

New Rules of the Japan Commercial Arbitration Association Come into Force

15 July 2021

INTRODUCTION

The Japan Commercial Arbitration Association (the “JCAA”) was established in 1950 and has administered arbitrations ever since, with numbers increasing in recent years. Between 2016 and 2020, 72 arbitrations were commenced at the JCAA. 86% of these concerned cross-border disputes involving one or more non-Japanese companies or Japan-based foreign subsidiaries. The majority of cases were conducted in English (57%), followed by Japanese (35%) and Chinese (3%). The majority of non-Japanese parties involved in these arbitrations were from China, South Korea, the United States and Thailand.

Japanese courts have generally been considered to be pro-arbitration, avoiding excessive intervention and regularly enforcing awards. The [Arbitration Act \(Act No. 138 of 2003\)](#) that governs arbitration procedures in Japan is based on the UNCITRAL Model Law (1985) and supports the principle of party autonomy. In June 2017, the Japanese government published its Basic Policy on Economic and Fiscal Management and Reform, in which it declared the Japanese government’s aim of laying the foundation to promote international arbitration. Since October 2020, the Legislative Council of the Japanese Ministry of Justice has been considering amendments to the Arbitration Act to further promote arbitration in Japan and to reflect the [2006 amendments to the UNCITRAL Model Law](#). In 2020, the [Act on Special Measures Concerning the Handling of Legal Services by Foreign Lawyers \(Act No. 66 of 1986\)](#) was amended to broaden the scope of “international arbitration cases” where foreign lawyers could act in the proceedings. Japan is also a member of the [Convention on the Recognition and Enforcement of Foreign Arbitral Awards \(1958\)](#) (the “New York Convention”), which provides a common standard for the recognition and enforcement of arbitral awards worldwide. New arbitration facilities have also been opened in recent years in Tokyo and Osaka.

AMENDMENTS TO THE JCAA COMMERCIAL ARBITRATION RULES

On 1 July 2021, the new Commercial Arbitration Rules of the JCAA came into force, applying to arbitrations commenced after that date. The amendments center on changes to the JCAA's expedited arbitration procedures.

Expedited arbitration is a potentially time- and cost-saving procedural innovation that is gaining in popularity. Expedited arbitration is aimed at reducing time and costs in proceedings, often by dispensing with hearings, such that disputes are decided on a documents-only basis. Typically, expedited arbitration is aimed at lower-quantum disputes. The JCAA has reported that around 15% of JCAA arbitrations concluded in the last decade took place under the expedited arbitration procedures, with an average duration of three and one-half months (significantly shorter than the 12.8-month average the JCAA saw for non-expedited arbitrations). The new amendments expand the application of the expedited arbitration procedures from cases where the amount in dispute is less than JPY 50 million (approximately USD 450,000) to those where the amount in dispute is JPY 300 million (approximately USD 2.73 million) or less. This will lead to an increase in the number of expedited arbitrations taking place under the JCAA rules. Where the amount in dispute exceeds JPY 50 million, the period for the issuing of the decision is extended from three to six months. It remains open to parties to opt out of the expedited arbitration procedure or to adopt it for higher-value disputes by mutual agreement.

INTRODUCTION OF THE JCAA APPOINTING AUTHORITY RULES

The JCAA has also released Appointing Authority Rules for the appointment of arbitrators in ad hoc arbitrations or for arbitrations administered by other institutions where the JCAA is named as the appointing authority. These are also effective as of 1 July 2021. Ad hoc arbitrations are not conducted under the supervision of an arbitral institution. Parties in ad hoc arbitrations on occasion agree to designate an appointing authority that can select the arbitrators if the parties cannot reach agreement. The new rules set out procedures to enable the JCAA to serve as the appointing authority in such circumstances.

CONCLUSION

These changes follow amendments made to the JCAA Commercial Arbitration Rules in 2019. The short period of time that has passed since those amendments were introduced and before the release of new rules illustrates that the JCAA is seeking to remain at the

forefront of international arbitration. We expect to see the Japanese government and the JCAA continuing to work together to promote Japan as a seat of arbitration, to increase Japan's market share in the international arbitration field and to attempt to position Japan as an alternative to other leading seats of international arbitration in Asia.

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Please do not hesitate to contact us with any questions.

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