GAR Global Arbitration Review

The Guide to Construction Arbitration - Sixth Edition

Construction arbitration in Japan

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Edited by academics who teach construction contracts and arbitration at the School of International Arbitration in London, GAR's Guide to Construction Arbitration pulls together both substantive and procedural sides of the subject in one volume. Across four parts, it moves from explaining the mechanics of FIDIC contracts and particular procedural questions that arise at the disputes stage, to how to organise an effective arbitration, before ending with a section on the specifics of certain contracts and of key countries and regions. The chapters are written by leaders in the field from both the civil and common law worlds and other relevant professions.

This sixth edition is fully up to date with the new FIDIC suites and includes chapters on expert witnesses, claims resolution, dispute boards, ADR, agreements to arbitrate, investment treaty arbitration and Canada. It is a must-have for anyone seeking to improve their understanding of construction disputes or construction law..

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Explore on **GAR**

Construction arbitration in Japan

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INTRODUCTION

Since around 2021, many Japanese contractors have been struggling with continued disruptions in the supply chain, the rapid rise in material costs [1] and the depreciation of the Japanese yen. This situation has been exacerbated by recent movements, including import and export restrictions by various countries and the increase in geopolitical risk.

In the case of a fixed lump-sum construction contract, contractors may not claim for additional costs arising from disruptions in the supply chain or price fluctuations unless specific remedies (e.g., an escalation clause) are provided in the contract.

The Central Council on Construction Contracting Business[2] published an interim report (-*Chu-kan Torimatome*) in September 2023[3] that addresses the measures that should be taken to make the construction industry sustainable. The report refers to the possibility of amending the Construction Business Act to appropriately allocate risk by increasing the transparency of the relationship between the owner and the contractor. This includes through:

- resolving the inequalities between owners and contractors:
    - the contractor would be required to provide any risk information to the owner when providing the estimate; and
    - contingent expenses would be required to be explicitly provided in a construction contract;
- explicitly agreeing in the construction contract measures on how to manage price fluctuations; and
- preparing a Japanese form of an open-book or cost-plus-fee type of contract.

To achieve an appropriate allocation of risk, the Amended Construction Business Act (Act No. 49 of 2024) was promulgated in June 2024. Under the Amended Construction Business Act, as of 13 December 2024, the following steps should be taken to prevent the contractor from being forced to cut labour costs to absorb rises in material costs:

1. Both parties must include in the construction contract the calculation methods for adjustments in the contract price, as well as changes to the scope of the work and the contract price arising from price fluctuations.[4]
2. If the contractor discovers a risk of significant supply reduction or increase in material costs, or other events affecting the construction period or contract price (which are prescribed in the regulations of the Ministry of Land, Infrastructure, Transport and Tourism), the contractor must notify the owner of these risks together with necessary information before concluding the construction contract.[5]
3. If the contractor has provided the notification in point (2) and, after concluding the construction contract, the notified events are realised, the contractor may request discussions for changes in the construction period, the scope of the work or the contract price based on the agreed calculation method.[6]
4. The owner must make an effort to engage in good-faith discussions when the request referenced in point (3) is made by the contractor, unless there are legitimate reasons not to (e.g., the request being groundless).[7]

Before the enactment of the Amended Construction Business Act, there was no recourse for the contractor to address rises in material costs if there was no provision outlined in the contract allowing the contractor to make a claim for an increase of the contract price owing to rises in material costs. The amendment above may help to dissolve the inequality and achieve an appropriate allocation of risk between the owner and the contractor.

COURTS AND PROCEDURE

In Japan, most construction disputes relate to defects in housing. Since the parties (including Japanese entities) to construction contracts for large infrastructure projects (particularly for international projects) tend to include an arbitration agreement, the disputes relating to those projects are not, in general, referred to Japanese courts; Japanese courts tend to respect the parties' autonomy and, therefore, tend to be reluctant to intervene in or supervise arbitration proceedings conducted in Japan.

FORA

The courts hear construction disputes. There are no special or separate construction courts; however, since disputes relating to defects in housing are common in urbanised areas, the Tokyo and Osaka district courts have established special building dispute departments to handle these disputes. In those departments, construction specialists called expert committee members advise, assist and support the judge in preparatory proceedings, witness examinations and conciliation procedures for construction disputes.

With the exception of small claims, the district courts are the first instance courts for construction disputes. The party that loses the case at the district court may file an appeal to the high court. The Supreme Court is the ultimate judicial organ. The Constitution does not permit any court that is not included in the aforementioned hierarchy to preside over construction disputes.

JURISDICTION

General rules on jurisdiction governing all types of disputes also apply to construction disputes. The Code of Civil Procedure (Act No. 109 of 1996 (CCP)) provides that the general forum is determined by the place of residence of the defendant (in the case of an individual) or the location of its principal office or place of business of the defendant (in the case of juridical persons or other entities).[8]

The Arbitration Act (Act No. 138 of 2003) provides that if a claim subject to an arbitration agreement is filed, the court, in principle, must dismiss the action without prejudice.[9] There are some case precedents in which the court dismissed the action relating to a construction dispute owing to an arbitration agreement in the applicable construction contract.[10]

The principle requiring mediation before the filing of an action[11] does not apply to construction disputes. Accordingly, parties are not legally required to attempt mediation to resolve the construction dispute before filing an action to the court; however, if there is a provision in a contract requiring an attempt at mediation prior to filing an action but a party directly files an action to the court, it is likely that the court will dismiss the case owing to lack of jurisdiction.

PROCEDURAL RULES

General procedural rules governing all types of disputes also apply to construction disputes. The CCP provides the following procedures:

- The court conducts preparatory proceedings to clarify and ascertain the material issues and evidence. In 2020, it became possible to hold preparatory proceedings through web conferences.
- Witness examination is conducted, focusing on the material issues identified in the preparatory proceedings.
- The court is not usually inquisitorial in respect of fact finding; it relies on the parties to make arguments and obtain evidence.

In the Tokyo District Court and the Osaka District Court, which each have a department specialised in construction disputes, expert committee members who are construction specialists assist and support the judge. further, the parties are generally required to submit a list of matters subject to dispute (e.g., a list of defects, a list of additional works, a list of the amounts for the completed works and a list of chronology) to facilitate the clarification and ascertainment of the material issues and evidence.

EVIDENCE

It is the responsibility of the parties to collect and submit evidence. Unlike common law jurisdictions, in Japan, document discovery or disclosure is limited. Although a party may file a petition to the court to order the other party or a third party to produce documents,-[12] the number of case precedents granting these petitions is limited. Even under the case precedents granting these petitions, the scope of production of documents ordered was limited.

ALTERNATIVE DISPUTE RESOLUTION

Some alternative dispute resolution (ADR) methods are available, including arbitration and mediation. The advantages and disadvantages of each method are summarised below.

STATUTORY ADJUDICATION

'Statutory adjudication' refers to a form of dispute resolution procedure called a 'pay now, argue later' mechanism, which is adopted in most common law jurisdictions. There is no statute in Japan that provides a mechanism equivalent to statutory adjudication. This means that, if there is a dispute relating to payments, the contractor in general may not receive the payments until it obtains a judgment ordering the owner to make payments to the contractor.

ARBITRATION

Japan is a member state of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Further, Japan's Arbitration Act (Act No. 138 of 2003 (JAA)) is modelled on the 1985 United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration (the UNCITRAL Model Law).

The amended JAA, promulgated in April 2023, adopts some of the provisions of the 2006 amendments of the UNCITRAL Model Law, including the enforcement of interim measures by the tribunal. Further, the Supreme Court Rules on Procedures of Arbitration Related Cases (Supreme Court Rules No. 27 of 2003) provide the specific procedural rules applicable

to court cases relating to arbitration proceedings. Although arbitration is not a popular method of dispute resolution for domestic disputes, Japanese courts have sought to take an arbitration-friendly position.

In recent years, the government has welcomed and aims to facilitate international arbitration in Japan.[13] In December 2017, the Japan International Arbitration Centre Establishment Association was founded (renamed the Japan International Dispute Resolution Centre Operating Association soon after). With the support of the Association, the Japan International Dispute Resolution Centre was established in Osaka in February 2018 and in Tokyo in April 2020

The Japan Commercial Arbitration Association is the main arbitration institution in Japan that administers international arbitration cases in Japan. It offers the following three sets of arbitration rules:

- the UNCITRAL Arbitration Rules and the Administrative Rules for UNCITRAL Arbitration;
- the Commercial Arbitration Rules (2019); and
- the Interactive Arbitration Rules (2019).

Each of the rules has its own particular features. The parties may choose the most suitable set of rules for their dispute, depending on their needs and preferences.

Many of the commercial disputes involving Japanese parties are also referred to arbitration administered by the International Chamber of Commerce and the Singapore International Arbitration Centre.

The Arbitration Act allows the court to set aside an arbitral award or reject the recognition and enforcement of an arbitral award; however, to respect the party autonomy, the grounds for setting aside an arbitral award and for the rejection of recognition and enforcement of an arbitral award under the Arbitration Act are limited, generally corresponding to the grounds set out under the 1985 Model Law as shown in the table below.

TABLE 1: GROUNDS FOR SETTING ASIDE AN ARBITRAL AWARD AND GROUNDS FOR THE REJECTION OF RECOGNITION AND ENFORCEMENT OF AN ARBITRAL AWARD UNDER THE ARBITRATION ACT

Topic	Grounds for setting aside	Grounds for rejection of recognition and enforcement
Limited capacity of a party	The arbitration agreement is not valid owing to the limited capacity of a party.	The arbitration agreement is not valid owing to the limited capacity of a party.
Grounds other than limited capacity of a party	The arbitration agreement is not valid on grounds other than the limited capacity of a party, pursuant to the applicable laws and regulations designated in the arbitration agreement agreed by the parties. If no such laws and	The arbitration agreement is not valid on grounds other than the limited capacity of a party, pursuant to the applicable laws and regulations designated in the arbitration agreement agreed by the parties. If no such laws and regulations

	regulations have been designated, Japanese laws and regulations apply.	have been designated, the laws and regulations of the country to which the place of arbitration belongs apply.
No notice	The petitioner did not receive the notice required in the procedure for arbitrator appointment or in the arbitration procedure under Japanese laws and regulations or, if applicable, under the parties' agreement.	The party did not receive the notice required in the procedure for arbitrator appointment or in the arbitration procedure under the laws and regulations of the country to which the place of arbitration belongs or, if applicable, under the parties' agreement.
Party unable to make a defence	The petitioner was unable to make its defence in the arbitration procedure.	The party was unable to make its defence in the arbitration procedure.
Matters beyond the scope of the agreement or petition	The arbitral award contains a decision on matters beyond the scope of the arbitration agreement or of the petition presented in the arbitration procedure.	The arbitral award contains a decision on matters beyond the scope of the arbitration agreement or of a petition in the arbitration procedure.
Composition of the tribunal	The composition of the arbitral tribunal or the arbitration procedure is in violation of Japanese laws and regulations or, if applicable, under the parties' agreement.	The composition of the arbitral tribunal or the arbitration procedure is in violation of the laws and regulations of the country to which the place of arbitration belongs or, if applicable, under the parties' agreement.
Extraterritorial effect	Not applicable.	According to the laws and regulations of the country to which the place of arbitration belongs, or, if applicable, the parties' agreement, the arbitral award is not final and binding, or the arbitral award has been set aside or its effect has been suspended by a judicial body of that country.
Lack of jurisdiction	A petition filed in the arbitration procedure is concerned with a dispute that may not be subject to an arbitration agreement pursuant to the provisions of Japanese laws and regulations	The petition filed in the arbitration procedure is concerned with a dispute that may not be subject to an arbitration agreement pursuant to the provisions of Japanese laws and regulations.

Public policy	The content of the arbitral award is contrary to public policy in Japan.	The content of the arbitral award is contrary to public policy in Japan

MEDIATION

ENFORCEABILITY OF SETTLEMENT AGREEMENT CONCLUDED IN INTERNATIONAL MEDIATION

In October 2023, Japan deposited the instrument of accession to the United Nations Convention on International Settlement Agreements Resulting from Mediation (the Singapore Convention on Mediation). The Singapore Convention on Mediation entered into force in Japan on 1 April 2024.[14]

To implement the Singapore Convention on Mediation, the Act for the Implementation of the United Nations Convention on International Settlement Agreements Resulting from Mediation was enacted in April 2023 and became effective in April 2024. Under the Act, a settlement agreement concluded in an international mediation may be enforced (on the condition that a Japanese court issues an enforcement decision), which would contribute to resolve the disputes through mediation.

MEDIATION BY THE PANEL ASSIGNED BY A BUILDING DISPUTE DEPARTMENT

The Tokyo and Osaka district courts have a building dispute department. Once a claim is filed, the department assigns a mediation panel member from its private list to encourage the parties to settle the dispute amicably. The judges in charge of the case are the only members of the panel. Parties are not entitled to designate their own panel members.

Usually, listed members are retired architects, retired employees of construction or manufacturing companies and private practitioners. Since the majority of the claims are defect-related matters, the list does not include delay experts or quantum surveyors. In practice, delay experts and quantum surveyors are not chartered professions in Japan. The settlement agreement concluded in this type of mediation is not enforceable.

OTHER ADR METHODS

The Construction Business Act (Act No. 100 of 1949 (CBA)) established the construction dispute adjudication board (KFSK) as a government-sponsored alternative dispute resolution body.[15] There are 47 local KFSKs and a single central (national) KFSK in Tokyo. The relevant jurisdiction in each case is determined by the registered office of the claimant or the construction site in question. Central and local governments appoint a panel of mediator-arbitrators.

The KFSK is formulated mainly for domestic disputes. Around 32 cases were registered at the central KFSK in 2024. However, the KFSK strongly recommends amicable settlement rather than pursuit of an award based on adversarial procedures. The central KFSK issued seven awards based on adversarial procedures in 2024 and settled 22 cases with mediation and conciliation in the same period. The KFSK's procedure is significantly different from that of international arbitration: there is no party-appointed arbitrator or mediator, no document disclosure and almost no witness examinations.

CONSTRUCTION CONTRACTS

PUBLIC PROCUREMENT

The Public Account Act (Act No. 35 of 1947) (in relation to procurement by central government) and the Local Autonomy Act (Act No. 67 of 1947) (in relation to procurement by local government) refer to the permitted forms and procedures for public procurement (i.e., open competitive tenders, selective tenders and negotiated contracts).

Criminal sanctions are applicable to persons or entities who commit serious violations of procurement procedures (e.g., bribery or graft, cartel conduct and unfair methods of competition). However, under the Criminal Code (Act No. 45 of 1907) or the Act on Prohibition of Private Monopolisation and Maintenance of Fair Trade (Act No. 54 of 1947), there is no specific cause of action available to losing bidders that can stop the procurement procedure or the conclusion of the contract.

In addition to the above statutes, the Act for Promoting Proper Tendering and Contracting for Public Works (Act No. 127 of 2000) (the Proper Tendering Act) was enacted to ensure information disclosure, sanctions on unfair conducts, the bidder's obligation to prepare details or breakdowns of the bid and the government's obligation to prepare guidelines. Under the Proper Tendering Act, the central government encourages public project owners to prepare claim procedures for losing bidders should they identify any problems in the bidding process. However, this claims procedure is yet to be legally guaranteed by national legislation.

CONTRACT INTERPRETATION

The way of construing contracts differs fundamentally from the approach in common law, which relies on the parol evidence rule, according to which extrinsic evidence is inadmissible to vary a written contract that is intended to be a complete and final expression of the parties' agreement.

What is written in the contract constitutes the main subject of the interpretation of contract terms. However, since the terms of the contract can be implied by law, custom and fact, there is much room for the intervention of a judge in the interpretation of a contract. Especially in cases where a contract contains a clause that the judge deems to be unjust or unreasonable, the court will not hesitate to rely on normative considerations external to the contract. The contract will be viewed holistically, taking into account all relevant circumstances; therefore, even a clearly written clause can be ignored by courts.

COMMON SUBSTANTIVE ISSUES AND REMEDIES

TIME BARS AS CONDITION PRECEDENT TO ENTITLEMENT

Under common law, a time bar under a contract is interpreted strictly. More specifically, if a contractor fails to submit a claim within the period specified in the contract, the contractor loses its entitlement to make a claim.[16] However, under Japanese law, time bars are not interpreted so strictly.

In Japan, some construction contracts do not provide a period during which a contractor is required to make a claim. For example, the General Conditions for Construction Contracts (GCCC), published by a committee of architects and contractors, and the Engineering Advancement Association's General Conditions for Domestic Plant Construction Works (ENAA-Domestic) (last amended in 2020) do not stipulate a specific period within which the contractor must make a claim.

Instead, a notice period is often provided for in construction contracts in Japan. However, even if a contractor fails to provide a notification within that period, there are no cases in which Japanese courts have held that the contractor consequently loses its right to make a claim.

The Civil Code provides a one-year notice period during which an owner is required to provide notice after it becomes aware of non-compliance.[17] After this period, the owner may not demand further performance, reduction of remuneration, compensation and termination.[18] Japanese courts have yet to determine whether an owner loses the right to make those demands when it fails to provide notice within one year.

RIGHT TO PAYMENT FOR VARIATIONS AND VARIED SCOPE OF WORK

The CBA provides formal requirements for changes to construction projects. It stipulates that:

- the parties to a construction contract are required to stipulate certain understandings (including the amount of the contract price) in writing, sign or affix a registered seal impression on that written agreement, and exchange that agreement;[19] and
- any changes to those understandings stipulated in the signed or sealed written agreement must also be specified in a written document that is signed or sealed by the parties and exchanged in the same manner.[20]

The CBA empowers the authority only to regulate and sanction construction companies and does not invalidate contract provisions. From a private law perspective, there are no clear guidelines on whether the owner is entitled to issue variations that directly contradict the contract and the contractor's rights; however, parties are free to agree to a particular change or variation mechanism in the contract. The GCCC explicitly provides that the owner is entitled to order additional or extra works or changes in the works and, if such order is issued, the contractor can make a claim for the necessary adjustment to the contract price.

In cases where the parties had not agreed on the price of additional work, there are many case precedents where the Japanese court awarded the payment of compensation or costs for the additional work by the contractor (1) by finding an express agreement on the price,-[21] (2) by finding an implied agreement on the price[22] or (3) based on Article 512 of the Commercial Code (Act No. 48 of 1899).[23]

CONCURRENT DELAY

There is no specific provision or court precedent in Japan that addresses whether and to what extent the contractor is entitled to an extension of time or additional costs, or both, in the case of concurrent delay. Unless otherwise stipulated in a contract, the court or arbitrator will consider the owner's delay in determining the damage amounts claimed by the contractor through Article 130(1) of the Civil Code[24] (which provides the conceptual equivalent to the prevention principle), comparative fault or the good faith principle.

The GCCC and the ENAA-Domestic entitle the contractor to an extension of time in the case of concurrent delay but does not entitle the contractor to receive additional costs.

SUSPENSION AND TERMINATION

The Civil Code does not provide any provisions relating to suspensions. However, the parties to the construction contracts tend to agree to include provisions relating to suspensions.

The GCCC and the ENAA-Domestic entitle both the owner and the contractor to suspend the works upon the occurrence of any of the specified events.

With regard to termination, as a general rule for all types of contract, either party may terminate the contract upon the other party's non-performance of the obligation[25] (i.e., breach of contract in common law terminology). Generally, prior notice is necessary to give a non-performing obligor (i.e., the breaching party) an opportunity to rectify its non-performance or breach.[26] However, if non-performance of the obligation is caused by grounds attributable to the obligee (i.e., the non-breaching party), the obligee may not terminate the contract (Civil Code, Article 543).

Additionally, as a special rule for construction contracts, the owner can terminate the contract 'at any time while a contractor has not completed the work by paying compensation for loss or damage'.[27] This right is given to the owner because it would be useless to compel an owner to receive work that is no longer necessary. A contractor, on the contrary, may terminate the contract before completion of the work if an owner receives an order of commencement of bankruptcy proceedings.[28] The contractor can, therefore, avoid the risk of not being paid before completing the construction.

PENALTIES AND LIQUIDATED DAMAGES

If a contractor fails to complete the works by the time for completion specified in the construction contract, that delay will constitute non-performance of an obligation.

When a contractor's delay is caused by reasons attributable to the contractor, the contractor is obliged to compensate the damages incurred by the owner as a result of the delay.[29] Further, even if the contractor's delay is caused by reasons not attributable to the contractor, if the delay is material from a 'commercial social norm' perspective, the owner is entitled to terminate the contract with notice.[30]

Under the Civil Code, in principle, the scope of damages is determined according to the criteria of 'ordinary loss' and 'special loss'.[31] For the latter type of loss, the amount of which can exceed that of the former, an owner must prove foreseeability to be compensated.[32] Regardless of this general rule, the parties may agree that the contractor will pay liquidated damages in the case of delay.[33]

There is no specific threshold under Japanese law as to the amount and proportion of liquidated damages. However, an excessive amount or proportion of liquidated damages will be invalid and unenforceable owing to a breach of public policy.

Unlike at common law, in Japan, a penalty provision does not become invalid and unenforceable by the mere reason that it is a penalty provision. A penalty provision is deemed to be a liquidated damages provision and, therefore, is valid unless it is contrary to public policy.[34]

Even when a contractor is obliged to pay liquidated damages, the contractor can claim a reduction of the amount if the owner is contributorily negligent.[35]

DEFECTS CORRECTION AND LIABILITIES

Under the Civil Code before the amendment in 2020, if a 'latent defect' is found in the work completed by a contractor and it becomes difficult to achieve the objectives of the contract because of the defect, the owner may terminate the contract and claim damages. It is

necessary for the owner to have been unaware of the existence of the defect at the time of delivery to terminate the contract and claim damages from the contractor.[36]

Under the amended Civil Code, the concept of latent defects was eliminated. Instead, the new concept of 'non-compliance' was introduced.[37] If the contractor's work does not conform to the terms of the contract, non-performance by the contractor regarding their obligations under the contract will be found. Regardless of whether the owner was aware of the existence of the defect, if there is non-compliance in the works at the time of delivery, the owner may seek special remedies, such as remedial work, replacement and a reduction in the contract price.

BONDS AND GUARANTEES

There is no statutory law that explicitly regulates bonds or guarantees. There are some court cases relating to bank guarantees issued by Japanese banks for foreign beneficiaries, including one that granted a petition for a preliminary injunction prohibiting a beneficiary from exercising the guarantee and the issuing bank from making payments to a beneficiary under certain circumstances.

OVERALL CAPS ON LIABILITY

As a default rule, the scope of damages to be compensated by a breaching party includes ordinary damages, as well as special damages to the extent that the parties foresaw or should have foreseen the special damages.[38] However, under the principle of freedom of contract, the parties may agree to a different term in the contract with regard to the parties' liability.

In a construction contract, an owner and a contractor sometimes limit the scope of damages to be compensated by a breaching party to direct damages while excluding indirect damages, consequential damages, incidental damages and loss of profit. For example, in the ENAA-Domestic, lost profit, loss of business, loss of time, loss of raw materials or production materials, indirect damages and any other comparable damages are excluded from the scope of damages.

The parties also sometimes set a cap on the damage to be compensated by a breaching party (including liquidated damages). The capped amount depends on factors, including the project, the parties, the works and the contract price. In some projects, the parties may agree to set a contract price as a cap on the damages to be compensated by a breaching party.

The parties may agree not to enforce a limitation of liability clause in a case where the damage is caused by wilful conduct or gross negligence of a breaching party. This is provided for in the ENAA-Domestic.

Under Japanese law, a defaulting party may be liable in tort and for breach of contract. For example, if there is a defect in the works, an owner may claim damages incurred owing to the defect by arguing that the contractor has not only breached the contract but also committed a tort. For a contractor to avoid tortious liability, the contractor should ensure that a limitation of liability clause excludes liability for not only breach of contract but also tort.

OUTLOOK

As more foreign investors or players are participating in construction and infrastructure projects in Japan (e.g., renewable energy projects and constructions of data centres and semiconductor manufacturing plants), arbitration (rather than the court process) has

become a preferred method for dispute resolution. Further, mediation has recently been drawing attention as another preferred method of dispute resolution owing to the speed and effectiveness it offers by encouraging the pursuit of common interests. Because Japanese companies tend to avoid disputes and settle cases by agreement, mediation is a more suitable dispute resolution method for Japanese companies.

ENDNOTES

[1] Report, 'Regarding the Revised Construction Industry Law' [translated title], Ministry of Land, Infrastructure, Transport and Tourism (MLIT) (December 2024), www.mlit.go.jp/tochi_fudousan_kensetsugyo/const/content/001855628.pdf (accessed 5 December 2025), p. 3.

[2] A body established in the MLIT under Chapter VI of the Construction Business Act (Act No. 100 of 1949).

[3] Report, 'Accelerating Efforts to Secure Construction Workers and Aiming for a Sustainable Construction Industry' [translated title], Central Council on Construction Contracting Business (September 2023), www.mlit.go.jp/policy/shingikai/ content/001631030.pdf (accessed 5 December 2025).

[4] Amended Construction Business Act (Act No. 49 of 2024), Article 19(1)(8).

[5] id., Article 20-2(2).

[6] id., Article 20-2(3).

[7] id., Article 20-2(4).

[8] Code of Civil Procedure (Act No. 109 of 1996 (CCP)), Article 4(1).

[9] Arbitration Act (Act No. 138 of 2003), Article 14(1).

[10] See, e.g., Judgment No. 2625 (***wa***) 2004 of the Nagoya District Court, dated 28 September 2005.

[11] See, e.g. Domestic Relations Case Procedure Act (Act No. 52 of 2011), Article 256.

[12] CCP, Article 221.

[13] In June 2017, the Basic Policy on Economic and Fiscal Management and Reform 2017 (the 2017 Policy) was approved by the Cabinet of Japan. It aimed to 'develop a foundation to activate international arbitration' in Japan as an important government policy. Responding to the 2017 Policy, in September 2017, the Liaison Conference of Relevant Ministries and Agencies for Stimulating International Arbitration was established within the government to encourage cooperation among relevant government organisations and to consider and promote comprehensive and efficient approaches to develop the necessary foundation for the expansion of international arbitration in Japan. Since December 2020, the Study Group for Reformation of the Arbitration Legal Framework, in which the Ministry of Justice and the Japanese Supreme Court was also involved, has continued the discussions. In July 2020, the Study Group published the Report of the Study Group for Reformation of the Arbitration Legal Framework, the main subject of which is whether the interim measures issued by the tribunal may be enforced by the Japanese court, irrespective of the country in which they were issued

[14] Press release, 'Conclusion of the "Singapore Convention on Mediation" by Japan', Ministry of Foreign Affairs (2 October 2023), www.mofa.go.jp/press/ release/press6e_000501.html (accessed 8 December 2025).

[15] Construction Business Act (Act No. 100 of 1949 (CBA)), Article 25.

[16] See, e.g., Clause 20.1 of the International Federation of Consulting Engineers 1999 and 2017 contracts.

[17] Civil Code, Article 637(1).

[18] ibid.

[19] CBA, Article 19.

[20] id., Article 19-2.

[21] Judgment of the Tokyo District Court dated 6 August 2015; judgment of the Tokyo District Court dated 14 January 2016; judgment of the Tokyo District Court dated 24 February 2016; judgment of the Tokyo District Court dated 24 March 2016; judgment of the Tokyo District Court dated 25 March 2016 (2015 (wa) No. 1036, 2015 (wa) No. 2154); judgment of the Nagano District Court dated 28 December 2016; judgment of the Tokyo District Court dated 13 August 2017.

[22] Judgment of the Nagoya High Court dated 18 March 2002; judgment of the Tokyo District Court dated 11 October 2007; judgment of the Tokyo District Court dated 23 March 2016.

[23] Article 512 of the Commercial Code provides that 'When a merchant has conducted any act for another person within the scope of his/her business, he/she may claim a reasonable remuneration.' Under Article 512, the contractor may claim 'reasonable remuneration' from the owner if the contractor performs work for the owner without executing the contract (negotiorum gestio in legal terms). See also judgment of the Tokyo District Court dated 16 March 2016; judgment of the Tokyo District Court dated 13 July 2016.

[24] Article 130, Paragraph 1 of the Civil Code provides that 'If a party that would suffer a detriment as a result of the fulfilment of a condition intentionally prevents the fulfilment of that condition, the counterparty may deem that the condition has been fulfilled.'

[25] In addition to the non-performance of the obligations, 'impossibility' to perform the obligations is another cause for termination (Civil Code, Article 541).

[26] Civil Code, Article 542.

[27] id., Article 641

[28] id., Article 642.

[29] ibid., Article 415(I).

[30] id., Article 541.

[31] id., Article 416(I).

[32] id., Article 416(II).

[33] id., Article 420(I).

[34] id., Article 420(III).

[35] Supreme Court of Japan, Case 1990(O)1456, dated 21 April 1994, reported in 172 *Minshu*, 379.

[36] Former Civil Code, Article 570.

[37] Civil Code, Articles 562 to 564.

[38] Civil Code, Article 416.

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