
CHAMBERS GLOBAL PRACTICE GUIDES

International Arbitration 2025

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Japan: Law and Practice

Yoshihiro (Yoshi) Takatori, Shota Toda and Anju Kurihara
Nagashima Ohno & Tsunematsu

JAPAN



Law and Practice

Contributed by:

Yoshihiro (Yoshi) Takatori, Shota Toda and Anju Kurihara
Nagashima Ohno & Tsunematsu

Contents

1. General p.4

- 1.1 Prevalence of Arbitration p.4
- 1.2 Key Industries p.4
- 1.3 Arbitration Institutions p.4
- 1.4 National Courts p.4

2. Governing Legislation p.4

- 2.1 Governing Law p.4
- 2.2 Changes to National Law p.5

3. The Arbitration Agreement p.5

- 3.1 Enforceability p.5
- 3.2 Arbitrability p.5
- 3.3 National Courts' Approach p.6
- 3.4 Validity p.6

4. The Arbitral Tribunal p.6

- 4.1 Limits on Selection p.6
- 4.2 Default Procedures p.6
- 4.3 Court Intervention p.7
- 4.4 Challenge and Removal of Arbitrators p.7
- 4.5 Arbitrator Requirements p.7

5. Jurisdiction p.7

- 5.1 Challenges to Jurisdiction p.7
- 5.2 Circumstances for Court Intervention p.7
- 5.3 Timing of Challenge p.8
- 5.4 Standard of Judicial Review for Jurisdiction/Admissibility p.8
- 5.5 Breach of Arbitration Agreement p.8
- 5.6 Jurisdiction Over Third Parties p.8

6. Preliminary and Interim Relief p.9

- 6.1 Types of Relief p.9
- 6.2 Role of Courts p.9
- 6.3 Security for Costs p.9

7. Procedure p.10

- 7.1 Governing Rules p.10
- 7.2 Procedural Steps p.10
- 7.3 Powers and Duties of Arbitrators p.10
- 7.4 Legal Representatives p.11

8. Evidence p.12

- 8.1 Collection and Submission of Evidence p.12
- 8.2 Rules of Evidence p.13
- 8.3 Powers of Compulsion p.13

9. Confidentiality p.14

- 9.1 Extent of Confidentiality p.14

10. The Award p.14

- 10.1 Legal Requirements p.14
- 10.2 Types of Remedies p.14
- 10.3 Recovering Interest and Legal Costs p.15

11. Review of an Award p.15

- 11.1 Grounds for Appeal p.15
- 11.2 Excluding/Expanding the Scope of Appeal p.16
- 11.3 Standard of Judicial Review p.16

12. Enforcement of an Award p.16

- 12.1 New York Convention p.16
- 12.2 Enforcement Procedure p.17
- 12.3 Approach of the Courts p.18

13. Miscellaneous p.18

- 13.1 Class Action or Group Arbitration p.18
- 13.2 Ethical Codes p.18
- 13.3 Third-Party Funding p.19
- 13.4 Consolidation p.19
- 13.5 Binding of Third Parties p.19

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the firm delivers tailored, cross-disciplinary advice. The firm's international arbitration team represents clients in proceedings seated worldwide under ICC, ICSID, SIAC, JCAA, AAA/ICDR, JAMS, CIETAC, and UNCITRAL rules, covering disputes arising from joint ventures, M&A, infrastructure, construction, investment, energy, technology, and distribution.

Authors



Yoshihiro (Yoshi) Takatori is a special adviser at Nagashima Ohno & Tsunematsu. His practice covers international litigation and alternative dispute resolution, including arbitration and mediation. He regularly

serves as an arbitrator or mediator under the rules of leading institutions such as the JCAA, SIAC, HKIAC, and KCAB. He serves as Executive Director of the Japan Association of Arbitrators and Co-Convener of the Chartered Institute of Arbitrators Japan Chapter.



Shota Toda is an associate at Nagashima Ohno & Tsunematsu, focusing on international commercial arbitration and complex cross-border disputes. He previously served as an Assistant Legal Counsel at the

Permanent Court of Arbitration in The Hague, where he worked closely with arbitral tribunals in investor-state and commercial arbitration proceedings. Shota earned a Master of Laws degree from Harvard Law School and is qualified to practise as a solicitor in England and Wales, as well as in New York and Japan.



Anju Kurihara is an associate at Nagashima Ohno & Tsunematsu. Her practice focuses primarily on international arbitration. She also has experience in a wide range of domestic and international litigation

and dispute resolution matters, including intellectual property and labour law disputes.

Nagashima Ohno & Tsunematsu

JP Tower, 2-7-2 Marunouchi
Chiyoda-ku
Tokyo 100-7036
Japan

Tel: +81-3-6889-7000
Fax: +81-3-6889-8000
Email: shota.toda@nagashima.com
Web: www.nagashima.com/en/

The logo for Nagashima Ohno & Tsunematsu, consisting of the firm's name in white serif font on a dark blue square background.

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1. General

1.1 Prevalence of Arbitration

International arbitration is widely chosen as a dispute resolution mechanism for cross-border commercial transactions involving Japanese parties. Japanese companies generally prefer international arbitration to litigation before foreign national courts, largely due to concerns regarding neutrality, procedural predictability, enforceability, and the ability to select arbitrators with relevant expertise.

By contrast, arbitration is not commonly used for purely domestic transactions, for which litigation before Japanese courts remains the default method of dispute resolution.

1.2 Key Industries

Industries with Significant International Arbitration Activity

Among Japanese companies, the manufacturing industry, trading and investment companies, engineering and construction companies, and the pharmaceutical sector have been more active than others in international arbitration. This is largely because these industries are heavily involved in cross-border investments and transactions, which makes international arbitration a preferred dispute resolution mechanism due to its neutrality compared to domestic court litigation.

1.3 Arbitration Institutions

Most Commonly Used Arbitration Institutions

In the context of international commercial arbitration, when Japan is designated as the seat of arbitration, the International Court of Arbitration of the International Chamber of Commerce (ICC) and the Japan Commercial Arbitration Association (JCAA) are the arbitral institutions most commonly chosen.

The ICC Arbitration Rules are frequently chosen in international commercial arbitrations involving Japanese parties. The JCAA is Japan's leading arbitral institution and administers both domestic and international commercial arbitration cases; it is commonly selected for arbitrations seated in Japan. Where appropriate, the authors refer in this article to the

JCAA Commercial Arbitration Rules (2021) (the JCAA Rules") and its practice to provide local insight.

Recent Institutional Developments

No new arbitral institutions have been established in Japan in the last 12 months.

1.4 National Courts

Courts Competent to Hear Arbitration-Related Matters

There are no designated or specialised courts with exclusive jurisdiction over arbitration-related matters in Japan. Under Article 5 (1) of the Arbitration Act, first-instance jurisdiction over arbitration-related court proceedings lies with the district court that

- is agreed upon by the parties;
- has geographical jurisdiction over the seat of arbitration; or
- has geographical jurisdiction over the respondent's permanent address. In addition, Tokyo District Court and Osaka District Court have concurrent jurisdiction over arbitration-related proceedings arising from arbitrations seated in Japan, regardless of the aforementioned connecting factors (Article 5 (2)).

Notably, as a result of a revision to the Tokyo District Court's internal case-allocation rules, arbitration-related cases – which were previously dispersed across several civil divisions – have, since April 2023, been centralised in the Business Court (Nakameguro, Tokyo), which accommodates the commercial division of the Tokyo District Court, facilitating the accumulation of institutional expertise in arbitration-related matters.

2. Governing Legislation

2.1 Governing Law

Japan's Arbitration Act and its Alignment with the UNCITRAL Model Law

The Arbitration Act of Japan (Act No 138 of 2003) (the Arbitration Act) serves as the *lex arbitri* for arbitrations seated in Japan. Court proceedings relating to arbitration are governed by the Arbitration Act with procedural matters supplemented by Supreme Court Rules

on Procedures of Arbitration-Related Cases (Supreme Court Rules No 27 of 2003), which set out detailed rules on matters such as form of applications, service, evidence-taking, and translation.

The Arbitration Act was originally enacted in 2003 and substantially incorporates the modern arbitration framework reflected in the UNCITRAL Model Law on International Commercial Arbitration (1985). More recently, the Act was amended to reflect the 2006 amendments to the UNCITRAL Model Law (the 2006 UNCITRAL Model Law). These amendments entered into force in April 2024 and, among other things, enhanced the effectiveness of interim measures by arbitral tribunals by clarifying the types of interim relief available and the mechanisms for their enforcement.

Notable respects in which the Arbitration Act diverges from the UNCITRAL Model Law include the following:

- **Scope of application.** Unlike the UNCITRAL Model Law, the Arbitration Act applies to both domestic and international arbitration (Articles 1 and 3). The Act does not distinguish between commercial and non-commercial arbitration, but instead applies broadly to civil disputes that may be settled by the parties.
- **Settlement assistance by arbitrators.** The Arbitration Act clarifies that an arbitral tribunal (or one or more arbitrators designated by it) may assist the parties in settlement negotiations only where both parties have expressly agreed in writing to such assistance (Article 38 (4)).
- **Consumer and employment protections.** The Arbitration Act contains specific restrictions on the enforceability of arbitration agreements involving consumers and individual employees. See **3.2 Arbitrability**.

2.2 Changes to National Law

2024 Amendment to the Arbitration Act

Japan has undergone notable legislative developments with the amendment to the Arbitration Act, which entered into force in April 2024. While the original Arbitration Act had already been broadly aligned with the principles reflected in the 2006 amendments to the UNCITRAL Model Law, the 2024 amendment brought further clarity and functional alignment, in

relation to interim measures and arbitration-related court proceedings.

Interim Measures

See **6 Preliminary and Interim Relief**.

Arbitration-Related Court Proceedings

The 2024 amendment also enhanced the usability and efficiency of arbitration-related court proceedings in Japan:

- Courts may now exempt a party from submitting Japanese translations of all or part of the documentary evidence (ie, arbitral awards and interim measure orders) in the enforcement process where the court considers such an exemption appropriate.
- The amendment established the concurrent jurisdiction of the Tokyo District Court and Osaka District Court over the arbitration-related cases, improving accessibility for users of arbitration in Japan.

3. The Arbitration Agreement

3.1 Enforceability

Formality Requirement for Enforceable Arbitration Agreement

Under Japanese law, an arbitration agreement must be made in writing to be enforceable (Article 13 (2) of the Arbitration Act). This requirement is satisfied where the agreement is set out in a document signed by all parties, exchanged through correspondence such as letters, telegrams or facsimiles, incorporated by reference into a written contract, or recorded by electronic means (Articles 13 (3) and (4)).

3.2 Arbitrability

Arbitrability and Statutory Carve-Outs

Under the Arbitration Act, unless otherwise provided by laws or regulations, an arbitration agreement is valid only in so far as its subject matter constitutes a civil dispute that may be settled between the parties, in respect of an existing dispute or a future dispute arising out of a certain legal relationship. Disputes concerning divorce or the dissolution of an adoptive relationship are expressly excluded (Article 13 (1)).

For the purpose of consumers' and individual employees' protections, the Arbitration Act itself contains specific restrictions on the enforceability of arbitration agreements involving consumers and individual employees:

- an arbitration agreement concerning future civil disputes between a consumer and a business may be revoked by the consumer; and
- arbitration agreements concerning future individual labour disputes are rendered invalid (Supplementary Provisions, Articles 3 (2) and 4).

3.3 National Courts' Approach Courts' Approach to Determining the Governing Law of the Arbitration Agreement

Japanese courts have taken the position that the law governing an arbitration agreement should follow the parties' express choice where one exists, and, in the absence of an express choice, their implied choice, if ascertainable. In assessing the existence of an implied choice, due regard should be had to the parties' agreement on the seat of arbitration, the terms of the main contract, and the surrounding circumstances as a whole (Supreme Court Judgment of 4 September 1997, *Minshū*, Vol 51, Issue 8, p 3657).

Courts' Approach to the Enforcement of Arbitration Agreements

Japanese courts generally adopt a pro-enforcement approach toward arbitration agreements and have issued numerous decisions upholding their validity and dismissing court proceedings brought in breach of such agreements. Arbitration agreements are enforced, provided that they satisfy the statutory requirements under the Arbitration Act, which closely reflects the principles of the 2006 UNCITRAL Model Law. Where a valid arbitration agreement exists, courts will decline jurisdiction over the merits of the dispute and refer the parties to arbitration.

3.4 Validity Validity of Arbitration Agreements and Separability

Under Japanese law, an arbitration clause may remain valid even if the rest of the contract in which it is contained is invalid. The Arbitration Act expressly incorporates the rule of separability. Where a single contract contains an arbitration agreement, the invalidity

of contractual provisions other than the arbitration agreement – whether due to nullity, rescission, or any other reason – does not automatically affect the validity of the arbitration agreement itself (Article 13 (7)).

4. The Arbitral Tribunal

4.1 Limits on Selection

Under Japanese law, there are no statutory limits on the parties' autonomy to select arbitrators, and arbitrators are not required to be qualified attorneys. Parties may freely agree on specific qualifications or requirements for arbitrators in their arbitration agreements, and in practice may consider factors such as legal or industry expertise, academic background, language proficiency, and nationality, depending on the nature of the dispute.

4.2 Default Procedures

The Arbitration Act provides default mechanisms for the appointment of arbitrators, which apply only where the parties' agreed method fails or no agreement exists; agreed procedures or institutional rules prevail over the statutory defaults.

Number of Arbitrators

Unless otherwise agreed by the parties, the default number of arbitrators is three in a two-party arbitration (Article 16 (2)). In cases involving three or more parties, if the parties fail to agree on the number of arbitrators, the court shall determine the number upon the petition of a party (Article 16 (3)).

Default Appointment Procedures

Article 17 of the Arbitration Act sets out the default appointment procedure as follows:

- Where there are two parties and three arbitrators, and the parties have not agreed on an appointment procedure, each party shall appoint one arbitrator, and the two party-appointed arbitrators shall appoint the presiding arbitrator. If a party fails to appoint an arbitrator within 30 days from receipt of a request from the other party, or if the two arbitrators fail to appoint the presiding arbitrator within 30 days from their appointment, the court

shall appoint the arbitrator upon the petition of the relevant party (Article 17 (2)).

- Where there are two parties and a sole arbitrator, and the parties fail to reach agreement on the appointment, the court shall appoint the arbitrator upon the petition of either party (Article 17 (3)).
- In multiparty arbitrations, if the parties fail to agree on the appointment procedure or the appointment itself, the court shall appoint the arbitrator(s) upon the petition of a party (Article 17 (4)).

4.3 Court Intervention

Court Assistance in Appointing Arbitrators

A court in Japan may intervene in the selection of arbitrators, but only in limited circumstances and primarily in a supportive role. Where the parties' agreed appointment method fails, or where no agreement exists – as described in 4.2 Default Procedures – the national court may appoint an arbitrator upon the petition of a party, pursuant to Article 17 of the Japanese Arbitration Act.

Appointment Criteria

The court's role is limited to facilitating the constitution of the arbitral tribunal and does not extend to revising the parties' agreement. Under Article 17 (6) of the Arbitration Act, the court must, when appointing an arbitrator, take into account any qualifications agreed by the parties, the arbitrator's independence and impartiality, and, where a sole arbitrator is to be appointed or the court acts on behalf of the party-appointed arbitrators, whether it is appropriate to appoint a person of a different nationality from the parties.

4.4 Challenge and Removal of Arbitrators

The Japanese Arbitration Act contains specific provisions governing both the challenge and removal of arbitrators, each with distinct grounds and procedures.

Challenge of Arbitrators (Kih))

A party may challenge an arbitrator where:

- the arbitrator does not satisfy the qualifications or requirements agreed by the parties; or
- there are reasonable grounds to doubt the arbitrator's impartiality or independence (Article 18 (1)).

Removal (Dismissal) of Arbitrators (Kainin)

Separately, a party may petition the court for the removal of an arbitrator where:

- the arbitrator has become de jure or de facto unable to perform their duties; or
- the arbitrator unjustifiably delays the performance of their duties (Article 20).

4.5 Arbitrator Requirements

Under Japanese law, arbitrator independence, impartiality, and disclosure obligations are expressly regulated. A person who is requested to serve as an arbitrator must, upon receiving such a request, disclose to the requesting party any facts that are likely to give rise to justifiable doubts as to their impartiality or independence (Article 18 (3)).

Further, an arbitrator has a continuing duty of disclosure throughout the arbitral proceedings and must, without delay, disclose to all parties any newly arising facts that are likely to give rise to doubts as to impartiality or independence, except for matters that have already been disclosed (Article 18 (4)).

5. Jurisdiction

5.1 Challenges to Jurisdiction

Tribunal's Power to Rule on its own Jurisdiction (Competence-Competence)

Japanese law expressly incorporates the principle of competence-competence. Under Article 23 (1) of the Arbitration Act, an arbitral tribunal may rule on its own jurisdiction, meaning its authority to conduct the arbitral proceedings and to render an arbitral award. This power includes the authority to rule on any objections or allegations concerning the existence or validity of the arbitration agreement.

5.2 Circumstances for Court Intervention

Pursuant to Article 23 (5) of the Arbitration Act, where an arbitral tribunal issues a positive ruling on its jurisdiction in a separate decision rendered prior to the arbitral award, either party may petition a competent court to determine whether the tribunal has jurisdiction. Any such petition must be filed within 30 days from receipt of notice of the tribunal's decision.

In contrast, where the arbitral tribunal declines jurisdiction, whether by a separate decision prior to the award or as part of the final award, the parties are not entitled to seek court review of the tribunal's negative ruling on jurisdiction.

5.3 Timing of Challenge

Timing of Jurisdictional Objections Before the Arbitral Tribunal

As previously mentioned, under Japanese law, the arbitral tribunal has first-instance competence to rule on its own jurisdiction. Pursuant to Article 23 (2) of the Arbitration Act, an objection that the arbitral tribunal lacks jurisdiction must be raised promptly after the ground for the objection arises, where it arises during the arbitral proceedings, or, in any other case, no later than the submission of the party's first written statement on the merits. This requirement does not apply where the arbitral tribunal finds justifiable grounds for the delay in raising the jurisdictional objection.

Court Review Following a Positive Jurisdictional Ruling

Where the arbitral tribunal affirmatively rules that it has jurisdiction in an independent decision rendered prior to the arbitral award, either party may petition a competent court to review that ruling within 30 days from receipt of notice of the decision (Article 23 (5)).

Court Review Following the Arbitral Award

Where the arbitral tribunal affirms its jurisdiction in the arbitral award itself, a party may seek to set aside the award on jurisdictional grounds (Article 44 (1)(v)). However, such a petition may not be filed once three months have elapsed from the date on which notice of the arbitral award was given by delivery of a copy of the written award, or once an execution order (*shikkō-kettei*) has become final and binding (Article 44 (2)).

5.4 Standard of Judicial Review for Jurisdiction/Admissibility

Under Japanese law, national courts review questions of jurisdiction and admissibility on a *de novo* basis. In conducting such a review, the courts are not bound by the arbitral tribunal's prior ruling or decision on jurisdiction or admissibility.

5.5 Breach of Arbitration Agreement Court Proceedings Commenced in Breach of an Arbitration Agreement

Pursuant to Article 14 (1) of the Arbitration Act, where a judicial action is brought in respect of a civil dispute that is subject to a valid arbitration agreement, the court must, upon the defendant's petition, dismiss the action. This rule does not apply where:

- the arbitration agreement is invalid due to nullity, rescission, or other reasons;
- it is impossible to conduct arbitral proceedings on the basis of the arbitration agreement; or
- the defendant files the petition after having presented oral arguments on the merits or made submissions on the merits in preparatory proceedings.

The arbitral tribunal may, in parallel, continue the arbitral proceedings notwithstanding the pendency of any such court proceedings (Article 14 (2)).

5.6 Jurisdiction Over Third Parties Extension of Jurisdiction to Non-signatories

The Japanese Arbitration Act does not expressly provide for the requirements or scope under which an arbitration agreement may bind third parties, nor does it define the circumstances in which an arbitral award may have binding effect on non-signatories. The statutory framework is premised on party consent.

Case Law Developments

Japanese case law has recognised that, depending on the factual circumstances, an arbitration agreement may bind persons who are not formal signatories, such as directors or employees of a company, where the court is able to infer the third party's intention or willingness to arbitrate from the surrounding circumstances (Supreme Court Judgment of 4 September 1997, *Minshū*, Vol 51, Issue 8, p 3657; Sapporo District Court Judgment of 8 February 2022, available on the Courts of Japan website). These approaches are not limited to domestic third parties and may, in principle, apply equally to foreign third parties, subject to the applicable governing law and the specific factual matrix.

6. Preliminary and Interim Relief

6.1 Types of Relief

Power of Arbitral Tribunals to Grant Interim Relief

Under Japanese law, interim relief in arbitration may be issued by national courts, arbitral tribunals, and emergency arbitrators appointed under institutional rules. Following the April 2024 amendment to the Arbitration Act, the categories of tribunal-issued interim measures available and the mechanism for their enforcement by Japanese courts are now expressly provided for, and interim measures ordered by arbitral tribunals are binding and enforceable, subject to limited statutory grounds for refusal.

Types of Interim Measures

Article 24 (1) of the Arbitration Act provides that an arbitral tribunal may order the following types of interim measures:

- Asset-preservation measures (Article 24 (1)(i) and (ii)): measures to prevent the disposal, alteration, or other changes to property that is material to the satisfaction of a monetary claim or a claim for the delivery of property.
- Preventive or restorative measures (Article 24 (1) (iii)): measures requiring a party to take, or refrain from taking, actions necessary to prevent substantial loss or imminent danger to the applicant in relation to its rights or the subject matter of the dispute, or to restore an altered state to its original condition.
- Measures to protect the arbitral proceedings (Article 24 (1)(iv)): measures restraining conduct that would disrupt or otherwise undermine the arbitral proceedings.
- Evidence preservation measures (Article 24 (1) (v)): measures prohibiting the disposal, erasure, or alteration of evidence necessary for the determination of the dispute. Notably, with respect to this category, the Arbitration Act does not expressly require the applicant to demonstrate prima facie merit, leaving the necessity of such measures to the tribunal's discretion.

6.2 Role of Courts

Role of Courts in Interim Relief in Arbitral Proceedings

Courts may order interim measures, either before the commencement of arbitration or during the arbitral proceedings (Article 15 of the Arbitration Act). Court-ordered interim measures are governed by the Civil Provisional Remedies Act (Act No 91 of 1989), and such measures are binding and may be enforced through compulsory execution.

Court-issued interim measures are available in aid of both Japan-seated and foreign-seated arbitrations (Article 3 (2) of the Arbitration Act). In addition, the 2024 amendment to the Arbitration Act has enhanced the effectiveness of interim relief by extending the jurisdiction of Japanese courts to enforce arbitral tribunal-ordered interim measures within Japan, even where the seat of arbitration is outside Japan (Article 47 (1)).

Emergency Arbitrators

Under Japanese law, interim measures issued by emergency arbitrators are considered valid. However, the Arbitration Act does not contain provisions expressly addressing emergency arbitrators, and parties must therefore have recourse to the institutional rules agreed between them, which provide a framework for emergency arbitrators. For example, the JCAA Rules provide a framework for emergency arbitrators, under which an emergency arbitrator is appointed within two days of a party's application and endeavours to render a decision within two weeks of appointment (Articles 76 (4) and 77 (4) of the JCAA Rules).

Interim measures ordered by emergency arbitrators are not currently subject to statutory enforcement under the Arbitration Act, and the appointment of an emergency arbitrator does not preclude a party from seeking interim relief from the courts.

6.3 Security for Costs

Security for Costs

Article 51 of the Arbitration Act grants the arbitral tribunal the authority to order the advance payment of arbitration costs and, in the event that such an advance is not made, to suspend or terminate the

arbitral proceedings. In light of these powers, it is understood that Article 51 permits the tribunal to order the provision of security for costs.

Security in Connection with an Interim Measure

When granting an interim measure, the arbitral tribunal may order the applicant to provide appropriate security in relation to that interim measure (Article 24 (3)).

7. Procedure

7.1 Governing Rules

The Arbitration Act, as the *lex arbitri* for Japan-seated arbitrations, provides a basic procedural framework which, in principle, defers to party autonomy in the conduct of arbitral proceedings.

Party-agreed Procedures

The arbitral tribunal shall conduct the arbitration in accordance with the procedure agreed by the parties, which typically consists of institutional arbitration rules and any additional procedural agreements (Article 26 (1)). Any such agreed procedures must not violate the provisions of the Act concerning public order. Provisions relating to public order are understood to refer to mandatory provisions.

Tribunal Discretion in the Absence of Agreement

Where the parties have not agreed on the arbitration procedure, the arbitral tribunal may conduct the arbitration in such a manner as it considers appropriate, provided that the procedure does not violate the mandatory provisions of the Act (Article 26 (2)).

Evidentiary Powers of the Tribunal

Even in the absence of an agreement by the parties, the arbitral tribunal has the authority, with respect to evidence, to determine its admissibility, the necessity of its examination, and its probative value (Article 26 (3)).

7.2 Procedural Steps

Mandatory Procedural Requirements

In Japan-seated arbitral proceedings, the Arbitration Act does not prescribe a rigid sequence of procedural steps, but it does impose certain core procedural requirements that must be observed.

Equality and Right to be Heard

Articles 25 (1) and 25 (2) of the Arbitration Act require that the parties be treated with equality and be given a full opportunity to present their respective cases. These provisions constitute mandatory due process safeguards applicable to all arbitral proceedings.

Hearings

The arbitral tribunal is afforded discretion to determine whether the proceedings should be conducted through oral hearings or on the basis of written submissions (Article 32 (1)). However, where a party requests an oral hearing, the tribunal is required to hold such a hearing at an appropriate stage of the proceedings, unless the parties have agreed otherwise (Article 32 (2)).

Notice and Disclosure

Where an oral hearing is held, the arbitral tribunal must give the parties reasonable advance notice of the date, time, and place of the hearing (Article 32 (3)). Parties must ensure that written submissions and evidentiary materials submitted to the tribunal are made known to the opposing party (Article 32 (4)). The tribunal must also take measures to ensure that all parties are able to know the contents of expert reports and other evidentiary materials on which the tribunal relies as the basis of the arbitral award or other decisions of the tribunal (Article 32 (5)).

7.3 Powers and Duties of Arbitrators

Under the Arbitration Act, arbitrators in Japan are vested with broad powers to manage the arbitral proceedings and resolve the dispute, subject to party autonomy and the mandatory provisions of the Act. These powers and duties include, in particular, the following:

Jurisdictional Authority

As a fundamental aspect of arbitral authority, the arbitral tribunal has the power to rule on its own jurisdiction, including any objections concerning the existence or validity of the arbitration agreement (*kompetenz-kompetenz*), as noted in 5.1 **Challenges to Jurisdiction**.

Interim and Provisional Measures

Unless otherwise agreed by the parties, the arbitral tribunal may, upon the application of a party, order interim or provisional measures it considers necessary in respect of the subject matter of the dispute (Article 24 (1)). In connection with such measures, the tribunal also has the authority to order a party to provide appropriate security (Article 24 (3)).

Procedural Management and Language of the Proceedings

In addition to the tribunal's authority to conduct the arbitral proceedings subject to the parties' agreement, where the parties have not agreed on the language or languages to be used in the arbitral proceedings, or on the manner in which proceedings are to be conducted in those language(s), the arbitral tribunal is empowered to determine these matters (Article 30 (2)). In addition, the tribunal may require that documentary evidence be accompanied by translations into the agreed or determined language(s) of the proceedings (Article 30 (4)).

Appointment of Tribunal-Appointed Experts

Although it is not the prevailing practice in Japan-seated international commercial arbitrations, the arbitral tribunal may appoint one or more experts to provide opinions on matters it considers necessary and may require those experts to present their findings in writing or orally (Article 34 (1)). The tribunal may also direct the parties to co-operate with the tribunal-appointed expert by providing necessary information, submitting relevant documents or materials, or enabling the expert to inspect them (Article 34 (2)).

Assistance of National Courts in Evidence-Taking

Where necessary, the arbitral tribunal may petition a competent court to carry out evidentiary measures – such as the examination of witnesses, expert testimony, documentary evidence, or inspections – in accordance with the Code of Civil Procedure (Article 35 (1)).

Facilitation of Settlement

Where the parties reach a settlement during the course of the arbitral proceedings and jointly request it, the arbitral tribunal may render an award reflecting the agreed terms of settlement (ie, a consent award: Arti-

cle 38 (1)). In addition, with the consent of both parties, the tribunal or one or more arbitrators appointed by the tribunal may attempt to facilitate a settlement of the dispute (Article 38 (4)).

Correction of Arbitral Awards

The arbitral tribunal has the authority to correct miscalculations, clerical errors, or other similar errors in the arbitral award, either upon a party's application or on its own initiative (Article 41 (1)).

7.4 Legal Representatives

Japanese law imposes certain qualification requirements on legal representatives appearing in arbitral proceedings seated in Japan. However, representation is not confined to Japanese-qualified attorneys (*bengoshi*), and the applicable regime depends on whether the arbitration is international in nature.

General Legal Qualification to Represent in Arbitration

Japanese-qualified attorneys (*bengoshi*) may represent parties in arbitral proceedings, with no nationality requirement, as long as the representative is duly admitted as a *bengoshi*.

While Japanese law permits representation and legal counselling in arbitration proceedings by certain other licensed professionals (Certified Judicial Scrivener Act, Article 3 (1)(vii) and Patent Attorneys Act, Article 4 (2) (ii)), these exceptions are not generally used in international commercial arbitration seated in Japan.

Representation by Foreign Lawyers in International Arbitration

Important exceptions apply in the context of international arbitration under the Act on Special Measures Concerning the Handling of Legal Services by Foreign Lawyers (the Foreign Lawyers Act).

Representation by a registered foreign lawyer (*gaikokuho jimusho bengoshi*)

Under Articles 2 (14) and 7 of the Foreign Lawyers Act, a Registered Foreign Lawyer (*gaikokuho-jimusho-bengoshi*) is permitted to engage in acts of representation in arbitral proceedings that qualify as an "international arbitration case." An international arbitration case is

defined under the Foreign Lawyers Act as an arbitration that satisfies any of the following criteria:

- some or all of the parties have their address, principal office, or head office in a foreign country, including cases where more than 50% of the voting rights (or equivalent interests) of a party are held by a person or entity domiciled abroad;
- the governing law agreed by the parties is not Japanese law; or
- the seat of arbitration is located outside Japan.

Representation by a foreign lawyer (not registered in Japan)

A foreign lawyer who is not registered in Japan may engage in acts of representation where the matter qualifies as an international arbitration case and the engagement of the mandate was made outside Japan (Article 98 of the Foreign Lawyers Act).

8. Evidence

8.1 Collection and Submission of Evidence

Japanese law does not provide a detailed statutory framework governing the collection and submission of evidence in arbitral proceedings. The Arbitration Act largely defers to party autonomy with respect to evidentiary and procedural matters (Article 26 (1)). As a result, the practical approach to discovery/disclosure, privilege, and the use of witness evidence depends heavily on the parties' agreement and, in its absence, on the procedural preferences of the arbitral tribunal.

In practice, a key distinction is whether the parties (or the tribunal) adopt the IBA Rules on the Taking of Evidence in International Arbitration (the IBA Rules on Evidence), which is common in international arbitrations seated in Japan, or whether the tribunal applies procedures closer to Japanese civil litigation practice, which is more frequently seen in domestic arbitrations. The explanation that follows therefore focuses on typical practice where the IBA Rules on Evidence are not applied.

Discovery/Disclosure Including Document Production

The Arbitration Act does not contain specific provisions governing discovery or document production. Japanese civil litigation does not recognise broad discovery comparable to US discovery or UK disclosure. Instead, courts may order the production of specific, identified documents upon a party's request, subject to statutory limitations.

In arbitrations seated in Japan where the IBA Rules on Evidence are not adopted, tribunals – particularly those accustomed to domestic litigation practice – often take a similar approach. There is typically no structured document production phase, and requests for documents are dealt with on an ad hoc basis, focusing on narrowly defined and specifically identified documents rather than broad categories.

Privilege

Where the IBA Rules on Evidence are adopted, arbitral tribunals enjoy broad discretion to determine the existence and scope of applicable privileges, taking into account considerations such as fairness, equality of arms, and the expectations of the parties based on their respective legal backgrounds.

By contrast, where arbitrators apply procedures reflecting Japanese court practice, the concept of privilege is significantly more limited. Japanese law does not recognise attorney – client privilege, litigation privilege, or settlement privilege in the manner familiar to common-law jurisdictions. While certain statutory grounds for refusing the production of documents exist – such as (i) documents containing confidential facts disclosed to attorneys in the course of their professional duties, and (ii) documents created solely for internal use where disclosure would cause substantial harm – these protections are narrow and less well-defined, with the precise boundaries remaining unclear in the absence of established case law.

As such, reflecting the absence of broad discovery or disclosure obligations in Japanese court proceedings, there is generally no blanket protection against document production based on privilege. As a result, in arbitral proceedings seated in Japan that are conducted without reference to the IBA Rules on Evidence and

instead follow domestic court practice, parties cannot ordinarily rely on privilege as a comprehensive basis to resist document production in the manner familiar to common-law jurisdictions.

Use of Witness Statements and Cross-Examination

In international arbitrations seated in Japan where the IBA Rules on Evidence are applied, witness evidence is typically presented through written witness statements submitted in advance, with examination-in-chief omitted or limited to confirmation, and the hearing focusing on cross-examination and re-direct.

By contrast, in arbitrations conducted without reference to the IBA Rules and influenced by Japanese court practice, tribunals may permit more extensive oral examination-in-chief at the evidentiary hearing, notwithstanding the prior submission of written witness statements.

8.2 Rules of Evidence

Japanese law does not provide comprehensive statutory rules of evidence applicable to arbitral proceedings. Instead, the Arbitration Act contains only a limited set of default provisions relating to evidence. These include, among others, the arbitral tribunal's authority to determine the admissibility, relevance, and probative value of evidence (Article 26 (3)); its power to order the submission of translations of documentary evidence (Article 30 (4)); the appointment of tribunal-appointed experts (Article 34); and the availability of court assistance in the examination of evidence (Article 35).

The Arbitration Act in principle defers to party autonomy with respect to evidentiary matters (Article 26 (1)). In practice, in international arbitration proceedings seated in Japan, the IBA Rules on Evidence are frequently referenced, depending on the legal backgrounds of the arbitrators and counsel. In particular, where arbitrators or counsel have a common-law background, the IBA Rules on Evidence are often viewed as a balanced procedural framework that bridges common-law and civil-law approaches, especially in relation to document production and other evidentiary issues.

8.3 Powers of Compulsion

Under Japanese law, arbitral tribunals do not possess coercive powers to compel the production of documents or the attendance of witnesses, whether such measures be directed against parties or non-parties. Where compulsion is required, parties may seek assistance from the courts under Article 35 of the Arbitration Act, pursuant to the relevant provisions of the Code of Civil Procedure, which apply *mutatis mutandis* to arbitral proceedings.

Court assistance for the collection and examination of evidence is available through several mechanisms. These include:

- court orders to submit documents, which may be issued against both parties and third parties (*bunsho-teishutsu-meirei*);
- the compulsory examination of witnesses by subpoena (*kōin*); and
- court-appointed expert testimony, where individuals with the requisite expertise are under a statutory duty to co-operate (*kantei*), which is accompanied by procedural sanctions for non-compliance, such as monetary fines. In addition, the court may, without imposing sanctions for non-compliance,
- commission government bodies, public offices, foreign authorities, or other corporations and organisations to conduct examinations or provide information (*chosa-shokutaku*);
- commission expert institutions to provide expert opinions (*kantei-shokutaku*); or
- request the voluntary production of documents in their possession, including from non-parties (*bunsho-sōfu-shokutaku*).

Finally, in arbitral proceedings conducted with reference to the IBA Rules on Evidence, arbitral tribunals may draw adverse inferences where a party fails to produce evidence without reasonable justification, notwithstanding the absence of direct coercive powers.

9. Confidentiality

9.1 Extent of Confidentiality

Under Japanese law, there is no statutory default rule imposing confidentiality on arbitral proceedings. The Arbitration Act is silent on confidentiality obligations applicable to the parties, arbitrators, or arbitral institutions. As a result, the existence and scope of confidentiality depend primarily on the parties' agreement and, where applicable, the institutional rules governing the arbitration.

In practice, confidentiality is most commonly ensured through institutional rules. For example, the JCAA Rules provide that arbitral proceedings are conducted in private and impose a general confidentiality obligation subject to limited exceptions (Article 42 (1) and (2) of the JCAA Rules).

Subsequent court proceedings related to arbitration, such as set-aside proceedings or enforcement actions, are in principle conducted in open court, in accordance with the general rule of publicity under Japanese procedural law. Court records in such proceedings may be accessible to third parties upon request, unless the court restricts access – for example, to protect trade secrets, personal information, or other legitimate confidentiality interests.

10. The Award

10.1 Legal Requirements

Legal Requirements for Arbitral Awards

Under Article 39 of the Arbitration Act, an arbitral award rendered in an arbitration seated in Japan must satisfy the following formal requirements:

- **Written form and signature:** the award must be in writing and signed by the sole arbitrator or, in the case of a multi-member tribunal, by a majority of the arbitrators. Where any arbitrator's signature is missing, the award must state the reason for the absence of that signature (Article 39 (1));
- **Reasons:** the award must state the reasons on which it is based, unless the parties have agreed otherwise (Article 39 (2)); and

- **Date and seat:** the award must state the date on which it was rendered and the seat of arbitration (Article 39 (3)).

The arbitral tribunal must notify the parties of the award by delivering a copy of the signed award to each party (Article 39 (5)).

Time Limits

The Arbitration Act does not impose any statutory time limit on the rendering or delivery of an arbitral award. Any time limits typically arise from the applicable institutional rules or procedural timetables set by the arbitral tribunal.

10.2 Types of Remedies

Scope of Available Remedies

The Arbitration Act does not prescribe specific limitations on the types of remedies that an arbitral tribunal may award. Generally, the tribunal may grant any relief that is available under the substantive law governing the dispute, subject to public policy and arbitrability considerations. Accordingly, remedies such as declaratory relief, specific performance, rectification, and injunctive relief are in principle available in Japan-seated arbitrations.

Punitive Damages

Japanese courts do not recognise punitive damages as a matter of substantive law, and awards of punitive damages are generally considered contrary to Japanese public policy (Supreme Court judgment of 11 July 1997, Minshū, Vol 51, No 6, p 2573, which refused to enforce a US judgment to the extent that it ordered punitive damages; the same reasoning would apply to arbitral awards). While the Arbitration Act does not expressly prohibit an arbitral tribunal from awarding punitive damages where permitted by the governing law, a punitive damages award rendered in a Japan-seated arbitration would likely be set aside to the extent it orders such damages, and a foreign arbitral award containing punitive damages would likewise be unlikely to be enforced in Japan on public policy grounds.

10.3 Recovering Interest and Legal Costs Recovery and Allocation of Legal Costs – Default Rules Under the Arbitration Act

Under Japanese law, the default rule is that each party bears its own legal costs, unless the parties have agreed otherwise. Unlike the English “costs follow the event” approach, Articles 52 (1) and (2) of the Arbitration Act provide that, in the absence of an agreement, each party must bear its own costs incurred in connection with the arbitration proceedings. These costs include attorneys’ fees and other party-incurred expenses.

Cost Allocation Under the JCAA Rules

The JCAA Rules do not adopt a strict “costs follow the event” principle. Instead, they grant the arbitral tribunal broad discretion to allocate the costs of arbitration. In exercising this discretion, the tribunal may take into account (i) the parties’ conduct throughout the arbitral proceedings, (ii) the outcome of the dispute on the merits, and (iii) any other relevant circumstances (Article 80 (2) of the JCAA Rules).

Interest

As regards interest, Japanese law generally permits the recovery of interest on monetary claims where such interest is available under the applicable substantive law. Arbitral tribunals seated in Japan commonly award pre-award and post-award interest in accordance with the governing law of the claim and the parties’ agreement, subject to public policy considerations.

11. Review of an Award

11.1 Grounds for Appeal

General Principle of Finality of Arbitral Awards

Under the Arbitration Act, arbitral awards – whether domestic or foreign – are recognised as final and binding, subject only to setting-aside proceedings (Article 45 (1)). In other words, Japanese law does not permit any appeal or judicial review on the merits of an arbitral award.

As regards jurisdiction, Japanese courts have authority over applications to set aside awards rendered in arbitrations seated in Japan (Article 3 (1)), reflecting

the principle set out in Article 1 (2) of the 2006 UNCITRAL Model Law. Judicial review is strictly confined to the limited grounds for annulment enumerated in the Act, which closely align with the Model Law standards. There is no general right of appeal.

Grounds for Setting Aside

A party seeking to challenge an arbitral award must file a petition for setting aside pursuant to Article 44 (1) of the Arbitration Act. The permissible grounds are exhaustively enumerated as follows:

- Invalid arbitration agreement: the arbitration agreement is invalid under the applicable law, for example due to a party’s lack of legal capacity or other defects affecting its validity (Article 44 (1)(i) and (ii)).
- Procedural due process violations: the award may be set aside if a party was not given proper notice of the arbitral proceedings or the appointment of arbitrators, or was otherwise deprived of a reasonable opportunity to present its case (Article 44 (1) (iii) and (iv)).
- Excess of authority: where the award deals with matters beyond the scope of the arbitration agreement or the claims submitted to arbitration. In such cases, the court may set aside only the affected portion of the award, leaving the remainder in force if it is severable (Article 44 (1)(v)).
- Illegitimate tribunal composition or procedure: the composition of the arbitral tribunal or the conduct of the arbitral procedure was not in accordance with the parties’ agreement or with mandatory provisions of Japanese law (Article 44 (1)(vi)).
- Non-arbitrability: the subject matter of the dispute is not capable of settlement by arbitration under Japanese law, such as certain disputes relating to family law or specific individual labour matters (Article 44 (1)(vii)).
- Public policy: the award is contrary to public policy or good morals in Japan. This ground is interpreted narrowly and applies only to serious and fundamental violations (Article 44 (1)(viii)).

Time Limits and Procedure

A petition for setting aside must be filed within three months from the date the party receives notice of the award. In addition, once an execution order has been issued in connection with enforcement of the award,

any subsequent application for setting aside is barred (Article 44 (2)).

Unlike Article 34 (4) of the 2026 UNCITRAL Model Law, the Arbitration Act does not provide for suspension of set-aside proceedings to allow the tribunal to cure defects; Japanese law prioritises judicial efficiency by having courts decide the challenge directly.

Practice

Successful set-aside applications are exceedingly rare in Japan. Although there have been a small number of lower-court decisions annulling arbitral awards, most have been overturned on appeal. To date, there is only one publicly reported case in which a set-aside judgment ultimately became final. In that case, the arbitral tribunal treated key disputed facts as undisputed, thereby overlooking material issues that were central to the parties' submissions and to the outcome of the case. The courts held that this approach deprived the parties of a proper adjudication of the dispute and constituted a serious violation of procedural fairness amounting to a breach of procedural public order (Tokyo District Court decision dated 13 June 2011, Hanrei Jiho Issue 2128, p 58). The set-aside was upheld by the Tokyo High Court (Tokyo High Court decision dated 13 March 2012, D1-Law.com Hanrei Taikei 28211461) and subsequently affirmed by the Supreme Court (Supreme Court Petty Bench No 2 decision dated 25 July 2012, D1-Law.com Hanrei Taikei 28211460).

11.2 Excluding/Expanding the Scope of Appeal

Under Japanese arbitration law, there are no statutory provisions or judicial precedents that expressly address whether parties may exclude or expand the grounds for setting aside an arbitral award beyond those provided in the Arbitration Act.

In academic commentary, some scholars argue that party autonomy could allow agreements modifying the scope of judicial review. Other scholars take the view that the statutory grounds for setting aside form part of the mandatory legal framework governing arbitration as an alternative dispute resolution mechanism subject to court supervision and therefore cannot be altered by party agreement. According to this view,

an agreement purporting to exclude or expand the statutory grounds for setting aside would not bind Japanese courts and would be unenforceable in the context of arbitrations seated in Japan. Parties may therefore wish to take into account the possibility that Japanese courts would not give effect to such an agreement.

11.3 Standard of Judicial Review

As mentioned in 11.1 Grounds for Appeal, Japanese courts do not review the merits of an arbitral award. Judicial intervention is limited to setting-aside proceedings based on the statutory grounds set out in the Arbitration Act.

12. Enforcement of an Award

12.1 New York Convention New York Convention

Japan ratified the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards on 20 June 1961, and the Convention entered into force for Japan on 18 September 1961. Pursuant to Article I(3) of the New York Convention, Japan made a reciprocity reservation, limiting the application of the Convention to arbitral awards rendered in the territory of another Contracting State. Japan did not make a commercial reservation under Article I(3); accordingly, the Convention applies, irrespective of whether the underlying dispute is considered "commercial" under Japanese law.

Other Treaties Concerning the Enforcement of Arbitral Awards

In addition to the New York Convention, Japan has concluded several bilateral treaties of commerce and navigation that contain provisions relating to the recognition and enforcement of arbitral awards, including, most notably, the Japan–US Treaty of Friendship, Commerce and Navigation (1953). With respect to the recognition and enforcement of arbitral awards (regardless of the seat of arbitration) involving a US party and a Japanese party, Japanese courts may, in principle, apply the Japan–US treaty instead of the New York Convention, as the grounds for refusal and procedural requirements may be more favourable to enforcement in certain respects and less favourable in

others. This approach is consistent with Article VII(1) of the New York Convention, which confirms that the Convention does not affect the validity or continued applicability of other international agreements concluded by the Contracting States.

12.2 Enforcement Procedure

Procedure for Enforcement

While the Arbitration Act recognises that arbitral awards are legally final and binding upon their issuance (Article 45 (1)), in order to enforce an award (ie, to have the award ready for the execution proceedings), the successful party must obtain an execution order (*shikkō-kettei*) from a competent district court.

To seek an execution order for the arbitral award, the applicant is required to submit the following documents:

- a copy of the arbitral award;
- a document certifying that the copy is identical to the original arbitral award; and
- a Japanese translation of the arbitral award, unless the award is written in Japanese (Article 46 (2)).

Grounds for Refusal of Enforcement

Japanese courts do not review the merits of an arbitral award upon the procedure for enforcement. Judicial scrutiny is limited to compliance with formal requirements and to whether any of the statutory grounds for refusal are established reflecting the New York Convention standard.

The applicable refusal grounds depend on whether the award is governed by the Arbitration Act (eg, domestic awards or awards rendered in non-New York Convention states) or by the New York Convention (or an applicable bilateral treaty as mentioned in **12.1 New York Convention**).

For awards subject to the Arbitration Act, enforcement may be refused if any of the following grounds set out in Article 45 (2) are found:

- Invalid arbitration agreement: Enforcement may be refused where the arbitration agreement is invalid under the applicable law, including where a party lacked the legal capacity to enter into the arbitra-

tion agreement or where the agreement suffers from other defects affecting its validity (Article 45 (2)(i) and (ii)).

- Procedural due process violations: Enforcement may be refused if a party was not given proper notice of the arbitral proceedings or was otherwise deprived of a reasonable opportunity to present its case (Article 45 (2)(iii) and (iv)).
- Excess of authority: Where the arbitral award deals with matters beyond the scope of the arbitration agreement or the claims submitted to arbitration, enforcement may be refused. As with setting-aside proceedings, where the portion of the award affected by the excess of authority is severable, enforcement may be refused only in respect of that portion (Article 45 (2)(v)).
- Illegitimate tribunal composition or procedure: Enforcement may be refused where the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the parties' agreement or with mandatory provisions at the seat of arbitration (Article 45 (2)(vi)).
- Lack of finality or annulment at the seat: Enforcement may be refused if the arbitral award is not yet binding on the parties, or if it has been set aside or suspended by a competent judicial authority at the seat of arbitration (Article 45 (2)(vii)).
- Non-arbitrability: Enforcement may be refused where the subject matter of the dispute is not capable of settlement by arbitration under Japanese law (Article 45 (2)(viii)).
- Public policy: Enforcement may be refused where the content of the arbitral award is contrary to Japanese public policy or good morals. As in setting-aside proceedings, this ground is construed narrowly and is generally limited to serious and fundamental violations (Article 45 (2)(ix)).

Award Set Aside at the Seat of Arbitration

Where an arbitral award has been set aside by a competent court at the seat of arbitration, enforcement may be refused under Article 45 (2)(vii) of the Arbitration Act.

As under the 2006 UNCITRAL Model Law and the New York Convention, the Arbitration Act provides that the court “may” refuse enforcement if a ground for refusal is established. Accordingly, in theory, a

Japanese court retains discretion to enforce an award even after it has been set aside at the seat. However, there is no established Japanese case law addressing whether Japanese courts would in fact exercise such discretion. The courts' approach to the enforcement of foreign annulled awards therefore remains unsettled.

Award Subject to Pending Set-Aside Proceedings at the Seat

The mere fact that an arbitral award is subject to pending set-aside proceedings at the seat of arbitration does not, in itself, constitute a ground for refusing enforcement. However, pursuant to Article 46 (3) of the Arbitration Act, where a petition to set aside the arbitral award or to suspend its effect has been filed with a competent judicial authority, Japanese courts may, at their discretion, suspend the enforcement proceedings if they consider it appropriate.

Sovereign Immunity at the Enforcement Stage

Under the Act on the Civil Jurisdiction of Japan with respect to Foreign States (Act No 24 of 24 April 2009), a foreign state or state entity is not immune from the jurisdiction of Japanese courts in proceedings concerning the existence or validity of a written arbitration agreement relating to a commercial transaction, or arbitration proceedings conducted pursuant to such an agreement, unless the parties have agreed otherwise (Article 16). As a result, a foreign state or state entity will generally be unable to rely on sovereign immunity as a defence at the enforcement stage in respect of an arbitral award arising out of a commercial arbitration agreement. As to sovereign immunity from execution against state property, see Articles 17 and 18 of the Act.

12.3 Approach of the Courts

General Approach Towards the Recognition and Enforcement of Arbitral Awards

Japanese courts generally take an enforcement-friendly approach to the recognition and enforcement of arbitral awards. The statutory grounds for refusal under the Arbitration Act and the New York Convention are interpreted strictly, and judicial review is confined to those grounds.

In practice, Japanese courts have issued a substantial number of execution orders for arbitral awards. The authors are not aware of any publicly reported decisions in the major Japanese legal databases in which enforcement was refused on the grounds set out in the Arbitration Act or the New York Convention.

Public Policy

With respect to public policy, Japanese courts adopt a restrictive interpretation, focusing on whether enforcement of the award would result in a violation of the fundamental principles of public order and morals in Japan.

As articulated by the Tokyo High Court in its decision of 19 August 2016 (Westlaw Japan No 2016WLJP-CA08196002), the public policy inquiry does not concern whether the applicable law or mandatory legal norms were correctly applied in the arbitral award, but rather whether the result of their application in the award itself is incompatible with Japan's public order and morals. Accordingly, not every violation of substantive law or mandatory provisions will amount to a breach of public policy under the Arbitration Act or New York Convention. Although this decision arose in the context of an application to set aside an arbitral award, the same reasoning is understood to apply when Japanese courts assess the public policy ground in proceedings for recognition or enforcement.

13. Miscellaneous

13.1 Class Action or Group Arbitration

Japanese law does not expressly contemplate collective arbitral proceedings, and there is no established mechanism comparable to class arbitration regimes found in some other jurisdictions. As a result, the availability of class or group arbitration in Japan is highly limited and would, in practice, depend on the explicit agreement of all parties concerned.

13.2 Ethical Codes

There are no arbitration-specific ethical codes or standalone rules of professional conduct governing counsel or arbitrators in international arbitration seated in Japan.

However, lawyers registered in Japan as *bengoshi* or *gaikokuho-jimu-bengoshi* are subject to the Attorneys Act and the Act on the Handling of Legal Services by Foreign Lawyers, respectively, as well as the professional rules promulgated by the Japan Federation of Bar Associations. These rules apply irrespective of whether legal services are rendered in litigation or arbitration and impose general duties of loyalty to clients, professional confidentiality, avoidance of conflicts of interest, and integrity.

13.3 Third-Party Funding

There are no specific statutory rules or regulations in Japan governing third-party funding in arbitration.

That said, where a party engages a third-party funder, careful attention should be paid to the structure and contractual terms of the funding arrangement to ensure compliance with the Attorneys Act and the Basic Rules on the Duties of Practising Attorneys (*Bengoshi Shokumu Kihon Kitei*), particularly with respect to restrictions on fee arrangements, independence of counsel, and avoidance of improper influence by non-lawyers.

13.4 Consolidation

The Arbitration Act does not provide a mechanism for the consolidation of arbitral proceedings, nor does it confer authority on Japanese courts to order consolidation. Accordingly, consolidation is left to the parties' agreement or to applicable institutional arbitration rules.

By way of example, the JCAA Rules provide that an arbitral tribunal may consolidate a pending arbitration with another request for arbitration where an arbitral tribunal has not yet been constituted for the latter, if:

- all parties agree;
- the claims in both proceedings are brought under the same arbitration agreement; or
- the claims are between the same parties and the other request for arbitration was submitted to the JCAA and consolidation is considered appropriate to be examined in a single set of proceedings (Article 57 of the JCAA Rules).

13.5 Binding of Third Parties

The Arbitration Act does not expressly define the circumstances in which third parties may be bound by an arbitration agreement or an arbitral award.

Although there is no settled Supreme Court precedent, several lower court decisions have recognised that, depending on the factual background, an arbitration agreement may bind non-signatories such as directors or employees of a company, particularly where the court can identify a clear intention or willingness on the part of the third party to submit to arbitration.

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