

# Arbitration Act (Tentative translation)

(Act No. 138 of August 1, 2003)

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## Chapter I General Provisions

(Purpose)

Article 1 Arbitration procedures of which the place of arbitration is in Japan and procedures to be conducted by the court for an arbitration procedure shall be governed by the provisions of this Act, in addition to the provisions of other laws and regulations.

(Definition)

- Article 2 (1) The term "arbitration agreement" as used in this Act means an agreement by the parties to leave the resolution of all or certain civil disputes which have already arisen or which may arise in the future in respect of a defined legal relationship (irrespective of whether contractual or not) to one or more arbitrators, and to accept the award made therefor (hereinafter referred to as an "arbitral award").
- (2) The term "arbitral tribunal" as used in this Act means a single arbitrator or a panel of two or more arbitrators that, based on an arbitration agreement, conducts proceedings in regard to the civil dispute which is the subject thereof.
- (3) The term "written allegation" as used in this Act means documents which the parties prepare and submit to the arbitral tribunal in an arbitration procedure,

and in which the allegations of the parties are set forth.

(Scope of Application)

Article 3 (1) The provisions of the following Chapter to Chapter VII, and Chapters IX and X shall, except for those provided for in the following paragraph and Article 8, apply to the case where the place of arbitration is in Japan.

(2) The provisions of Article 14, paragraph (1) and Article 15 shall apply to the case where the place of arbitration is in Japan, the case where the place of arbitration is outside Japan, and the case where the place of arbitration has yet to be determined.

(3) The provisions of Chapter VIII shall apply to the case where the place of arbitration is in Japan and the case where the place of arbitration is outside Japan.

(Participation of Court)

Article 4 With respect to an arbitration procedure, the court may exercise its authority only in the case provided for in this Act.

(Jurisdiction of the Court)

Article 5 (1) The case pertaining to the procedure conducted by the court pursuant to the provisions of this Act shall be subject to the exclusive jurisdiction of the following courts:

- (i) the district court determined by an agreement between the parties;
  - (ii) the district court which has jurisdiction over the place of arbitration (limited to the case where an area that belongs only to a jurisdictional district of a single district court is determined to be the place of arbitration);
- or
- (iii) the district court which has jurisdiction over the location of the general venue of the respondent of the relevant case.

(2) When two or more courts have jurisdiction pursuant to the provisions of this Act, the relevant case shall be subject to the jurisdiction of the court to which the request had been filed first.

(3) The court shall, if it finds that all or part of the case pertaining to the procedure conducted by the court pursuant to the provisions of this Act does not fall under its jurisdiction, transfer the case to the court with jurisdiction, upon petition or by its own authority.

(Optional Oral Arguments)

Article 6 A judicial decision on the procedure conducted by the court pursuant to the provisions of this Act may be made without oral argument.

(Appeal Against Judicial Decision)

Article 7 Any person who has an interest in the judicial decision on the procedure conducted by the court pursuant to the provisions of this Act may file an immediate appeal against the judicial decision, within the unextendable period of two weeks from the day on which a notice of the judicial decision has been received, only in cases where there are special provisions allowing such appeal in this Act.

(Participation of the Court in the Case Where the Place of Arbitration Has Yet to Be Determined)

Article 8 (1) The petitions set forth in the following items may be filed with a court, even if the place of arbitration has yet to be determined and the place of arbitration is likely to be in Japan, and the location of the general venue of the petitioner or respondent (excluding general venues which shall be determined by the last domicile) is in Japan. In this case, the provisions set forth in said following items shall be applied in accordance with the categories of petition listed in the respective items:

(i) the petition set forth in Article 16, paragraph (3): Article 16

(ii) the petitions set forth in paragraphs (2) through (5) of Article 17: Article 17

(iii) the petition set forth in Article 19, paragraph (4): Articles 18 and 19; and

(iv) the petition set forth in Article 20: Article 20.

(2) The case based on the petitions set forth in the items of the preceding paragraph in the case referred to in said paragraph shall, notwithstanding the provisions of Article 5, paragraph (1), be subject to the exclusive jurisdiction of the district court which has jurisdiction over the location of the general venue prescribed in the preceding paragraph.

(Inspection of Record of the Case Pertaining to the Procedure Conducted by the Court)

Article 9 Any person who has an interest in the procedure conducted by the court pursuant to the provisions of this Act may file a request with the court clerk in regard to the following matters:

(i) inspection or copy of the record(s) of the case;

(ii) reproduction of a record made in an electronic form, a magnetic form, or any other form not recognizable to human perception and included in the records of the case;

(iii) delivery of an authenticated copy, transcript, or extract of the record of the case; and

(iv) delivery of a certificate for the matters related to the case.

(Application Mutatis Mutandis of the Code of Civil Procedure to the Procedure Conducted By the Court)

Article 10 The provisions of the Code of Civil Procedure (Act No. 109 of 1996) shall, except as otherwise provided, apply mutatis mutandis to the procedure conducted by the court pursuant to the provisions of this Act.

(Rules of the Supreme Court)

Article 11 In addition to what is provided for in this Act, matters necessary for the procedure to be conducted by the court pursuant to the provisions of this Act shall be specified by the Rules of the Supreme Court.

(Notice to Be Given by Means of Documents)

Article 12 (1) When a notice in an arbitration procedure is to be given by means of documents, unless otherwise agreed between the parties, such notice shall be deemed to have been given at the time when the addressee directly received the document or the time when the document was delivered to the domicile, habitual residence, business office, office, or place of delivery (meaning the place designated by the addressee as the place of delivery of documents from the sender; hereinafter the same shall apply in this Article).

(2) With regard to the notice to be given by means of documents in an arbitration procedure, in cases where it is possible to deliver the document to the domicile, habitual residence, business office, office, or place of delivery of the addressee, but it is difficult for the sender to obtain the materials that prove the fact of delivery, if the court finds it necessary, it may rule that the court will serve the document, upon the request of the sender. With respect to the service in this case, the provisions of Article 104, and Articles 110 through 113 of the Code of Civil Procedure shall not apply.

(3) The provision of the preceding paragraph shall not apply where an agreement to the effect that the service set forth in said paragraph shall not be made has been reached between the parties.

(4) The case based on the petition set forth in paragraph (2) shall, notwithstanding the provisions of Article 5, paragraph (1), be subject to the exclusive jurisdiction of the courts set forth in items (i) and (ii) of said paragraph and the district court which has jurisdiction over the location of the domicile, habitual residence, business office, office or place of delivery of the addressee.

(5) In cases where a notice in an arbitration procedure is to be given by means of documents, if none of the addressee's domicile, habitual residence, business office, office or place of delivery of the addressee can be found after making a reasonable inquiry, unless otherwise agreed between the parties, it shall be sufficient for the sender to send the document to the addressee's last-known

domicile, habitual residence, business office, office, or place of delivery by registered mail or any other means by which the attempt to deliver it can be certified. In this case, the notice shall be deemed to have been given at the time when the document should normally have arrived.

- (6) The provisions of paragraph (1) and the preceding paragraph shall not apply to the case where notice is to be given in the procedure to be conducted by the court pursuant to the provisions of this Act.

## **Chapter II Arbitration Agreement**

(Validity, etc. of Arbitration Agreement)

Article 13 (1) An arbitration agreement shall, except as otherwise provided for in laws and regulations, be effective only when the subject thereof is a civil dispute (excluding disputes of divorce or dissolution of adoptive relation) which can be settled between the parties.

- (2) An arbitration agreement shall be in writing, such as in the form of a document signed by all the parties, letters or telegrams exchanged between the parties (including those sent by facsimile device or other communication device for parties at a distance which provides the recipient with a written record of the communicated content), or other documents.

- (3) In cases where a document containing a clause of an arbitration agreement is quoted in a contract concluded in writing as constituting part of such contract, such arbitration agreement shall be in writing.

- (4) When an arbitration agreement is made in an electromagnetic record (meaning a record made in an electronic form, a magnetic form, or any other form not recognizable to human perception, which is used in information processing by computers) recording the contents thereof, such arbitration agreement shall be in writing.

- (5) When the written allegation submitted by one party contains the contents of an arbitration agreement, and a written allegation submitted in response by the other party does not contain anything to dispute it, such arbitration agreement shall be deemed to be made in writing.

- (6) In regard to a single contract containing an arbitration agreement, even in cases where the clauses of the contract other than that of the arbitration agreement are not valid due to nullity, rescission or for any other reasons, the effect of the arbitration agreement shall not ipso jure be precluded.

(Arbitration Agreement and Suit on the Merits)

Article 14 (1) When an action is filed for a civil dispute which may be subject to an arbitration agreement, the court in charge of the case shall dismiss the action, upon the petition of the defendant; provided, however, that this shall

not apply to the following cases:

- (i) when the arbitration agreement is not valid due to nullity, rescission or for any other reason;
  - (ii) when it is impossible to carry out an arbitration procedure under an arbitration agreement; and
  - (iii) when the petition was filed after the defendant has presented oral arguments on the merits or made statements in preparatory proceedings.
- (2) An arbitral tribunal may, even while a suit pertaining to the action referred to in the preceding paragraph is pending in the court, commence or continue the arbitration procedure, and make an arbitral award.

(Arbitration Agreement and Temporary Restraining Order by the Court)

Article 15 An arbitration agreement shall not preclude the parties to the relevant dispute from filing a petition, before the commencement or during the course of the arbitration procedure, for a temporary restraining order with the court, in regard to the civil dispute which may be the subject of the arbitration agreement, and the court that has received such petition to issue a temporary restraining order.

### **Chapter III Arbitrator**

(Number of Arbitrators)

- Article 16 (1) The number of arbitrators shall be as specified by the agreement of the parties.
- (2) In cases where there are two parties, when an agreement set forth in the preceding paragraph has not been reached, there shall be three arbitrators.
- (3) In cases where there are three or more parties, when an agreement set forth in paragraph (1) has not been reached, the number of arbitrators shall be specified by the court.

(Appointment of Arbitrator(s))

- Article 17 (1) The procedure for appointing an arbitrator or arbitrators shall be as specified by the agreement of the parties; provided, however, that this shall not apply to what is provided for in paragraph (5) or (6).
- (2) In cases where there are two parties and three arbitrators, if an agreement set forth in the preceding paragraph has not been reached, the parties shall each appoint one arbitrator, and the two arbitrators appointed by the parties shall appoint the third arbitrator. In this case, if one party fails to appoint an arbitrator within 30 days from the day on which it received a demand to appoint an arbitrator from the other party who has already appointed an arbitrator, or if the two arbitrators appointed by the parties fail to appoint the

third arbitrator within 30 days from their appointment, the court shall appoint the arbitrator, upon the petition of said other party or of one of the parties respectively.

- (3) In cases where there are two parties and one arbitrator, if an agreement set forth in paragraph (1) has not been reached and the parties are unable to reach an agreement for the appointment of the arbitrator, the court shall appoint the arbitrator, upon the petition of one of the parties.
- (4) In cases where there are three or more parties, if the agreement set forth in paragraph (1) has not been reached, the court shall appoint the arbitrator, upon the petition of a party.
- (5) In cases where a procedure for appointing an arbitrator has been determined by the agreement set forth in paragraph (1), if it becomes impossible to appoint an arbitrator under the procedure for appointing an arbitrator due to the fact that the act specified under said procedure is not performed or for any other reasons, one of the parties may file a petition for the appointment of an arbitrator with the court.
- (6) The court shall, in appointing an arbitrator under the provisions of paragraph (2) to the preceding paragraph, give consideration to the following matters:
  - (i) the requirements for the arbitrator as specified by the agreement of the parties;
  - (ii) the impartiality and independence of the person to be appointed; and
  - (iii) in cases where there is one arbitrator, or where appointing an arbitrator who should have been appointed by the two arbitrators appointed by the parties, whether it is appropriate or not to appoint a person whose nationality is different from those of both parties.

(Grounds for Challenge, etc.)

Article 18 (1) If the following grounds are found in an arbitrator, the parties may challenge such arbitrator:

- (i) the arbitrator does not meet the requirements specified by the agreement of the parties; or
  - (ii) there are reasonable grounds to suspect the impartiality or independence of the arbitrator.
- (2) A party, who has appointed an arbitrator or who has made a recommendation for or otherwise similarly participated in the appointment of the arbitrator, may challenge such arbitrator, only for the grounds of which he/she becomes aware after the appointment has been made.
  - (3) A person, who has been requested to assume the post of an arbitrator and intends to accept the negotiation, shall disclose to the person who made such request all facts likely to give rise to doubts as to his/her impartiality or independence.

- (4) An arbitrator, during the course of the arbitration procedure, shall without delay, disclose to the parties all the facts likely to give rise to doubts as to his/her impartiality or independence (excluding those which have already been disclosed).

(Challenge Procedure)

Article 19 (1) The procedure for challenging an arbitrator shall be as specified by the agreement of the parties; provided, however, that this shall not apply to what is provided for in paragraph (4).

- (2) In the case where an agreement set forth in the preceding paragraph has not been reached, the decision on the challenge of the arbitrator shall be made by the arbitral tribunal, upon the request of a party.

(3) A party who intends to file a request referred to in the preceding paragraph shall, within 15 days from the day on which he/she became aware of the constitution of the arbitral tribunal or the day on which he/she became aware of the existence of any grounds set forth in the items of paragraph (1) of the preceding Article, whichever comes later, submit to the arbitral tribunal a written request stating the reasons for the challenge. In this case, if the arbitral tribunal finds the grounds for challenge in the relevant arbitrator, it shall make a decision that the challenge is well-grounded.

(4) In cases where a decision is made to the effect that the challenge of an arbitrator is groundless in the challenge procedure provided in the preceding three paragraphs, the party who made the challenge may file a petition for the challenge of the arbitrator with the court, within 30 days from the day of receipt of notice of such decision. In this case, if the court finds the grounds for challenge in the arbitrator, it shall give an order that the challenge is well-grounded.

(5) An arbitral tribunal may, even while the case based on the petition for the challenge referred to in the preceding paragraph is pending in the court, commence or continue the arbitration procedure and make an arbitral award.

(Petition for Dismissal)

Article 20 When the following grounds are found, a party may file a petition to dismiss the arbitrator with the court. In this case, if the court finds the grounds pertaining to the petition in the arbitrator, it shall give an order to dismiss the arbitrator:

- (i) the arbitrator has become de jure or de facto unable to perform his/her duties; or
- (ii) except for the case referred to in the preceding item, the arbitrator unduly delays the performance of his/her duties.

(Termination of the Arbitrator's Duties)

Article 21 (1) The arbitrator's duties shall terminate for the following reasons:

- (i) the death of the arbitrator;
  - (ii) the resignation of the arbitrator;
  - (iii) the dismissal of the arbitrator by the agreement of the parties;
  - (iv) a decision finding the challenge, which has been made in the challenge procedure provided for in paragraphs (1) through (4) of Article 19, to be well-grounded; and
  - (v) an order to dismiss the arbitrator under the preceding Article.
- (2) It shall not be presumed that the grounds set forth in the items of Article 18, paragraph (1) or the items of the preceding Article can be found in the relevant arbitrator from the mere fact that the arbitrator resigned or was dismissed by the agreement of the parties during the course of the challenge procedure provided for in paragraphs (1) through (4) of Article 19, or the procedure for dismissal under the provision of the preceding Article.

(Method of Appointing the Successor Arbitrator)

Article 22 The method of appointing a successor arbitrator in cases where the arbitrator's duties have terminated for the reasons set forth in the items of paragraph (1) of the preceding Article shall, unless otherwise agreed by the parties, be the appointment method applied to the appointment of the arbitrator whose duties have terminated.

## **Chapter IV Special Authority of Arbitral Tribunal**

(Competence of Arbitral Tribunal to Rule on Its Jurisdiction)

Article 23 (1) An arbitral tribunal may rule on its own jurisdiction (meaning the authority to conduct proceedings in an arbitration procedure and to make an arbitral award; hereinafter the same shall apply in this Article), including a ruling on any allegations on the existence or validity of an arbitration agreement.

- (2) In an arbitration procedure, an allegation that an arbitral tribunal does not have jurisdiction shall be made promptly after the occurrence of the cause for such allegation if the cause has occurred during the course of the arbitration procedure, or shall be made by the time of submission of the first written allegation on the merits (including the time of orally making the first allegation on the merits in oral hearings) in any other case; provided, however, that this shall not apply when the arbitral tribunal finds justifiable grounds for a delay in making an allegation that the arbitral tribunal does not have jurisdiction.
- (3) A party may make the allegation set forth in the preceding paragraph even

where said party has appointed an arbitrator, or has made a recommendation for or otherwise similarly participated in the appointment of an arbitrator.

(4) An arbitral tribunal shall, when the allegation set forth in paragraph (2) has been made lawfully, rule on the allegation by the decision or arbitral award specified in the following items for each category of ruling set forth in those items:

(i) when ruling that the arbitral tribunal has jurisdiction: by an independent decision made before an arbitral award or by an arbitral award; and

(ii) when ruling that the arbitral tribunal does not have jurisdiction: by a decision to terminate the arbitration procedure.

(5) When an arbitral tribunal, in its independent decision made before an arbitral award, has ruled that it has jurisdiction, a party may request a court, within thirty days of receipt of notice of said decision, to rule on whether the arbitral tribunal has jurisdiction. In this case, even where a case based on said request is pending before the court, the arbitral tribunal may continue the arbitration procedure and make an arbitral award.

(Interim Measures or Preservative Measures)

Article 24 (1) An arbitral tribunal may, unless otherwise agreed between the parties and at the request of a party, order any party to take interim measures or preservative measures as the arbitral tribunal may consider necessary in respect of the subject matter of the dispute.

(2) An arbitral tribunal may order any party to provide appropriate security in connection with the interim measures or preservative measures set forth in the preceding paragraph.

## **Chapter V Commencement of Arbitration Procedure and Proceedings in Arbitration Procedure**

(Equal Treatment of Parties)

Article 25 (1) The parties shall be treated with equality in an arbitration procedure.

(2) The parties shall be given a full opportunity of presenting his/her case in an arbitration procedure.

(Rules of Arbitration Procedure)

Article 26 (1) The rules of an arbitration procedure which the arbitral tribunal should observe shall be as specified by the agreement of the parties; provided, however, that such rules shall not contravene the provisions concerning public order provided in this Act.

(2) If an agreement set forth in the preceding paragraph has not been reached,

the arbitral tribunal may conduct the arbitration procedure in such manner as it finds appropriate, unless such manner violates the provisions of this Act.

- (3) The power conferred upon the arbitral tribunal in cases where an agreement set forth in paragraph (1) has not been reached shall, with regard to evidence, include the power to determine its admissibility as evidence, necessity of examination, and its weight of evidence.

(Waiver of Right to Object)

Article 27 In an arbitration procedure, if a party, knowing that any provision of this Act or rules of an arbitration procedure which have been specified by the agreement of the parties (limited to those unrelated to public order) has not been complied with, does not state his/her objection without delay (in cases where a time limit within which an objection should be stated is provided for, by such time limit), such party shall be deemed to have waived his/her right to object, unless otherwise agreed between the parties.

(Place of Arbitration)

Article 28 (1) The place of arbitration shall be as specified by the agreements of the parties.

- (2) If an agreement set forth in the preceding paragraph has not been reached, the arbitral tribunal shall specify the place of arbitration by giving regard to the circumstances of the dispute, including the convenience of the parties.

(3) Notwithstanding the place of arbitration as provided for in the provisions of the preceding two paragraphs, an arbitral tribunal may, unless otherwise agreed by the parties, conduct the following procedures at any place it finds appropriate:

- (i) consultation within an arbitral tribunal which is a panel;
- (ii) hearing of statements of the parties, expert witnesses, or third parties; and
- (iii) inspection of goods or documents.

(Commencement of Arbitration Procedure and Interruption of Prescription)

Article 29 (1) Unless otherwise agreed by the parties, an arbitration procedure in respect of a particular civil dispute will commence on the date on which one party notifies the other party that the arbitration procedure shall be applied to such civil dispute.

- (2) A request in an arbitration procedure shall have the effect of interruption of prescription; provided, however, that this shall not apply to cases where the arbitration procedure has terminated other than by an arbitral award.

(Language)

Article 30 (1) The language(s) to be used in an arbitration procedure and the

procedure to be conducted by using such language(s) shall be as specified by the agreement of the parties.

- (2) When an agreement set forth in the preceding paragraph has not been reached, the arbitral tribunal shall determine the language(s) to be used in the arbitration procedure and the procedure to be conducted by using such language(s).
- (3) With regard to the agreement set forth in paragraph (1) or the determination under the preceding paragraph, if the procedure to be conducted by using the language(s) specified has not been determined, the procedure to be conducted by using such language(s) shall be as follows:
  - (i) oral procedure;
  - (ii) statement or notice in writing by the parties; and
  - (iii) decision (including an arbitral award) or notice in writing by the arbitral tribunal.
- (4) An arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the language(s) specified by the agreement set forth in paragraph (1) or determination under paragraph (2) (in cases where the language(s) to be used for a translation is specified, such language(s)).

#### (Time Limit of Statements by the Parties)

- Article 31 (1) An arbitration claimant (meaning a party who carried out acts to commence the arbitration procedure; the same shall apply hereinafter) shall state the relief or remedy claimed, the facts supporting his/her claim and points at issue in the dispute within the period of time determined by the arbitral tribunal. In this case, the arbitration claimant may submit all documentary evidence he/she considers necessary to be examined or quote documentary evidence or other evidence he/she plans to submit.
- (2) An arbitration respondent (meaning the party to the arbitration procedure other than the arbitration claimant; the same shall apply hereinafter) shall state his/her allegation in respect of the matters stated pursuant to the provision of the preceding paragraph, within the period of time determined by the arbitral tribunal. In this case, the provision of the second sentence of said paragraph shall apply *mutatis mutandis*.
  - (3) Either party may amend or supplement his/her statement during the course of the arbitration procedure; provided, however, that if such amendment or supplement has been made outside the appropriate time, the arbitral tribunal may not allow such amendment or supplement.
  - (4) The provisions of the preceding three paragraphs shall not apply in cases where otherwise agreed by the parties.

(Proceedings)

Article 32 (1) An arbitral tribunal may hold oral hearings to have the parties produce evidence or state their opinions; provided, however, that if one party makes the request set forth in Article 34, paragraph (3) or otherwise requests to hold oral hearings, the arbitral tribunal shall hold such oral hearings at an appropriate stage of the arbitration procedure.

(2) The provision of the preceding paragraph shall not apply in cases where otherwise agreed by the parties.

(3) When an oral hearing is to be held to hear opinions or inspect goods or documents, the arbitral tribunal shall notify the parties of the date and place of the oral hearing, leaving a sufficient period of time prior to the date of the oral hearing.

(4) When a party has provided the arbitral tribunal with a written allegation, documentary evidence or any other records, such party shall take measures to enable the other party to know the contents thereof.

(5) An arbitral tribunal shall take measures to enable all the parties to know the report of the expert witness or other evidentiary document which should serve as the basis for the arbitral award or other decision by the arbitral tribunal.

(Treatments in Case of Default of a Party)

Article 33 (1) When an arbitration claimant violates the provisions of Article 31, paragraph (1), the arbitral tribunal shall make a decision to terminate the arbitration procedure; provided, however, that this shall not apply to cases where there are justifiable grounds for such violation.

(2) Even in cases where an arbitration respondent has violated the provisions of Article 31, paragraph (2), the arbitral tribunal shall continue the arbitration procedure without treating such violation as the arbitration respondent's admission of the arbitration claimant's allegations.

(3) When one party fails to appear on the date of oral hearings or to submit documentary evidence, the arbitral tribunal may make an arbitral award on the evidence collected by that time; provided, however, that this shall not apply to cases where there are justifiable grounds for the party to fail to appear at the oral hearings or to submit documentary evidence.

(4) The provisions of the preceding three paragraphs shall not apply to cases where otherwise agreed by the parties.

(Appointment of Expert Witness by Arbitral Tribunal, etc.)

Article 34 (1) An arbitral tribunal may appoint one or more expert witnesses, and may have them give an expert testimony on necessary matters and report the results thereof in writing or orally.

(2) In the case referred to in the preceding paragraph, an arbitral tribunal may

require the parties to carry out the following acts:

- (i) to provide the expert witness with the information necessary for an expert testimony;
  - (ii) to submit documents and other things necessary for an expert testimony to the expert witness, or enable the expert witness to inspect them.
- (3) When the parties so require or the arbitral tribunal finds it necessary, an expert witness shall, after delivering the report under the provision of paragraph (1), appear on the date of the oral hearing.
- (4) The parties may carry out the following acts on the date of oral hearing set forth in the preceding paragraph:
- (i) to put questions to the expert witness;
  - (ii) to have the person, who has an expert knowledge and whom the relevant party has requested to appear at the oral hearing, make statements on the matters pertaining to the relevant expert testimony.
- (5) The provisions of the preceding paragraphs shall not apply in cases where otherwise agreed by the parties.

(Examination of Evidence by the Court)

Article 35 (1) An arbitral tribunal or party may request the court to implement the commission of an examination, examination of witness, expert testimony, examination of documentary evidence (excluding those where the parties submit the documents) and observation (excluding those where the parties present the subject matter of the observation) provided for in the provisions of the Code of Civil Procedure and found necessary by the arbitral tribunal; provided; however, that this shall not apply to cases where the parties have agreed not to request the implementation of the whole or part of these procedures.

- (2) In order to file a petition set forth in the preceding paragraph, the parties shall obtain the consent of the arbitral tribunal.
- (3) Notwithstanding the provisions of Article 5, paragraph (1), the case based on the request set forth in paragraph (1) shall be subject to the exclusive jurisdiction of the following courts:
  - (i) the courts set forth in Article 5, paragraph (1), item (□);
  - (ii) the district court which has jurisdiction over the domicile or residence of the person to be examined or the person who holds the document, or the location of the subject-matter of the observation;
  - (iii) the district court which has jurisdiction over the general venue of the claimant or respondent (limited to cases where there is no such court that corresponds to the courts set forth in the preceding two items).
- (4) An immediate appeal may be filed against the decision on the request set forth in paragraph (1).

- (5) Where the court implements the examination of evidence upon the request under paragraph (1), an arbitrator may inspect the document, verify the subject-matter of the observation, or may ask the witness or expert witness (meaning the expert witness provided for in Article 213 of the Code of Civil Procedure) questions by obtaining the permission of the presiding judge.
- (6) The court clerk shall prepare a record on the examination of evidence to be implemented by the court upon the request under paragraph (1).

## **Chapter VI Arbitral Award and Termination of Arbitration Procedure**

(Law Applicable in Making Arbitral Award)

- Article 36 (1) The law which the arbitral tribunal should comply with in making an arbitral award shall be as specified by the agreement of the parties. In this case, if laws and regulations of a given State have been designated, such designation shall, unless a contrary intention has been clearly indicated, be deemed as designating the laws and regulations of the State which shall be directly applied to the case and not the laws and regulations of the State providing the application of conflicting domestic and foreign laws and regulations.
- (2) If an agreement set forth in the preceding paragraph has not been reached, the arbitral tribunal shall apply the laws and regulations of a State which has the closest relationship to the civil dispute that has been referred to the arbitration procedure and which should be directly applied to the case.
  - (3) Notwithstanding the provisions of the preceding two paragraphs, if a clearly indicated request has been made by both of the parties, the arbitral tribunal shall decide *ex aequo et bono*.
  - (4) An arbitral tribunal shall decide in accordance with the terms of the contract pertaining to the civil dispute which has been referred to the arbitral procedure, if such contract exists, and take into account the usages applicable to the relevant civil dispute, if any.

(Decision of the Arbitral Tribunal Which is a Panel)

- Article 37 (1) An arbitral tribunal which is a panel shall appoint a presiding arbitrator who shall be decided by a mutual election of arbitrators.
- (2) The decision of an arbitral tribunal which is a panel shall be made by the majority of the arbitrators constituting the arbitral tribunal.
  - (3) Notwithstanding the provision of the preceding paragraph, the procedural matters in an arbitration procedure may be decided by the arbitrator who is the presiding arbitrator, if so agreed by both of the parties or delegated by all the other arbitrators.
  - (4) The provisions of the preceding three paragraphs shall not apply to cases

where otherwise agreed by the parties.

(Settlement)

Article 38 (1) If, during the course of the arbitration procedure, a settlement is arranged between the parties with regard to a civil dispute which has been referred to an arbitration procedure and both the parties have so requested, the arbitral tribunal may make a decision based on the agreed matters in the settlement.

(2) The decision set forth in the preceding paragraph shall have the effect as an arbitral award.

(3) In making the decision set forth in paragraph (1), an arbitral tribunal shall prepare a written decision in accordance with the provisions of paragraphs (1) and (3) of the following Article and indicate that such written decision is an arbitral award.

(4) In cases where the consent of both parties has been obtained, an arbitral tribunal or one or more arbitrators who have been appointed by the parties may attempt to arrange a settlement for the civil dispute which has been referred to an arbitral procedure.

(5) The consent under the preceding paragraph or the revocation thereof shall be made in writing, unless otherwise agreed by the parties.

(Written Arbitral Award)

Article 39 (1) In making an arbitral award, a written arbitral award shall be prepared and signed by the arbitrator(s) who has made such arbitral award; provided, however, that if the arbitral tribunal is a panel, it will be sufficient if the written arbitral award is signed by the majority of the arbitrators constituting the arbitral tribunal and states the reasons for the omitted signatures of other arbitrators.

(2) A written arbitral tribunal shall state the reasons thereof; provided, however, that this shall not apply to cases where otherwise agreed by the parties.

(3) A written arbitral tribunal shall state the date of the preparation and the place of arbitration.

(4) An arbitral award shall be deemed to have been made at the place of arbitration.

(5) When an arbitral award has been made, the arbitral tribunal shall notify each party of the arbitral award by sending a copy of the written arbitral award signed by the arbitrator(s).

(6) The provision of the proviso to paragraph (1) shall apply mutatis mutandis to the copy of the written arbitral award set forth in the preceding paragraph.

(Termination of Arbitration Procedure)

Article 40 (1) An arbitration procedure shall terminate when an arbitral award or a decision to terminate the arbitration procedure has been made.

(2) When any of the following grounds exists, an arbitral tribunal shall make a decision to terminate the arbitration procedure, in addition to the cases under the provisions of Article 23, paragraph (4), item (ii) or Article 33, paragraph (1):

(i) when the arbitration claimant has withdrawn his/her application; provided, however, that this shall not apply to cases where the arbitration respondent has stated his/her objection against such withdrawal, and the arbitral tribunal recognizes a legitimate interest on the part of the arbitration respondent in resolving the civil dispute which has been referred to an arbitration procedure;

(ii) when both the parties have reached an agreement to terminate the arbitral procedure;

(iii) when a settlement has been arranged between the parties in regard to the civil dispute which has been referred to an arbitration procedure (excluding the cases where the decision set forth in Article 38, paragraph (1) has been made); and

(iv) in addition to the cases set forth in the preceding three paragraphs, when the arbitral tribunal has found that it is unnecessary or impossible to continue the arbitration procedure.

(3) When the arbitration procedure has terminated, the duties of the arbitral tribunal shall terminate; provided, however, that the acts under the provisions of the following Article to Article 43 may be carried out.

(Correction of Arbitral Award)

Article 41 (1) An arbitral tribunal may correct any miscalculation, clerical error or any other similar error in the arbitral award, upon the request of the parties or by its authority.

(2) The request set forth in the preceding paragraph shall, unless otherwise agreed by the parties, be made within 30 days from the date of receipt of the notice of arbitral award.

(3) When the party makes a request under paragraph (1), he/she shall issue a notice containing the contents of the request to the other party, in advance of, or at the same time as such request.

(4) The arbitral tribunal shall make a decision on the request under paragraph (1) within 30 days from the date of such request.

(5) The arbitral tribunal may, if it finds it necessary, extend the period set forth in the preceding paragraph.

(6) The provisions of Article 39 shall apply mutatis mutandis to the decision to correct the arbitral award and the decision to dismiss the request under

paragraph (1).

(Interpretation of Arbitral Award by Arbitral Tribunal)

Article 42 (1) The parties may request the arbitral tribunal to give an interpretation of a specific part of the arbitral award.

(2) The request set forth in the preceding paragraph may be made only when an agreement has been reached between the parties that such request may be made.

(3) The provisions of paragraphs (2) and (3) of the preceding Article shall apply mutatis mutandis to the request set forth in paragraph (1), and the provisions of Article 39 and paragraphs (4) and (5) of the preceding Article shall apply mutatis mutandis to the decision on the request set forth in paragraph (1).

(Additional Arbitral Award)

Article 43 (1) If any claims presented in an arbitration procedure have been omitted from the arbitral award, the parties may, unless otherwise agreed by the parties, request the arbitral tribunal to make an arbitral award on such omitted claim. In this case, the provisions of paragraphs (2) and (3) of Article 41 shall apply mutatis mutandis.

(2) The arbitral tribunal shall make a decision on the request set forth in the preceding paragraph within 60 days from the date of such request. In this case, the provisions of Article 41, paragraph (5) shall apply mutatis mutandis.

(3) The provisions of Article 39 shall apply mutatis mutandis to the decision set forth in the preceding paragraph.

## **Chapter VII Setting Aside Arbitral Award**

Article 44 (1) If any of the following grounds exist, the parties may make an application with the court to set aside the arbitral award:

(i) the arbitration award is not valid due to the limited capacity of a party;

(ii) the arbitration award is not valid on grounds other than the limited capacity of a party pursuant to the laws and regulations designated by the agreement of the parties as those which should be applied to the arbitration agreement (if such designation has not been made, Japanese laws and regulations);

(iii) the applicant did not receive the notice required under Japanese laws and regulations (if the parties have reached an agreement on the matters concerning the provisions unrelated to public order in such laws and regulations, such agreement) in the procedure of appointing arbitrators or in the arbitration procedure;

(iv) the applicant was unable to present a defense in the arbitration procedure;

- (v) the arbitral award contains a decision on matters beyond the scope of the arbitration agreement or of the claim presented in the arbitration procedure;
  - (vi) the composition of the arbitral tribunal or the arbitration procedure is in violation of Japanese laws and regulations (if the parties have reached an agreement on the matters concerning the provisions unrelated to public order in such laws and regulations, such agreement);
  - (vii) the application filed in the arbitration procedure is concerned with a dispute which may not be subject to an arbitration agreement pursuant to the provisions of Japanese laws and regulations; or
  - (viii) the content of the arbitral award is against public policy in Japan.
- (2) The application set forth in the preceding paragraph may not be made when three months have elapsed from the date on which the notice was given through the sending of a copy of the written arbitral award (including the written decision made by the arbitral tribunal pursuant to the provisions of Article 41 to the preceding Article), or when the execution order under the provisions of Article 46 has become final and binding;
- (3) The court may, even where the case based on the application set forth in paragraph (1) is subject to its jurisdiction, upon request or by its own authority, transfer whole or part of the case to another court with jurisdiction if it finds it appropriate.
- (4) An immediate appeal may be filed against the decision under the provisions of Article 5, paragraph (3) or the preceding paragraph with regard to the case based on the application set forth in paragraph (1).
- (5) The court may not make a decision on the petition under paragraph (1) without holding an oral argument or a hearing which both parties can attend on the date fixed therefor.
- (6) The court may, in cases where the application set forth in paragraph (1) has been made, set aside the arbitral award if it finds that any of the grounds set forth in the items of said paragraph exists (for the grounds set forth in items (i) through (vi) of said paragraph, limited to cases where the applicant has proved the existence of such grounds).
- (7) In cases where the grounds set forth in paragraph (1), item (v) exist, and the part concerning the matters prescribed in said item can be separated from the other parts of the relevant arbitral award, the court may set aside only that part of the arbitral award.
- (8) An immediate appeal may be filed against the decision on the application set forth in paragraph (1).

## **Chapter VIII Recognition and Execution Order of Arbitral Award**

(Recognition of Arbitral Award)

- Article 45 (1) An arbitral award (irrespective of whether or not the place of arbitration is in Japan; hereinafter the same shall apply in this Chapter) shall have the same effect as a final and binding judgment; provided, however, that a civil execution based on such arbitral award requires an execution order under the provisions of the following Article.
- (2) The provision of the preceding paragraph shall not apply in cases where any of the following grounds exist (for the grounds set forth in items (i) through (vii), limited to the case where any of the parties has proved the existence of such grounds):
- (i) the arbitration award is not valid due to the limited capacity of a party;
  - (ii) the arbitration award is not valid on grounds other than the limited capacity of a party pursuant to the laws and regulations designated by the agreement of the parties as those which should be applied to the arbitration agreement (if such designation has not been made, the laws and regulations of the country to which the place of arbitration belongs);
  - (iii) the party did not receive the notice required under the laws and regulations of the country to which the place of arbitration belongs (if the parties have reached an agreement on the matters concerning the provisions unrelated to public order in such laws and regulations, such agreement) in the procedure of appointing arbitrators or in the arbitration procedure;
  - (iv) the party was unable to present a defense in the arbitration procedure;
  - (v) the arbitral award contains a decision on matters beyond the scope of the arbitration agreement or of the application presented in the arbitration procedure;
  - (vi) 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 (if the parties have reached an agreement on the matters concerning the provisions unrelated to public order in such laws and regulations, such agreement);
  - (vii) 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 the country to which the place of arbitration belongs (in cases where the laws and regulations applied to the arbitration procedure are laws and regulations of a country other than the country to which the place of arbitration belongs, such other country) pursuant to the laws and regulations of that country;
  - (viii) the applications presented in the arbitration procedure are related to a dispute which cannot be the subject-matter of an arbitration agreement pursuant to the provisions of Japanese laws and regulations; or
  - (ix) the content of the arbitral award is against public policy in Japan.
- (3) In cases where the grounds set forth in item (v) of the preceding paragraph exist, if the part concerning the matters prescribed in said item can be

separated from the other parts of the relevant arbitral award, such part and the other parts of the arbitral award shall be deemed to be an independent arbitral award respectively, and the provision of said paragraph shall apply.

(Execution Order of Arbitral Award)

Article 46 (1) A party, who intends to have a civil execution based on an arbitral award carried out, may file an application with the court for an execution order (meaning an order allowing the civil execution based on an arbitral award; the same shall apply hereinafter), by specifying the obligor as the respondent.

(2) In filing the application set forth in the preceding paragraph, the party shall submit a copy of the written arbitral award, a document proving that the contents of such copy are the same as those of the written arbitral award, and a Japanese translation of the written arbitral award (excluding those prepared in Japanese).

(3) In cases where an application for setting aside the arbitral award or suspending the effect thereof has been made to the judicial body prescribed in paragraph (2), item (vii) of the preceding Article, the court to which the application set forth in paragraph (1) has been made may suspend the procedure pertaining to the application set forth in paragraph (1). In this case, the court may order the other party to provide security, upon the request of the person who made the application set forth in said paragraph.

(4) Notwithstanding the provisions of Article 5, paragraph (1), the case based on the application set forth in paragraph (1) shall be subject to the exclusive jurisdiction of the courts set forth in the items of said paragraph or the district court which has jurisdiction over the location of the subject-matter of the claim or the seizable property of the obligor.

(5) The court may, even where the case based on the application set forth in paragraph (1) is subject to its jurisdiction, upon request or by its own authority, transfer whole or part of the case to another court with jurisdiction, if it finds it appropriate.

(6) An immediate appeal may be filed against the decision under the provisions of Article 5, paragraph (3) or the preceding paragraph with regard to the case based on the application set forth in paragraph (1).

(7) The court shall give an execution order, except for the case where it dismisses the application set forth in paragraph (1) pursuant to the provisions of the following paragraph or paragraph (9).

(8) In cases where the application set forth in paragraph (1) has been made, the court may dismiss such application, only when it finds that any of the grounds set forth in the items of paragraph (2) of the preceding Article exist (for the grounds set forth in items (i) through (vii) of said paragraph, limited to the case where the respondent has proved the existence of such grounds).

- (9) The provision of paragraph (3) of the preceding Article shall apply mutatis mutandis to the application of the provision of the preceding paragraph in cases where the grounds set forth in paragraph (2), item (v) of said Article exist.
- (10) The provisions of paragraphs (5) and (8) of Article 44 shall apply mutatis mutandis to the decision on the application set forth in paragraph (1).

### **Chapter IX Miscellaneous Provision**

#### **(Arbitrator's Reward)**

Article 47 (1) An arbitrator may receive reward specified by the agreements of the parties.

- (2) In cases where an agreement set forth in the preceding paragraph has not been reached, the arbitral tribunal shall decide on the arbitrator's reward . In this case, such reward shall be a reasonable amount.

#### **(Prepayment of Arbitration Expenses)**

Article 48 (1) An arbitral tribunal may, unless otherwise agreed by the parties, order the parties to prepay the amount specified by the arbitral tribunal as the estimated amount of the expenses for the arbitration procedure by specifying a reasonable period.

- (2) An arbitral tribunal may, in the case where it ordered the prepayment pursuant to the provision of the preceding paragraph and if such prepayment has not been made, suspend or terminate the arbitral procedure, unless otherwise agreed by the parties.

#### **(Sharing of Arbitration Expenses)**

Article 49 (1) The sharing of expenses paid by the parties in relation to the arbitration procedure between the parties shall be as specified by the agreement of the parties.

- (2) If an agreement set forth in the preceding paragraph has not been reached, each party shall bear the expenses he/she paid in relation to the arbitration procedure.
- (3) An arbitral tribunal may, if the parties have reached an agreement, specify the sharing of expenses paid by the parties in relation to the arbitration procedure between the parties and the amount which one party should reimburse the other party based on such sharing, in an arbitral award or in an independent decision, pursuant to such agreement.
- (4) In cases where the matters prescribed in the preceding paragraph have been specified in an independent decision, such decision shall have the effect as an arbitral award.
- (5) The provisions of Article 39 shall apply mutatis mutandis to the decision set

forth in the preceding paragraph.

## **Chapter X Penal Provisions**

(Acceptance of a Bribe, Acceptance upon Request, Acceptance in Advance)

Article 50 (1) When an arbitrator, in relation to his/her duties, accepts, solicits, or promises to accept a bribe, he/she shall be punished by imprisonment with labor for not more than five years. In this case, when the arbitrator has agreed to perform an act in response to a request, he/she shall be punished by imprisonment with work for not more than seven years.

(2) When a person who intends to become an arbitrator agrees to perform an act in response to a request and accepts, solicits or promises to accept a bribe, in relation to the duties he/she shall be in charge of, he/she shall be punished by imprisonment with work for not more than five years when he/she becomes an arbitrator.

(Passing of Bribes to a Third Party)

Article 51 When an arbitrator agrees to perform an act in response to a request and causes a bribe to be given to a third party or solicits or promises such bribe to be given to a third party, in relation to his/her duties, he/she shall be punished by imprisonment with work for not more than five years.

(Aggravated Acceptance and Acceptance after Resignation)

Article 52 (1) When an arbitrator commits a crime prescribed in the preceding two Articles, and consequently acts illegally or refrains from acting in the exercise of his/her duty, he/she shall be punished by an imprisonment with work for a definite term of not less than one year.

(2) The provision of the preceding paragraph shall also apply when an arbitrator accepts, solicits or promises to accept a bribe or causes a bribe to be given to a third party or solicits or promises such bribe to be given to a third party, in relation to having acted illegally or having refrained from acting in the exercise of his/her duty.

(3) When a person who resigned from the position of an arbitrator, accepts, solicits or promises to accept a bribe in relation to having acted illegally or having refrained from acting in the exercise of his/her duty in response to a request while such person was still in such position, such person shall be punished by imprisonment with work for not more than five years.

(Confiscation and Collection of Equivalent Value)

Article 53 A bribe accepted by an offender or a third party with knowledge shall be confiscated. If whole or part of the bribe cannot be confiscated, an

equivalent value thereof shall be collected.

(Offer of Bribe)

Article 54 A person who has given, offered or promised to give a bribe as prescribed in Articles 50 through 52 shall be punished by imprisonment with work for not more than three years or a fine of not more than 2,500,000 yen.

(Crimes Committed Outside Japan)

Article 55 (1) The provisions of Articles 50 through 53 shall apply to a person who has committed the crimes prescribed in Articles 50 through 52 outside Japan.

(2) The crimes prescribed in the preceding Article shall be governed by Article 2 of the Penal Code (Act No. 45 of 1907).