) as the case may be) (article 17(2));
- where there are two parties and a sole arbitrator and the appointment of such arbitrator cannot be decided between the parties, a court will appoint an arbitrator upon the request of a party (article 17(3)); and
- where the appointment of an arbitrator cannot be decided in multiparty arbitration, a court will appoint the arbitrator upon the request of a party (article 17(4)).

*Law stated - 06 March 2023*

## 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. Is there a tendency to apply or seek guidance from the IBA Guidelines on Conflicts of Interest in International Arbitration?

The Arbitration Act sets out two grounds on which an arbitrator can be challenged: the arbitrator does not possess the 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 only challenge the arbitrator 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)). Where there is no agreement on the procedure for challenge, the challenging party must apply to the arbitral tribunal 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 his or her duties (article 20). An arbitrator's mandate is terminated upon his or her death or resignation, the removal of the arbitrator upon agreement by the parties, a decision ruling that grounds for challenge

exist or a decision to remove an arbitrator (article 21(1)).

The IBA Guidelines on Conflicts of Interest in International Arbitration are often referred to for guidance in international arbitration in Japan.

*Law stated - 06 March 2023*

### **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 of arbitrators.

Each arbitrator is considered to have entered into an entrustment contract with all the parties, whether or not such arbitrator is party-appointed. 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).

*Law stated - 06 March 2023*

### **Duties of arbitrators**

What are arbitrators' duties of disclosure regarding impartiality and independence throughout the arbitral proceedings?

Reasonable doubt as to the impartiality and independence of an arbitrator can be grounds for challenging them (Arbitration Act, article 18(1)). To secure the effectiveness of such a challenge system, arbitrator candidates and arbitrators are obliged to disclose all the facts that may raise doubts as to their impartiality or their independence (Arbitration Act, article 18 and 18(4); see also article 24 and 24 of the Japan Commercial Arbitration Association (JCAA) Rules).

Further, article 24(4) of the JCAA Rules provides that during the course of the arbitral proceedings, an arbitrator shall have an ongoing duty to make reasonable investigation into any circumstances that may, in the eyes of the parties, give rise to justifiable doubts as to the arbitrator's impartiality or independence and to promptly disclose to the parties and the JCAA in writing such circumstances, unless the arbitrator has already disclosed such circumstances.

*Law stated - 06 March 2023*

### **Immunity of arbitrators from liability**

To what extent are arbitrators immune from liability for their conduct in the course of the arbitration?

There are no provisions in the Arbitration Act providing for immunity for the civil liability of arbitrators. Article 13 of the JCAA Rules stipulates that arbitrators will not be liable for an act or omission related to the arbitration unless such an act or omission can be shown to constitute wilful or gross negligence.

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

*Law stated - 06 March 2023*

## JURISDICTION AND COMPETENCE OF ARBITRAL TRIBUNAL

### 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 request of the defendant (Arbitration Act, article 14(1)). However, if the defendant party pleads on the substance of the disputes, this is deemed an acceptance of the court's jurisdiction and a waiver of the right to rely on the arbitration agreement (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 instead of dismissing the pending court proceedings, if a party so requests not later than when submitting his or her first statement of the substance of the dispute. Separately, an arbitral tribunal may commence or continue proceedings and make an arbitral award even if an action is pending in court (Arbitration Act, article 14(2)).

*Law stated - 06 March 2023*

### 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 (Arbitration Act, 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(3)).

*Law stated - 06 March 2023*

### Distinction between admissibility and jurisdiction of tribunal

Is there a distinction between challenges as to the admissibility of a claim and as to the jurisdiction of the tribunal?

Unlike the challenges as to the jurisdiction of the arbitral tribunal, the Arbitration Act does not have any express provisions about challenges as to the admissibility of a claim. An arbitral tribunal may rule on challenges as to both the admissibility of a claim and jurisdiction of the tribunal.

*Law stated - 06 March 2023*

## ARBITRAL PROCEEDINGS

### Place and language of arbitration, and choice of law

Failing prior agreement of the parties, what is the default mechanism for the place of arbitration and the language of the arbitral proceedings? How is the substantive law of the dispute determined?



Failing prior agreement of the parties regarding the place or language of the arbitration, the arbitral tribunal will decide them (Arbitration Act, articles 28(2) and 30(2)). When deciding the place, the arbitral tribunal will consider the circumstances of the case, including the convenience of the parties.

Primarily, the arbitral tribunal shall apply the law agreed by the parties as applicable to the substance of the dispute. If the parties fail to agree on the applicable law, the tribunal shall apply such law of the state with which the dispute is most closely connected (article 36(1) and 36(2)). Notwithstanding these provisions, the tribunal shall decide *ex aequo et bono* when the parties have expressly authorised it to do so (article 36(3)). In addition, in the case of a contract dispute, the tribunal shall decide in accordance with the terms of the contract and shall take into account the applicable usages, if any (article 36(4)).

*Law stated - 06 March 2023*

## Commencement of arbitration

### How are arbitral proceedings initiated?

Under the Arbitration Act, the arbitral proceedings commence when one party gives the other party notice to refer the dispute to the arbitral proceedings (article 29(1)).

The Japan Commercial Arbitration Association (JCAA) Rules provide that the claimant must submit a written request for arbitration to commence arbitral proceedings to the JCAA, setting forth, in addition to the items required by the Arbitration Act, a reference to the arbitration agreement that is invoked (including any agreement about the number of arbitrators, the procedure for appointing arbitrators, the place of arbitration and the language or languages of the arbitral proceedings), the contact information of the claimant or its counsel and other items (article 14(1)). A 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 (article 22(1)). However, this requirement does not apply to a submission by email, facsimile or any other electronic communication method (article 22(2)).

*Law stated - 06 March 2023*

## 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 that 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 has ensured that the other party is aware of the contents; and the tribunal has ensured that all parties are aware of the contents of any expert report or other evidence (article 32).

*Law stated - 06 March 2023*

## 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 Act, each party must be treated with equality and given a full opportunity to present its case in the arbitral proceedings (article 25). Subject to the requirements of the parties' arbitration agreement and the Arbitration

Act, the Arbitral Tribunal may carry out the arbitration procedure in such manner as it finds appropriate (article 26).

The JCAA Rules require that written statements setting forth each party's case on the law and facts be submitted (article 44(1)). Further, the arbitral tribunal, at the written request of a party or on its own motion, may order any party to produce documents in its possession that the arbitral tribunal considers necessary to examine after giving the party in possession an opportunity to comment, unless the arbitral tribunal finds reasonable grounds for the party in possession to refuse the production (article 54(4)). In addition, the arbitral tribunal, on its own motion, may examine evidence that a party has not applied to present, which may take place other than at a hearing. 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 (article 55).

It is common for arbitrators or parties who are familiar with international arbitration practice to refer for guidance to the IBA Rules on the Taking of Evidence in International Arbitration.

*Law stated - 06 March 2023*

## 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, or investigation of documentary evidence or inspection (Arbitration Act, article 35). The court may assist with service of a 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.

*Law stated - 06 March 2023*

## Confidentiality

Is confidentiality ensured?

The Arbitration Act does not have any express provisions prohibiting the disclosure of information related to arbitral proceedings, although it is understood 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 that arbitrators, officers and staff of the JCAA, the parties and their representatives, and other persons involved in the arbitral proceedings may not disclose facts related to arbitration cases except where disclosure is required by law or court proceedings, or based on any other justifiable grounds (article 42).

*Law stated - 06 March 2023*

## INTERIM MEASURES AND SANCTIONING POWERS

### 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 (Arbitration Act, article 15). The types of interim

measures that can be ordered by courts are the same as those permitted by the Civil Provisional Remedies Act (Act No. 91 of 1989) which applies to any types of disputes. These measures include orders of preliminary attachment or preliminary injunction. The power to order interim measures is not exclusive to courts; they may also be sought from arbitral tribunals.

*Law stated - 06 March 2023*

### **Interim measures by an emergency arbitrator**

Does your domestic arbitration law or do the rules of the domestic arbitration institutions mentioned above provide for an emergency arbitrator prior to the constitution of the arbitral tribunal?

The Arbitration Act does not expressly provide for emergency arbitrators prior to the constitution of the arbitral tribunal. However, the Japan Commercial Arbitration Association (JCAA) Rules set out detailed rules for an emergency arbitrator (articles 75 to 79). Under these rules, the JCAA shall use reasonable efforts to appoint an emergency arbitrator within two business days from its receipt of an application for emergency measures (article 76(4)) and the emergency arbitrator shall make reasonable efforts to make a decision on the emergency measures within two weeks from his or her appointment (article 77(4)). The claimant cannot obtain an order of emergency measures from the emergency arbitrator ex parte because the application for emergency measures must be notified to the respondent (articles 16(1) and 75(6)). The applicant must submit a written request for arbitration within 10 days of the application (article 75(7)). The types of emergency measures that the emergency arbitrator may order are the same as the interim measures that may be granted by the arbitral tribunal (article 77(1)). The emergency measures shall be deemed to be interim measures granted by the arbitral tribunal when it is constituted (article 77(5)). However, no determination on emergency measures shall be binding on the arbitral tribunal and the arbitral tribunal may approve, modify, suspend or terminate the emergency measures in whole or in part (article 78).

*Law stated - 06 March 2023*

### **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?

The Arbitration Act stipulates that at the request of a party the arbitral tribunal may order any party to take an interim measure of protection as the arbitral tribunal may consider it necessary in respect of the subject matter of the dispute and may order any party to provide appropriate security in connection with the interim measure ordered (article 24).

The JCAA Rules include more detailed provisions for interim measures by the arbitral tribunal (articles 71 to 74). Under these rules, the arbitral tribunal may grant, for example, orders to: maintain or restore the status quo; take action that would prevent, or refrain from taking action that is likely to cause, current or imminent harm or prejudice to the arbitral proceedings themselves; provide a means of preserving assets out of which a subsequent arbitral award may be satisfied; or preserve evidence that may be relevant and material to the resolution of the dispute (article 71(1)). Neither the Arbitration Act nor the JCAA Rules have any specific provision that addresses whether an arbitral tribunal may order security for costs. However, it is generally understood that an arbitral tribunal is not prohibited from ordering a claimant to provide security for costs at the request of a respondent.

*Law stated - 06 March 2023*

## Sanctioning powers of the arbitral tribunal

Pursuant to your domestic arbitration law or the rules of the domestic arbitration institutions mentioned above, is the arbitral tribunal competent to order sanctions against parties or their counsel who use 'guerrilla tactics' in arbitration? May counsel be subject to sanctions by the arbitral tribunal or domestic arbitral institutions?

The Arbitration Act stipulates that the claimant shall state the relief or remedy sought, the facts supporting its claim and the points at issue within the period determined by the arbitral tribunal (article 31(1)), absent which the proceedings are to be terminated unless there is a just cause (article 33(1)(4)). If any party fails to appear at an oral hearing or to produce documentary evidence as required, the arbitral tribunal may make the arbitral award on the evidence before it that has been collected up until such time, unless there is sufficient cause for such failure or unless otherwise agreed by the parties (article 33(3)(4)). However, the Arbitration Act does not provide the arbitral tribunal with any power to order sanctions against parties or their counsel who use guerrilla tactics in arbitration or commit gross violations of integrity of the arbitral proceedings.

The JCAA Rules provide that if one or both parties fail to appear, a hearing may be held in its or their absence (article 52(2)). If one party, without sufficient cause, fails to appear at a hearing or to produce documentary evidence, the arbitral tribunal may continue the arbitral proceedings and make the arbitral award based on the evidence before it (article 45(2)). However, the JCAA Rules also do not provide for any sanctioning powers of the arbitral tribunal against guerrilla tactics or gross violations of integrity.

*Law stated - 06 March 2023*

## AWARDS

### 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 (Arbitration Act, 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); article 66(6) of the Japan Commercial Arbitration Association (JCAA) Rules).

*Law stated - 06 March 2023*

### Dissenting opinions

How does your domestic arbitration law deal with dissenting opinions?

The Arbitration Act does not have any provisions relating to dissenting opinions.

*Law stated - 06 March 2023*

## Form and content requirements

## What form and content requirements exist for an award?

Under the Arbitration Act, 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). The JCAA Rules also prescribe that if the parties have agreed that no reasons are to be given, or if the arbitral tribunal records a settlement in the form of an arbitral award on agreed terms, the reasons shall be omitted (article 66(3)) and that the arbitral award must set out the total amount and allocation of the administrative fees, the arbitrators' remuneration and expenses, and other reasonable expenses incurred with respect to the arbitral proceedings (articles 66(4) and 80(1)).

*Law stated - 06 March 2023*

## Time limit for award

Does the award have to be rendered within a certain time limit under your domestic arbitration law or under the rules of the domestic arbitration institutions mentioned above?

No time limit is stipulated for an award to be rendered under the Arbitration Act. However, the JCAA Rules stipulate that the arbitral tribunal shall use reasonable efforts to render an arbitral award within nine months of the date when it is constituted (article 43(1)). For this purpose, the arbitral tribunal shall consult with the parties, and make a schedule of the arbitral proceedings in writing to the extent necessary and feasible as early as practicable (article 43(2)).

*Law stated - 06 March 2023*

## 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 notice of the award or after an enforcement decision (Arbitration Act, 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)). The JCAA Rules stipulate a slightly shorter time limit of four weeks (article 68(2)).

*Law stated - 06 March 2023*

## 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 (Arbitration Act, 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 within 30 days of receipt of notice of the award (articles 41(2) and 43(1)). The JCAA Rules amend this time limit from 30 days to four weeks (article 70).

*Law stated - 06 March 2023*

## 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 to such objection), the parties agree to terminate the proceedings, a settlement is reached on the dispute that is the subject of the arbitral proceedings or the arbitral tribunal finds that the continuation of the arbitral proceedings has become unnecessary or impossible (Arbitration Act, article 40). If the 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).

*Law stated - 06 March 2023*

## Cost allocation and recovery

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

Under the Arbitration Act, the parties may agree on the way in which costs for the proceedings are apportioned between them; if they do not reach an agreement, then each party must bear its own costs. 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 (Arbitration Act, article 49). The JCAA Rules provide that the costs of the arbitration are to be apportioned between the parties in the arbitral award, provided these costs are reasonable. Such costs include legal fees and expenses (articles 66(4)(5) and 80).

*Law stated - 06 March 2023*

## Interest

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

Interest may be awarded for principal claims and for costs. If Japanese substantive law applies, interest may be awarded at a rate of 3 per cent per annum (article 404(2) of the Civil Code (Act No. 89 of 1986)) unless other rates are agreed to by the parties.

*Law stated - 06 March 2023*

## PROCEEDINGS SUBSEQUENT TO ISSUANCE OF AWARD

### 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 party request (Arbitration Act, article 41; JCAA Rules, article 68(1)). The arbitral tribunal may also interpret an award upon request by a party (Arbitration Act, article 42; JCAA Rules, article 69). If a party requests the correction or interpretation of an award, the request must generally be made within 30 days (Arbitration Act, article 41(2) or article 42(3)) or four weeks (articles 68(2) and 69 of the JCAA Rules) of the receipt of notice of the arbitral award. However, there is no time limit for an award corrected upon the initiative of the tribunal, which distinguishes the Arbitration Act from the 1985 Model Law.

## Challenge of awards

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

If an arbitral award is rendered with the place of arbitration being within the territory of Japan, such an award may be challenged and set aside under the Arbitration Act (articles 3(1) and 44). 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)).

Law stated - 06 March 2023

## 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 (Arbitration Act, article 44(8)). Such an appeal must be filed within two weeks of receipt of the first-instance 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). The parties have to bear their respective attorneys' fees.

Law stated - 06 March 2023

## 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 domestic court judgment (Arbitration Act, article 45) and are enforced in a Japanese court (article 46). A party seeking enforcement based on the arbitral award should apply to a court for an enforcement decision. The grounds for refusing to recognise or 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 recognition and 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 recognising and enforcing awards.

*Law stated - 06 March 2023*

### **Time limits for enforcement of arbitral awards**

Is there a limitation period for the enforcement of arbitral awards?

The Arbitration Act does not provide for a limitation period for the enforcement of arbitral awards.

*Law stated - 06 March 2023*

### **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 language employed in the relevant provisions in the Arbitration Act 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 have 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 that have been set aside by the courts at the place of arbitration. There has been no court precedent that discusses this issue under the Arbitration Act as yet.

*Law stated - 06 March 2023*

### **Enforcement of orders by emergency arbitrators**

Does your domestic arbitration legislation, case law or the rules of domestic arbitration institutions provide for the enforcement of orders by emergency arbitrators?

The Arbitration Act does not provide for the enforcement of orders by emergency arbitrators, although the subject has been under discussion. Under the JCAA Rules, parties shall be bound by, and carry out, the emergency measures ordered by emergency arbitrators, which shall be deemed to be interim measures granted by the arbitral tribunal when it is constituted (article 77(5)). However, no determination on emergency measures shall be binding on the arbitral tribunal and the arbitral tribunal may approve, modify, suspend or terminate the emergency measures in whole or in part (article 78). Neither the interim measures granted by the arbitral tribunal nor the emergency measures ordered by emergency arbitrators may be enforced with an enforcement decision granted by a Japanese court.

*Law stated - 06 March 2023*

### **Cost of enforcement**

What costs are incurred in enforcing awards?

The costs required for enforcing an award are generally borne by the party seeking enforcement of the award.

*Law stated - 06 March 2023*



## OTHER

### Influence of legal traditions on arbitrators

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

Experienced arbitration practitioners in Japan can be expected to follow general practices seen in international arbitration globally. In domestic civil proceedings, written witness statements are common before testifying, and party officers may testify. Adversarial witness examination (ie, direct and cross-examination) is also standard. These features are often reflected in arbitration proceedings conducted in Japan. Japan's civil law system provides for limited, if any, discovery in the common law style.

*Law stated - 06 March 2023*

### Professional or ethical rules

Are specific professional or ethical rules applicable to counsel and arbitrators in international arbitration in your jurisdiction? Does best practice in your jurisdiction reflect (or contradict) the IBA Guidelines on Party Representation in International Arbitration?

There are no specific professional or ethical rules that are applicable to counsel and arbitrators in international arbitration in Japan. However, arbitration practitioners in Japan generally agree that the best practice of party representation reflects the IBA Guidelines on Party Representation in International Arbitration.

*Law stated - 06 March 2023*

### Third-party funding

Is third-party funding of arbitral claims in your jurisdiction subject to regulatory restrictions?

In Japan, there are no statutes or case law specifically prohibiting or allowing third-party funding of arbitral claims. Therefore, there is uncertainty as to whether third-party funding is allowed (and, if so, to what extent).

*Law stated - 06 March 2023*

### Regulation of activities

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

The Attorney Act (Act No. 205 of 1949) stipulates that any person who is not a Japan-qualified attorney 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 Act on Special Measures concerning the Handling of Legal Services by Foreign Lawyers (Act 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). 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).

**UPDATE AND TRENDS****Legislative reform and investment treaty arbitration**

Are there any emerging trends or hot topics in arbitration in your country? Is the arbitration law of your jurisdiction currently the subject of legislative reform? Are the rules of the domestic arbitration institutions mentioned above currently being revised? Have any bilateral investment treaties recently been terminated? If so, which ones? Is there any intention to terminate any of these bilateral investment treaties? If so, which ones? What are the main recent decisions in the field of international investment arbitration to which your country was a party? Are there any pending investment arbitration cases in which the country you are reporting about is a party?

Japan is currently considering corresponding amendments to the Arbitration Act, as stipulated in a set of proposals issued by the Ministry of Justice of Japan on 8 October 2021 (the Proposals). The main points are as follows.

These amendments aim to stipulate provisions for the enforceability of provisional measures granted by arbitral tribunals. Also, the Proposals aim to revise requirements for the issuance of provisional measures and stipulate provisions for damages against applicants in case the arbitral tribunal determines that the interim measure should not have been granted.

The Arbitration Act provides that any arbitration agreement must be in writing (article 13(2)).

These amendments would allow an oral agreement to be deemed to contain a valid arbitration agreement 'in writing' if they refer to a written document containing an arbitration clause.

The current Arbitration Act states that (1) any district court agreed upon by parties, (2) any district court with jurisdiction over the seat of arbitration or (3) any district courts with jurisdiction in the region where the respondent is located may have jurisdiction over matters related to arbitral proceedings, such as setting aside of arbitral awards (arbitration-related court proceedings) (article 5(1)).

The amendments aim to direct more arbitration-related court proceedings to designated courts (ie, Tokyo District Court and Osaka District Court), which is presumably for the purpose of accumulating experience and expertise in issues about arbitration-related court proceedings. It is expected that the Tokyo District Court and the Osaka District Court would have concurrent jurisdiction over those matters.












Under the current Arbitration Act, a complete and verified copy of the arbitral award along with a full Japanese translation must be submitted when making a request for a decision of enforcement (if the award is prepared in a language other than Japanese) (article 46(2)). Any evidence submitted in non-Japanese language must also be accompanied by a Japanese translation.

These amendments would allow courts to omit translations or allow partial translations of documents in arbitration-related court proceedings after hearing the parties' opinions. Considering that English is used in a significant proportion of international arbitration cases, these amendments aim to reduce time and costs involved in arbitration-related court proceedings and reduce the burden on parties.



## Jurisdictions

	<b>Australia</b>	DLA Piper
	<b>Austria</b>	OBLIN Attorneys at Law
	<b>Azerbaijan</b>	GRATA International
	<b>Bulgaria</b>	Kambourov & Partners, Attorneys at Law
	<b>Canada</b>	Singleton Urquhart Reynolds Vogel LLP
	<b>China</b>	Jingtian & Gongcheng
	<b>Croatia</b>	Gugić, Kovačić & Krivić
	<b>Cyprus</b>	N. Piriides & Associates LLC
	<b>Ecuador</b>	TADIR Dispute Resolution
	<b>Egypt</b>	Shahid Law Firm
	<b>France</b>	Aramis Law Firm
	<b>Germany</b>	rothorn legal
	<b>Ghana</b>	Kimathi & Partners Corporate Attorneys
	<b>Greece</b>	Lambadarios Law Firm
	<b>Hong Kong</b>	RPC
	<b>Hungary</b>	Bán, S.Szabó, Rausch & Partners
	<b>Indonesia</b>	Soemadipradja & Taher
	<b>Italy</b>	Legance
	<b>Japan</b>	Anderson Mōri & Tomotsune
	<b>Lebanon</b>	Hage-Chahine Law Firm
	<b>Liechtenstein</b>	Gasser Partner
	<b>Luxembourg</b>	Baker McKenzie
	<b>Macau</b>	JNV - Lawyers and Notaries
	<b>Malaysia</b>	Kuruvilla Yeoh & Benjamin
	<b>Mexico</b>	FloresRueda Abogados

	<b>Pakistan</b>	Axis Law Chambers
	<b>Romania</b>	STOICA & Asociații
	<b>Singapore</b>	Braddell Brothers LLP
	<b>Slovakia</b>	Barger Prekop sro
	<b>South Korea</b>	Kim & Chang
	<b>Spain</b>	King & Wood Mallesons
	<b>Sri Lanka</b>	FJ & G de Saram
	<b>Sweden</b>	Advokatfirman Delphi
	<b>Switzerland</b>	Bär & Karrer
	<b>Thailand</b>	Duensing Kippen
	<b>Turkey</b>	YAZICI Attorney Partnership
	<b>United Arab Emirates</b>	Afridi & Angell
	<b>United Kingdom</b>	Macfarlanes LLP
	<b>USA</b>	Draper & Draper LLC
	<b>Uzbekistan</b>	Putilin Dispute Management
	<b>Zambia</b>	Corpus Legal Practitioners