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The JCAA Moving Forward: Internationalisation, Rules Modernisation, and Proactive Case Management

Case Manager, Japan Commercial Arbitration Association

Shinji Ogawa

I . Introduction

Founded more than seventy years ago, the Japan Commercial Arbitration Association (JCAA) has grown into a recognised institution in the international arbitration community. Over the past decade in particular, the JCAA has pursued a deliberate strategy of internationalisation, deepening its engagement with practitioners, arbitrators, in-house counsel, and other arbitral institutions worldwide.

This article provides an account of three thematic areas in which that development is most visible: international events; rules modernisation; and recent trends in case management. It also analyses a recent case that exemplifies emerging approaches to achieving tribunal efficiency.

II . International Events

JCAA Global Arbitration Forum 2025 and 2026

In November 2025, the JCAA hosted its annual international conference, the JCAA Global Arbitration Forum, at the Tsunamachi Mitsui Club in Tokyo. The two-day event formed part of the Japan International Arbitration Week 2025 and attracted more than four hundred participants attending in person and online. Over fifty speakers and panelists from private practice, the judiciary, in-house departments, academia, and arbitral institutions contributed to a programme spanning the principal issues facing international arbitration today. Session reports from the Forum have been published on the Kluwer Arbitration Blog.¹⁾

This year, the JCAA will hold its annual international arbitration conference on 12-13 November 2026.

In addition, during the Japan International Arbitration Week 2026 in July, the JCAA hosted a

1) Day 1: <https://legalblogs.wolterskluwer.com/arbitration-blog/jcaa-global-arbitration-forum-2025-reflections-from-day-one/>; Day2: <https://legalblogs.wolterskluwer.com/arbitration-blog/jcaa-global-arbitration-forum-2025-reflections-from-day-two/>

few activities, together with other key organizations.

III. Arbitration Rules Review

The JCAA is engaged in a comprehensive review of its arbitration rules with the goal of rendering them even more user-friendly and responsive to the practical demands of modern international arbitration. An initial draft has already been circulated among international practitioners, including members of the JCAA International Advisory Board and its User Committee, whose comments are currently being reflected in the revised text. Once the consultation draft has been finalised, the JCAA will invite broader comments from arbitration users and practitioners around the world before adopting the new rules.

IV. Case Management: Speed, Neutrality, and Diversity

The following analysis draws on JCAA case management data covering the period from 2021 to 2025.

A. Efficiency and Fairness

The 2021 JCAA Rules introduced revised expedited arbitration procedures that apply to disputes valued at or below JPY 300 million (approximately USD 2 million). Under such procedures, a sole arbitrator is appointed and required to render a final award within three or six months, depending on the amount in dispute. Approximately 70% of cases concluded under the expedited arbitration procedures resulted in an award being delivered within the prescribed time limit.

Across all JCAA arbitrations, the average duration of the proceedings from the constitution of the tribunal to the rendering of the final award now stands at 10.5 months. For larger and more complex disputes involving amounts in excess of JPY 1 billion (approximately USD 6 million), the average duration of the proceedings is approximately 18 months, a figure that compares favourably with leading international arbitral institutions.

The JCAA's hands-on support to the tribunal and the parties throughout the proceedings facilitates efficiency and fairness. By way of illustration, the JCAA conducts a prompt and comprehensive review of draft awards and emergency arbitrator decisions. For final awards, the review can ordinarily be completed within one week; and for expedited proceedings, the awards may be reviewed within a few days. Emergency arbitrator decisions are typically reviewed within a day or less. This process is designed to support not only the speed of proceedings, but also the quality of the award, clarity of the reasoning therein, and other procedural considerations that may affect the enforceability of a JCAA award across jurisdictions, thereby reflecting the institution's commitment to outcomes that are both efficient and fair.

The JCAA's track record of enforceability of its awards further attests to its practical reliability. Over the past five years, JCAA awards have been recognised in China, Vietnam,

Indonesia, and Thailand, among other jurisdictions. The JCAA is also unaware of any JCAA award having been successfully set aside by a Japanese court during that period.

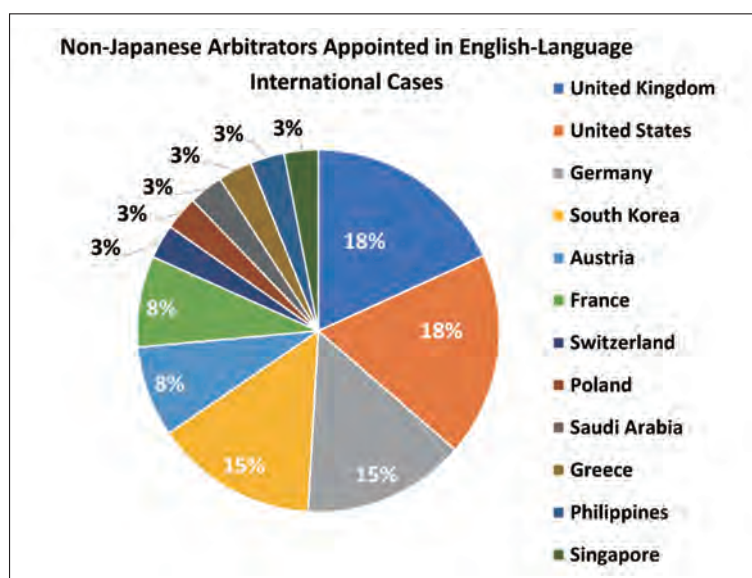
B. Neutrality and Language

Neutrality and fairness are central concerns of any regional arbitral institution. 60% of the JCAA's international arbitrations are conducted in English, whether by agreement of the parties or by the determination of the tribunal, reflecting the increasingly international character of the JCAA's caseload. Japanese has also been used in a number of international cases, notably in disputes between Japanese and Chinese parties, the most common party combination in recent years, where contracts have frequently been drafted in Japanese, Chinese, or both languages.

Under the JCAA Rules, a sole arbitrator is the default unless the parties agree otherwise or the JCAA determines that a three-member tribunal is appropriate. When appointing sole arbitrators in international cases, the JCAA gives careful consideration to neutrality. 73% of the sole arbitrators appointed by the JCAA in international matters were of neutral (non-Japanese) nationality, and around 30% of them reside outside Japan.

C. Arbitrator Diversity

The composition of the JCAA's arbitral tribunals has become markedly more diverse. In international cases, 41% of arbitrators were of non-Japanese nationality; in English-language proceedings that percentage rises to nearly 70%. Over the past five years, non-Japanese arbitrators in JCAA cases have been drawn from twelve different countries, including the United Kingdom, the United States, Germany, and South Korea. Significantly, appointments reflect a balance between civil law and common law traditions, reinforcing the international character and neutrality of JCAA arbitration proceedings.



V. Case Study: Proactive Tribunal Case Management

A recent JCAA international case illustrates the practical benefits of proactive tribunal case management and offers lessons relevant to practitioners and arbitrators alike.

A. Background

The dispute arose between the Japanese subsidiary of a foreign corporation and a Japanese local company. The parent company of the former was incorporated in a common law jurisdiction. The parties had negotiated their contract in English and agreed to a JCAA arbitration clause therein. However, when the contract was subsequently translated into Japanese and executed, the signed document contained both a Tokyo District Court jurisdiction clause and a JCAA arbitration clause, which gave rise to immediate and contentious jurisdictional questions. The substantive issues in the case were themselves complex, encompassing contract interpretation, and issues of liability and quantum. The language of arbitration was English.

The tribunal comprised of three experienced arbitrators with both common law and civil law backgrounds. The presiding arbitrator nominated by the co-arbitrators was of neutral nationality and resided outside Japan.

B. Procedural Innovation: Incorporating the JCAA Interactive Arbitration Rules

Prior to the first case management conference, the tribunal referred to Articles 48²⁾ and 56³⁾ of the JCAA Interactive Arbitration Rules as tools that could enhance the efficiency of the proceedings, and invited the parties to consider whether they wished to incorporate either or both provisions, or any adaptation thereof, into the proceedings being conducted under the JCAA Commercial Arbitration Rules.

2) Article 48 of the JCAA Interactive Arbitration Rules provides as follows:

“Article 48 Arbitral Tribunal’s Active Role in Clarifying Parties’ Positions and Ascertaining Issues

1 At a stage as early as possible in the arbitral proceedings, the arbitral tribunal shall draft a document containing a summary of each Party’s positions on factual and legal grounds of the claim and the defense (“Positions”) and the factual and legal issues that the arbitral tribunal tentatively ascertains arising from the Positions (“Issues”). The arbitral tribunal shall present such document to the Parties, and give the Parties an opportunity to comment on the Positions and the Issues within a time limit fixed by the arbitral tribunal.

2 Within the time limit fixed by the arbitral tribunal under Article 48.1, the Parties shall provide their comments in writing on the Positions and the Issues specifying which parts of the Positions and the Issues they agree or disagree with.

3 The arbitral tribunal may revise the Positions and the Issues taking into account the comments provided by the Parties under Article 48.2.

4 The arbitral tribunal may use the revised Positions under Article 48.3 as the Parties’ positions set forth in the arbitral award.

5 Notwithstanding Article 48.4, during the further course of the arbitral proceedings, if a Party finds further amendments to be required, the Party may request in writing that the Positions be amended. Unless the arbitral tribunal rejects the request because of delay, the arbitral tribunal may use such amended Positions as the Party’s position set forth in the arbitral award.”

The parties responded to the tribunal's proposals and agreed that:

- The tribunal shall provide a written summary to the parties of the factual and legal issues that the tribunal considered important, together with its preliminary views thereon, following its review of the Statement of Claim and the Statement of Defence;
- The tribunal shall give the parties an opportunity to comment on its preliminary views in their Reply and Rejoinder;
- The tribunal's preliminary views shall not be binding upon its subsequent decisions or the arbitral award; and
- The parties shall not challenge any arbitrator on the basis that he or she has expressed its preliminary views.

These arrangements were reflected in Procedural Order No.1 and the Procedural Timetable.

This was the first JCAA international arbitration case where the tribunal expressly referred to the JCAA Interactive Arbitration Rules.

C. Outcome and Observations

The tribunal carefully drafted and presented its preliminary views, which addressed matters, including the allocation of the burden of proof. From the JCAA Secretariat's perspective, these preliminary views served to clarify and narrow down the issues in dispute at an early stage. The parties were able to focus their submissions more effectively, and the oral hearing was shorter and more targeted than it might otherwise have been.

To the JCAA's knowledge, no application has been made to set aside the arbitral award.

This approach offers a potential counterpoint to the tendency, which has sometimes been

3) Article 56 of the JCAA Interactive Arbitration Rules provides as follows:

"Article 56 Expressing Arbitral Tribunal's Preliminary Views

1 In order to assist the Parties to present their cases effectively and efficiently, prior to the time of the arbitral tribunal's decision as to whether or not witness examination be conducted, the arbitral tribunal shall prepare and give a written summary to the Parties on the following items:

(1) the factual issues that the arbitral tribunal considers important and the arbitral tribunal's preliminary views with respect thereto;

(2) the legal issues that the arbitral tribunal considers important and the arbitral tribunal's preliminary views with respect thereto; and

(3) any other matters that the arbitral tribunal considers important.

2 The arbitral tribunal shall give the Parties an opportunity to comment on the items under Articles 56.1(1) through (3) within a time limit fixed by the arbitral tribunal.

3 The Parties, within the time limit fixed by the arbitral tribunal under Article 56.2, may comment in writing on the items under Articles 56.1(1) through (3) and, on whether or not witness examination should be conducted.

4 Taking into account the Parties' comments under Article 56.3, the arbitral tribunal shall decide whether or not to witness examination will be conducted.

5 The preliminary views expressed by the arbitral tribunal under Article 56.1 shall not be binding upon the arbitral tribunal's subsequent decisions or the arbitral award.

6 The Parties shall not challenge any arbitrator based on the fact that he or she has expressed preliminary views under Article 56.1."

described in literature as "due process paranoia," for tribunals to refrain from substantive engagement in the early stages of the proceedings out of concern for preserving their impartiality. While that caution is understandable, if taken to excess, it may risk rendering proceedings less focused and costly.⁴⁾

The case has attracted attention in the arbitration community. At the JCAA Global Arbitration Forum 2025, the tribunal's approach was discussed as one possible way to enhance procedural efficiency.

D. Lessons for Practitioners

A lesson emerges from this case: procedural efficiency is best achieved through a collaborative approach, in which both the tribunal and the parties actively contribute to shaping the proceedings.

In this instance, it was the tribunal that took the initial step by proposing the incorporation of elements of the JCAA Interactive Arbitration Rules; however, the outcome depended equally on the parties' willingness to engage constructively and agree on specific procedural arrangements tailored to the needs of the case.

This case suggests that a shared openness to creative procedural solutions, whether initiated by the tribunal or by the parties themselves, can meaningfully contribute to the focus and efficiency of the proceedings.

VI. Conclusion

The developments surveyed in this article reflect the JCAA's strengthening its position as an internationally oriented arbitral institution. Through its expanding events programme, ongoing rules modernisation, and performance data from its international caseload that demonstrate competitive processing times, a strong commitment to tribunal neutrality and diversity, and a robust record of enforceability, the JCAA continues to offer a credible and efficient forum for the resolution of complex cross-border commercial disputes.

The case study discussed above further illustrates that, where parties and counsel approach proceedings with flexibility and a willingness to engage with novel procedural approaches, international arbitration can promptly be more principled and genuinely efficient. These attributes will remain central to the JCAA's mission as it continues to support the development of international arbitration in and beyond Japan.

4) Prof. Dr. Klaus Sachs and Jan Zimmermann, *The JCAA Interactive Arbitration Rules and Arbitration's Quest for Efficiency*, An Arbitration Companion: Liber Amicorum for Michael Lee (2026). The authors examined the benefits and potential drawbacks of the JCAA Interactive Arbitration Rules, concluding that none of the drawbacks "seem insurmountable to an experienced panel of arbitrators."

The Tokyo High Court Decision Concerning a Petition to Set Aside an Expeditious Determination

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I. Introduction¹⁾

1. Recently, Japanese courts issued decisions dismissing a petition to set aside an arbitral award rendered as an expeditious determination in ICC arbitration: On 10 November 2023, the Tokyo District Court rendered a decision dismissing the petition to set aside the arbitral award.²⁾ On 30 May 2025, the Tokyo High Court dismissed the petitioner's appeal, upholding the Tokyo District Court's decision with some additional findings in response to the petitioner's supplemental arguments at the appellate proceedings (the Tokyo High Court's decision is hereinafter referred to as the "**Decision**").³⁾ The petitioner requested that the Tokyo High Court permit an appeal to the Supreme Court, but the Tokyo High Court did not grant permission. As a result, the decision dismissing the petition to set aside the arbitral award rendered as an expeditious determination became final.
2. The findings of the two decisions, particularly the Decision, appear to have significant implications for international arbitration in several aspects.⁴⁾ One such aspect is that the Decision affirmed the validity of an arbitral award rendered as an expeditious determination in ICC arbitration. This article will focus on such aspect in the Decision.

II. Outline of the ICC Arbitration Case Subject to the Decision

3. On 9 February 2021, the Claimant submitted a Request for Arbitration ("**RFA**") to the ICC.

1) Two of the authors of this article represented the respondent in the proceedings to set aside the arbitral award discussed in this article, but the opinions in this article are the authors' individual opinions and are not those of the party they represented.

2) Decision of the Tokyo District Court dated 10 November 2023 (2022 (Chu) No.1).

3) Decision of the Tokyo High Court dated 30 May 2025 (2023 (Ra) No.2747).

4) See, Aiko Hosokawa and Miriam Rose Ivan L. Pereira, "Is Procedural Order No. 1 an Order of the Arbitral Tribunal or a Procedural Agreement between the Parties?" in *ICC Dispute Resolution Bulletin 2025 Issue 3/2026 Issue 1*, p.21, which introduces the two decisions mainly from the aspect of procedural agreements in international arbitration practice.

The seat of arbitration was Tokyo, Japan.

4. On 22 March 2021, the Respondent submitted its Answer. In the Answer, the Respondent, relying on the ICC's Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration Under the ICC Rules of Arbitration ("**ICC Note**"), requested the expeditious determination of all the Claimant's claims on the grounds that the Claimant's claims fall manifestly outside the arbitral tribunal's jurisdiction and/or are manifestly devoid of merit.

5. Around 20 April 2021, in the process of drafting the Terms of Reference, the Claimant added a new claim regarding a certain provision ("**Section**") of the distribution agreement at issue between the parties.

6. In the responsive submission to the Respondent's application for expeditious determination, the Claimant argued that its additional claims regarding the Section were not subject to the expeditious determination.

7. On 9 August 2021, the arbitral tribunal rendered a decision on the Respondent's application for expeditious determination ("**Partial Award**"). In the Partial Award, the arbitral tribunal dismissed some of the Claimant's claims, including the claims regarding the Section, providing the following reasons:

(1) In principle, the Respondent's factual allegations are not relevant, as all facts put forward by the Claimant are assumed to be true in the expeditious determination. However, an exception needs to be made where the alleged facts are manifestly unsubstantiated.

(2) The Claimant made two manifestly untenable assertions concerning the Section. The Claimant has provided no other substantiation for its allegation, just a suspicion. This being the case, the Claimant's argument is to be characterized as a legal submission dressed up as factual allegation.

(3) The Claimant's claim that the Respondent violated the Section is manifestly without merit as a factual matter, and manifestly inadmissible (*res judicata*) as a legal matter.⁵⁾ The arbitral tribunal therefore grants the Respondent's application for expeditious determination.

8. Following the issuance of the Partial Award, the Claimant filed a petition with the Tokyo District Court to set aside the award on the following grounds:

(1) the petitioner (Claimant) was unable to conduct a defense in the arbitral proceedings (Article 44(1)(iv) of the Arbitration Act);

(2) the arbitral proceedings are in violation of Japanese laws and regulations (or if the parties have reached an agreement regarding the matters concerning the provisions unrelated to public order in those laws and regulations, the agreement) (Article 44(1)(vi) of the Arbitration Act); and

(3) the content of the arbitral award is contrary to public policy in Japan (Article 44(1)(viii) of the Arbitration Act).

5) In the previous arbitration between the Claimant and the Respondent, the Claimant had already brought an action based on the same provision of the distribution agreement, and the issue was adjudicated in the arbitral award.

III. Outline of the Decision

A. Outline of the Claimant's Arguments in the Set-Aside Proceedings

9. The Claimant (the petitioner in the set-aside proceedings) argued that the arbitral tribunal's determination in the Partial Award violated the Claimant's right to be heard and due process in the arbitral proceedings. The Claimant argued that the arbitral tribunal had wrongfully dismissed the Claimant's claims regarding the Section on the merits without affording the Claimant the procedural opportunity to present arguments and evidence on the claims before the arbitral tribunal.

B. Outline of the Decision

10. Regarding the Claimant's allegation that the arbitral tribunal failed to afford the Claimant an opportunity to present "arguments" on the claims, the Tokyo High Court found that the Claimant was afforded such opportunity, providing the following reasons:

(1) In Procedural Order No. 1, the Claimant was given the opportunity to submit a responsive submission to the Respondent's application for expeditious determination. The Claimant submitted its responsive submission. In the submission, the Claimant deliberately avoided responding to the Respondent's request for expeditious determination against the Claimant's claims concerning the Section.

(2) At the hearing for the Respondent's request for the expeditious determination, the arbitral tribunal did not impose any restrictions on the matters that the Claimant could argue in the hearing. During the hearing, the Claimant's counsel made certain statements regarding its claim concerning the Section.

11. Regarding the Claimant's allegation that the arbitral tribunal failed to afford the Claimant an opportunity to present "evidence" on the claims, the Tokyo High Court found that the arbitral tribunal's not affording such opportunity did not violate the Claimant's due process rights, providing the following reasons:

(1) It is said that the purpose of the expeditious determination proceedings is to save time and costs for the proceedings by dismissing all or a part of the claims at an early stage, thereby narrowing the issues of the case and enhancing the efficiency of and expediting the arbitral proceedings.

(2) Therefore, in general, the parties are not expected to submit further evidence to the arbitral tribunal as a basis for the expeditious determination.

(3) The ICC Note also states that "[f]urther presentation of evidence will only be allowed in exceptional circumstances" (Paragraph 112).

(4) Under the International Centre for Settlement of Investment Disputes ("**ICSID**") Arbitration Rules ("**ICSID Arbitration Rules**"), to which the parties had aligned to refer as a guidance in the arbitration case subject to the Decision ("**Arbitration Case**"), the party against whom an expeditious determination is sought is granted an "*opportunity to present their observations*", not an opportunity to present evidence (Rule 41(5)).

(5) The arbitral tribunal dismissed the Claimant's claim regarding the Section, describing it "as

a legal submission dressed up as factual allegation". This was based on the determination that there was no "*exceptional circumstances*" (Paragraph 112 of ICC Note) that would allow the Claimant to present further evidence. This decision by the arbitral tribunal cannot be considered particularly unreasonable.

IV. Analysis

A. Expeditious Determination Under the ICSID Arbitration Rules

12. An expeditious determination (or early dismissal) in arbitral proceedings is a tribunal's decision to dismiss certain claims or defenses on the merits at an early stage of the arbitral proceedings. It "*aims to enhance efficiency by narrowing the issues in dispute or rejecting the whole claim at an early stage, saving both time and cost in a proceeding*".⁶⁾

13. An expeditious determination was introduced in international arbitration when the ICSID Arbitration Rules were amended in 2006.⁷⁾ Under the 2006 ICSID Arbitration Rules, a party may request the expeditious determination where it considers that "*a claim is manifestly without legal merit*" (Rule 41(5)).⁸⁾ In the late 2010s, the expeditious determination was also introduced in the arbitration rules of various arbitral institutions handling commercial international arbitration.

14. In commercial international arbitration, the ICSID arbitral awards often serve as precedents, because they are generally published unlike arbitral awards in typical arbitral institutions.

15. In the Arbitration Case, the parties were also aligned that the ICSID Arbitration Rules and awards rendered under the same rules concerning expeditious determination (such as *Trans-Global Petroleum, Inc. v. The Hashemite Kingdom of Jordan*, ICSID Case No. ARB/07/25) would serve as a guidance.

B. Expeditious Determination Under the 2021 ICC Arbitration Rules⁹⁾

16. Article 19 of the 2021 ICC Arbitration Rules ("**ICC Rules**") provides that where the ICC Rules are silent and the parties have not agreed on any specific rules, the proceedings before the arbitral tribunal shall be governed by rules determined by the arbitral tribunal. Article 22(2) of the ICC Rules further states that the arbitral tribunal may adopt any procedural measures it considers appropriate, provided that they are not contrary to any agreement of the parties. Thus, the ICC Rules confirm that the arbitral tribunal has broad procedural

6) Mino Han and Arjun Solanki, "Early Determination: A Secret Recipe for Arbitral Efficiency?" (Kluwer Arbitration Blog, 12 May 2023) <<https://arbitrationblog.kluwerarbitration.com/2023/05/12/early-determination-a-secret-recipe-for-arbitral-efficiency/>>

7) *Id.*

8) The ICSID Arbitration Rules were amended in 2022. The same language can be found in Rule 41 of the 2022 ICSID Arbitration Rules.

9) The 2026 ICC Arbitration Rules entered into force on 1 June 2026. Article 30 of the 2026 rules addresses early (expeditious) determination. In this JCAJ article, we discuss the application of expeditious determination under the 2021 ICC Arbitration Rules, which were in effect at the time of the Arbitration Case.

discretion, subject to the parties' agreement.

17. Rather than introducing a new provision directly and explicitly addressing the expeditious determination in the institutional rules of arbitration, as is often the case in the arbitration rules of other prominent arbitral institutions, the ICC issued the revised ICC Note in October 2017, in which it officially clarified that the an expeditious determination could be applied under the existing ICC Arbitration Rules. This revision to the ICC Note is based on Article 22(1) of the ICC Rules, which states that *"the arbitral tribunal and the parties shall make every effort to conduct the arbitration in an expeditious and cost-effective manner"*.

18. The revised ICC Note states that it provides a *"guidance as to how an application for the expeditious determination of manifestly unmeritorious claims or defences may be addressed"* (Paragraph 109 of the ICC Note). It indicates that the tribunal may make an expeditious determination within the broad scope of Article 22 of the ICC Rules. The ICC Note further states that a party may request dismissal of a claim or defense where *"such claims or defences are manifestly devoid of merit or fall manifestly outside the arbitral tribunal's jurisdiction"* (Paragraph 110 of the ICC Note). Further, *"[t]he responding party or parties shall be given a fair opportunity to answer the application"* and *"[f]urther presentation of evidence will only be allowed in exceptional circumstances"* (second and third sentences of Paragraph 112 of the ICC Note). This means that the responding party to an application for expeditious determination is in principle not allowed to present additional evidence; presentation of evidence is not included in *"a fair opportunity to answer the application"*.

19. The ICC Note does not restrict the circumstances in which the arbitral tribunal may make an expeditious determination to cases where *"such claims [...] are manifestly devoid of merit or fall manifestly outside the arbitral tribunal's jurisdiction"*. Instead, it merely provides examples of when an expeditious determination can be made as a part of the arbitral tribunal's broad procedural discretion under Article 22 of the ICC Rules (Paragraph 109 of ICC Note). Moreover, the ICC Note contains no statement requiring the arbitral tribunal to assume that the claimant's alleged facts are true in the expeditious determination.

20. In other words, under the expeditious determination proceedings governed by the ICC Rules, the tribunal has broad procedural authority and discretion.

C. Significance of the Decision

21. In the Decision, the Tokyo High Court found that the adoption of the expeditious determination proceedings under the ICC Rules, a system not existing in Japanese court proceedings, would not be contrary to due process in itself and under the circumstances of the Arbitration Case. This finding suggests that Japanese courts take a pro-arbitration stance and respect the global practice in international arbitration. The following points in the Decision are worth noting:

(1) The Tokyo High Court recognized and accepted the existence of expeditious determination proceedings in international arbitration in which *"the parties are not expected to submit further evidence to the arbitral tribunal"*.

(2) The Tokyo High Court dismissed a petition to set aside an arbitral award issued as an

expeditious determination. In other words, the court did not set aside the award on the grounds that "*the content of the arbitral award is contrary to public policy in Japan*" (Article 44(1)(viii) of the Arbitration Act), a ground the court can invoke even if the parties do not raise it (see parentheses in Article 44(5) of the Arbitration Act). This means that the court did not consider the adoption of the expeditious determination proceedings in the arbitral proceedings itself to be a violation of due process, despite the fact that this system does not exist in Japanese court proceedings.

(3) In the examination of whether there was a violation of the Claimant's due process rights in the expeditious determination proceedings in the Arbitration Case, the Tokyo High Court placed significant weight on the provisions of the ICC Note and the ICSID Arbitration Rules, which the parties had adopted as guidance in the Arbitration Case.

(4) The Tokyo High Court accepted that, even if an arbitral tribunal dismissed certain claims on the merit without affording the party an opportunity to present "evidence", which is distinct from an opportunity to present its arguments, such an arbitral tribunal's decision did not violate due process in the arbitral proceedings and did not constitute violations of Article 44(1) (iv), (vi) and (viii) of the Arbitration Act.

D. Potential Implications for JCAA Rule Amendment

22. The JCAA is currently considering the modernization and revision of its Commercial Arbitration Rules and Interactive Arbitration Rules, including the adoption of expeditious determination/early dismissal proceedings.

23. The fact that a Japanese court dismissed a petition to set aside an arbitral award rendered through the expeditious determination proceedings under the ICC Rules, accepting that the expeditious determination does not itself violate the due process of the arbitral proceedings, is significant.

24. There is a concern that an arbitral tribunal's award rendered through the expeditious determination proceedings can be challenged on the grounds that the party was not given the opportunity to fully present its case. The Decision demonstrates that a Japanese court would generally consider an arbitral tribunal's expeditious determination on the merits at an early stage of the proceeding to be within the arbitral tribunal's procedural discretion, and that it does not violate procedural due process (at least when the party is provided an opportunity to present its allegation) even from the perspective of a Japanese court, which does not have expeditious determination proceedings.

25. We believe that the Decision provides strong support for JCAA's adoption of the expeditious determination proceedings in its institutional arbitration rules.





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I. Enhanced Judicial Support of the Courts Due to Amendments to Japan's Arbitration Act

Although arbitration is categorized as alternative dispute resolution and intended to function as a private dispute resolution mechanism, its effective operation often depends on an essential degree of judicial support from the local courts. One of the most important aspects of the 2023 amendments to Japan's Arbitration Act relates to the role and function of the Japanese courts in supporting arbitral proceedings. One area in which such judicial support is particularly significant is the enforcement of interim measures ordered by arbitral tribunals. This article will focus on the judicial support provided by Japanese courts under the amendments to the Arbitration Act as well as a comparison of the Japanese procedural structure with that of other jurisdictions.

II. Interim Measures

1. Issues of the Former Arbitration Act

Under the former Arbitration Act, arbitral tribunals were authorized to order interim measures pursuant to Article 24(1). However, Article 24 did not specify particular types of interim measures that could be ordered and under what conditions they could be ordered, so an arbitral tribunal had some measure of discretion in determining interim measures.¹⁾ Further, unlike an arbitral award which can become enforceable and can function as a title of obligation (*saimu meigi*) under the Civil Execution Act after an enforceability order (*shikko kettei*) (i.e., an order allowing civil enforcement based on an arbitral award) is granted under Article 46 thereof, the former Arbitration Act did not provide for any special legal effects or mechanism through which interim measures could be enforced by Japanese courts.²⁾

1) Ayako Imatsu, *Enforcement of the Arbitral Tribunal's Provisional Measures* [仲裁廷の暫定保全措置に対する執行力の付与], JCA Journal [JCAジャーナル] 69-3, 2022, 12.

2) Imatsu, n. 1 above, at 12.

Therefore, the effectiveness of interim measures ordered by an arbitral tribunal previously depended highly on the voluntary action of the parties. While parties generally complied with such measures,³⁾ the requesting party faced practical difficulties if the other party refused to comply. In such cases, the requesting party's remedies were rather limited. For example, parties had the choice of attempting to seek monetary damages for non-compliance or applying to court for provisional measures, both of which involved court proceedings that were separate from the arbitral proceedings. Although Japanese courts had the ability to grant provisional measures regardless of whether the dispute is subject to arbitration, there was criticism about it being difficult for a party to expect prompt protection of its rights.⁴⁾

2. The Amended Arbitration Act

Given the circumstances, the 2023 amendments introduced a legal framework that enabled Japanese courts to assist arbitral tribunals in the enforcement of interim measures. The reform was intended to make it clear that the Japanese legal framework is in line with the international standards reflected in the UNCITRAL Model Law which was amended in 2006, and strengthen the effectiveness of arbitration conducted in Japan.⁵⁾ Specifically, the amendments specified in Article 24(1) the types of interim measures that the arbitral tribunal may order and their respective requirements.⁶⁾ Further, the amendments enabled parties that have obtained interim measures to file a petition with the court for an enforcement approval order (*shikko ninka kettei*) authorizing compulsory execution based on the order for interim measures. This petition will generally be granted unless any of the grounds of refusal listed in Article 47(7) applies.

Moreover, interim measures ordered by arbitral tribunals can be broadly divided into two types.⁷⁾ Namely, the first category consists of preventive or restorative orders (Article 24(1), item 3). Such orders are meant to preserve the particular subject of the dispute or prevent serious harm before the final award is given. For such interim measures, the requesting party

3) Material 1-2 for the meeting of the Sub-committee "Consideration of issues concerning the amendment of Arbitration Act" [仲裁法制度部会資料1-2 仲裁法等の改正に関する論点の検討(1)], 1.

4) Aya Yamada, *Amendment to the Arbitration Act and the ADR Act* [仲裁法・ADR法の改正], *Jurist* [ジュリスト] 1590, 2023, 63.

5) Yamada, n. 4 above, at 61.

6) Article 24(1) of the amended Arbitration Act states as follows: (i) to prohibit the disposal of or any other change to property necessary for the payment of money, when it is likely that an enforcement regarding a claim for payment of money will not be possible, or it is likely that significant difficulties will arise in implementing enforcement; (ii) to prohibit the disposal of or any other change to any property which is the subject of a claim to seek provision of property benefits, when it is likely that the exercise of the right regarding the claim to seek provision of property benefits (excluding payment of money) will not be possible or will be extremely difficult; (iii) to prevent any substantial loss or imminent danger from arising that would occur to the party that filed the petition with regard to the property or relationship of rights which is the subject matter of the dispute, take necessary prevention measures, or restore the status quo of the property or relationship of rights if it has been changed, in order to avoid the loss or danger in question; (iv) to prohibit actions that cause harm or prejudice to the proceedings in the arbitration procedure (excluding the actions stated in the following item); or (v) to prohibit actions such as disposing, erasing or altering evidence necessary for the proceedings in the arbitration procedure.

7) Yamada, n. 4 above, at 62.

may apply to court for an enforcement approval order which authorizes civil execution based on the arbitral tribunal's order for interim measures and when the authorization becomes final, the order for interim measures may function as an enforceable title of obligation under the Japanese civil execution system.

The second category consists of prohibitory measures. Such measures include orders prohibiting the disposal of assets, interference with the arbitral proceedings, or the destruction of evidence (Article 24(1), items 1, 2, 4 and 5). For such measures, the requesting party may apply to court for an enforcement approval order which authorizes civil execution based on the arbitral tribunal's order for interim measures as well as an order for monetary payment. In particular, if the court finds that the respondent has violated or is likely to violate the order for interim measures, the court may order the payment of money for the period of non-compliance (Article 49). Accordingly, the amended Arbitration Act has adopted a different framework that reflects the Japanese civil execution law. Further, an order imposing a monetary penalty will also serve as an enforceable title of obligation that can be the subject of compulsory execution. Nevertheless, even if a party seeks an order authorizing civil execution, a petition for a monetary order is merely optional, and not compulsory.⁸⁾

With this framework, Japanese courts have assumed a supporting role in ensuring the effectiveness of interim measures ordered by arbitral tribunals while maintaining consistency with the existing legal framework of domestic civil execution law. The reform therefore illustrates the broader principle that arbitration and judicial authority are not mutually exclusive, but rather they are complementary mechanisms within the modern dispute resolution system.

3. Background of the Amendments

During the legislative process of the amendments, the Japanese Arbitration Legislation Sub-Committee of the Legislative Council engaged in extensive discussions on how to incorporate the provisions of the 2006 UNCITRAL Model Law while maintaining consistency with the legal framework of Japanese civil procedure and execution law.

During the legislative discussions, the Sub-Committee carefully examined the structure of the UNCITRAL Model Law, particularly Article 17H, which provides for the recognition and enforcement of interim measures. Although the amended Arbitration Act was basically designed to correspond to these UNCITRAL Model Law articles as explained above, the Sub-Committee decided not to adopt the model law's language of "recognition." Since interim measures do not have *res judicata* unlike foreign court awards or arbitral awards and are inherently provisional, the Sub-Committee considered "recognition" thereof to be inappropriate. Instead, the Japanese system adopted the mechanism of securing an enforcement approval order, which serves as a procedural gateway to civil execution of interim measures. The Sub-Committee was of the view that adopting this structure for interim

8) Atsushi Fukuda ed., Question and Answer New Arbitration and Mediation Legislation [一問一答 新しい仲裁・調停法制], 2024, 62.

measures would make Japan a more appealing seat to the international arbitration community. Besides, members of the Sub-Committee had differing views and could not reach an agreement regarding the effect and scope of the order, making it difficult to formulate a uniform wording.⁹⁾

Another issue that was discussed during the legislative process concerned whether they should adopt the "preliminary order" structure which is included in Articles 17B and 17C of the UNCITRAL Model Law. Basically these "preliminary orders" allow arbitral tribunals to grant *ex parte* interim relief without notice to the opposing party. While Article 25 of Japan's Arbitration Act requires the parties to be treated equally and given a full opportunity to present their case, some members of the Sub-Committee expressed strong concern that *ex parte* preliminary orders might contradict this principle of equality of the parties in arbitral proceedings. It was also discussed that even a number of jurisdictions which are pro-Model Law had declined to adopt preliminary orders. As a result, the Sub-Committee ultimately decided not to introduce a regime of "preliminary orders."¹⁰⁾

4. Comparison with Other Laws

(a) Comparison with the U.S. Approach

A comparison with the United States shows a somewhat different structural approach to the role of courts in supporting interim relief in arbitration. Unlike the amended Arbitration Act of Japan, the U.S. Federal Arbitration Act ("FAA") does not contain explicit provisions governing the recognition or enforcement of interim measures ordered by arbitral tribunals.¹¹⁾ The FAA primarily regulates the enforceability of arbitration agreements and the confirmation, vacatur, or modification of final arbitral awards, but it does not necessarily establish a legal framework for interim measures issued during the course of arbitral proceedings.

Despite the absence of explicit statutory provisions, it is said that "U.S. courts also generally hold that the parties' agreement that the arbitrators have the power to grant interim measures will be implied, absent contrary indication in the arbitration agreements."¹²⁾ Also, U.S. courts have reasoned that the ability of arbitrators to order interim relief is inherent in the arbitral mandate, particularly where such interim measures are necessary to preserve the effectiveness of the arbitral process or to prevent the final award from becoming meaningless.¹³⁾ In practice, U.S. courts have developed approaches to ensure the practical effectiveness of arbitral interim measures. One approach is to treat certain arbitral interim measures as interim awards, which may then be subject to judicial confirmation and enforcement under the FAA. Basically, this is based on the notion that granting provisional measures finally disposes of the request for such measures and that judicial enforcement of such measures is important to the arbitral

9) Minutes of the second meeting of the Sub-committee held on 20 November 2020 [法制審議会仲裁法制部会第2回議事録 2020年11月20日], 17-22, and see Fukuda ed., above n. 8, at 78.

10) *Ibid.*, 7, and Fukuda ed., n. 8 above, at 78.

11) Gary B. Born, *International Commercial Arbitration*, 2020, 2615 and 2699.

12) *Ibid.*, 2616.

13) *Ibid.*

process.¹⁴⁾ In addition, U.S. courts have recognized the authority of courts themselves to grant provisional measures to aid arbitration. Even where the underlying dispute is subject to arbitration, parties may seek temporary restraining orders or preliminary injunctions from courts to preserve the status quo pending the arbitral proceedings. Further, unlike Japan's Arbitration Act, which introduced a new statutory monetary penalty system for violations of certain interim measures, the U.S. structure does not have a monetary penalty.

Given the above, both U.S. and Japan have adopted the supplementing role of the courts for interim measures in arbitration. While the U.S. structure relies primarily on judicial interpretation and procedural practice rather than a statutory framework to support interim relief in arbitration, the amended Arbitration Act of Japan has adopted a more structured legislative approach, and the statute expressly establishes a legal framework for the enforcement of interim measures.

(b) Comparison with the Singapore Approach

Section 12(6) of the Singapore International Arbitration Act¹⁵⁾ provides that orders or directions made by an arbitral tribunal during an arbitration may, with the permission of the General Division of the High Court, be enforced in the same manner as if they were orders made by the court.¹⁶⁾ Once such permission is given, parties can rely on the ordinary framework for enforcement available for court orders. In this respect, while it may be true that both the Singaporean and amended Japanese legal frameworks require certain judicial involvement before arbitral interim measures can be enforced, they differ in how they treat such interim measures. In particular, in Singapore, based on the High Court's permission, the arbitral interim measure is integrated into the domestic procedural legal framework governing court judgments. In contrast, under Japan's Arbitration Act, the court must issue an enforcement approval order pursuant to Article 47 thereof before enforcement may proceed, and by requiring such approval, the interim measure is treated as a title of obligation that can be enforced through the Civil Execution Act. The two frameworks differ in how they characterize the legal nature of their interim measures.

Another crucial point worth mentioning is that Singapore did not completely adopt the enforcement framework introduced by Article 17H of the 2006 UNCITRAL Model Law. Under Article 17H, which Japan's procedural framework was inspired by and implemented through the civil execution procedure, interim measures issued by an arbitral tribunal are to be "recognized as binding" and enforced irrespective of the country in which they were issued. In contrast, the Singapore system maintains the existing Section 12(6), which is generally understood to apply only to arbitrations seated in Singapore. Because Section 12(6) is primarily intended for arbitrations seated in Singapore and does not necessarily provide a mechanism for the direct enforcement of interim measures issued by foreign-seated tribunals,

14) Born, n. 11 above, at 2699.

15) All orders or directions made or given by an arbitral tribunal in the course of an arbitration are, by permission of the General Division of the High Court, enforceable in the same manner as if they were orders made by a court and, where permission is so given, judgment may be entered in terms of the order or direction.

16) Paul Tan, etc., *The Singapore International Arbitration Act: A Commentary*, 2023, 156.

there was a concern that such foreign orders might fall through the gap. To address this, Singapore introduced Section 12A, which allows parties to apply directly to a Singapore court for interim measures for assistance of foreign-seated arbitrations. Regarding this point, the Singapore approach reflects a strategic legislative choice to align itself more closely with the structure of the English Arbitration Act 1996.¹⁷⁾

Further, unlike Japan's amended Arbitration Act, which introduces a statutory monetary penalty system for violations of certain interim measures, Singapore's system does not impose a monetary penalty for such violations.

III. Other Amendments Strengthening the Role of Local Courts

In addition to judicial assistance for the enforcement of interim measures, the 2023 amendments include several reforms aimed to strengthen the role of courts in supporting arbitral proceedings and thus can build international credibility for Japan as a seat of arbitration.

1. Translation

Under Article 46(2) of the former Arbitration Act of Japan, the petitioner was generally required to submit Japanese translations of the arbitral award and other relevant documents when seeking judicial support or enforcement. The amendments relaxed this requirement concerning the submission of translations in domestic court proceedings related to arbitration. Based on the amendments, under Article 46(2), local courts may, in their discretion, waive, in whole or in part, the requirement of submitting Japanese translations, after hearing the opinion of the opposing party. Also, Article 47(2) mirrors Article 46(2) and the Japanese translation of the written order for interim measures can be similarly waived at the court's discretion.

This change was intended to address the criticism that the requirement of the Japanese translation imposes financial costs and can be time consuming (the whole part of the arbitral award is not necessarily always indispensable for the judge to examine), and thus can hinder the swift progress of the proceedings and, consequently, impede the growth of international arbitration in Japan.¹⁸⁾ As a result, the amendment has reduced such procedural burden and facilitated a smoother interaction between arbitral proceedings and local courts in Japan.

2. Jurisdiction

Another vital amendment concerns the jurisdiction of Japanese courts related to arbitration. Article 5(2) of the amended Arbitration Act allows parties to file a petition regarding a proceeding before the Tokyo or Osaka District Courts, if the place of arbitration is Japan,

17) Leng Sun Chan, *Amendments to the Singapore International Arbitration Act*, *Arbitration: The International Journal of Arbitration, Mediation and Dispute Management*, Volume 76, 2010, 203.

18) Supplementary Explanation of the Interim Draft of the Amendment of the Arbitration Act [仲裁法等の改正に関する中間試案の補足説明], 32-35.

regardless of the default jurisdiction provided in Article 5(1).

This amendment relates to the amendment discussed earlier allowing the waiver of the Japanese translation requirement under Article 46(2). To make Article 46(2) effective, certain expertise in international arbitration and English proficiency will be desirable, and thus, the Tokyo and Osaka District Courts were selected to build such competence. By concentrating arbitration-related cases in courts with greater experience and expertise in international dispute resolution, including the newly established "Business Court" in Nakameguro (housing the Intellectual Property High Court and the Nakameguro Office of the Tokyo District Court), the government expects to promote consistency and efficiency in providing judicial support for arbitration and enhance the overall credibility of Japan as a seat of arbitration.¹⁹⁾

IV. Concluding Remarks

As discussed above, recent amendments to the Arbitration Act of Japan have strengthened the effectiveness of arbitral interim measures within the Japanese legal framework. Compared with other jurisdictions, the Japanese approach adopts a unique system of integrating arbitral interim measures into the existing civil execution system rather than directly incorporating the enforcement framework of the UNCITRAL Model Law. Together with other amendments, these developments demonstrate Japan's significant efforts to reinforce judicial support for international arbitration in Japan. Japan is still in the process of strengthening its position as a credible, international, and pro-arbitration seat, and it is hoped that these reforms will contribute to such objective.



19) *Ibid.*, 29-30.

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Comparison of Arbitrators' Impartiality and Independence with Attorneys' Conflicts of Interest

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I . The Issue at Hand and the Purpose of This Paper

In arbitration, the appointment of arbitrators is fundamentally based on the agreement of the parties. This is explained as respecting party autonomy¹⁾. Furthermore, Japan's Arbitration Act does not contain specific provisions defining arbitrator qualifications. However, the structure of Japan's Arbitration Act and the UNCITRAL Model Law (hereinafter referred to as the "Model Law") upon which it is based provides that if an arbitrator risks compromising fairness in the arbitral proceedings for any reason, they may be excluded through a challenge procedure.²⁾

Regarding grounds for challenging arbitrators, Article 18(1) of the Arbitration Act sets forth provisions following the framework of the first part of Article 12(2) of the Model Law.³⁾ Furthermore, the parties' right to challenge an arbitrator can only be effective if sufficient information regarding the grounds for challenging the arbitrator is provided. Therefore, it is considered necessary to impose a duty on arbitrators to disclose this information.⁴⁾ Accordingly, Japan's Arbitration Act, following the Model Law, explicitly requires arbitrators to disclose facts that "would be like to give rise to doubts as to their impartiality or independence" (Article 18, Paragraphs 3 and 4). If an arbitrator fails to appropriately disclose this information, they may be held liable for breaching this obligation.

1) Kazuhiko Yamamoto and Aya Yamada, *Law of ADR & Arbitration*, 2nd Edition (Japan Nippon Hyoronsha, 2015), p. 290; Takeshi Kojima and Takashi Inomata, *Tyusai-hou [Arbitration Law]* (Japan Nippon Hyoronsha, 2014), pp. 171, 177; Takeshi Kojima and Akira Takakuwa (eds.), *Tyusyaku to Ronten Tyusai-hou [Commentary and Issues: Arbitration Law]* (Japan Seirin-Shoin, 2007), pp. 102-103 [Masanori Kawano]; Kondo Masaaki et al., *Tyusai-hou Konmentaru [Commentary on Arbitration Law]* (Japan Shoji-homu, 2002), pp. 68-69, etc.

2) Koichi Miki and Kazuhiko Yamamoto, *Shin-Tyusai-hou no Riron to Jitumu [Theory and Practice of the New Arbitration Law]* (Japan Yuhikaku, 2006), p. 157; Yamamoto and Yamada, *supra* note 1), p. 333; Kojima and Inomata, *supra* note 1), pp. 200-202, etc.

3) Kojima and Inomata, *supra* note 1), pp. 204-205; Kondo et al., *supra* note 1), p. 74; Miki and Yamamoto, *supra* note 2), p. 157 [Kondo's statement], etc.

4) Kojima and Inomata, *supra* note 1), p. 216; Kojima and Takakuwa, *supra* note 1), p. 112 [Isamu Mori].

As is clear from the wording of the provisions, it is generally understood that the grounds for disclosure under Article 18(4) are broader than the grounds for challenge under Article 18(1)(ii). If it becomes apparent that an arbitrator failed to properly disclose to the parties the existence of grounds for challenge or the existence of facts subject to the disclosure obligation, and the arbitral proceedings have not yet concluded, the matter will be subject to a challenge procedure concerning that arbitrator. However, if an arbitral award has already been rendered, the matter may be raised as a ground for setting aside the award (Article 44(1)(vi) of the Arbitration Act) or a ground for refusal of recognition or enforcement of the award (Article 45(2)(vi) of the Arbitration Act).⁵⁾ Therefore, the proper disclosure by arbitrators of grounds for challenge or facts subject to the disclosure obligation is critically important for the credibility of arbitration itself.

The first Supreme Court decision addressing such a breach of an arbitrator's disclosure obligation information was the Supreme Court Decision of December 12, 2017 (Min-shū Vol. 71, No. 10, p. 2106)⁶⁾ (hereinafter referred to as the "2017 Supreme Court Decision"). Various scholarly articles⁷⁾ have been published regarding this 2017 Supreme Court Decision, some of which cite conflict checks for attorneys' conflicts of interest, centered on the "*IBA Guidelines on Conflicts of Interest in International Arbitration*" (hereinafter referred to as the "IBA Guidelines"),⁸⁾ as a benchmark.

Turning to conflicts of interest for attorneys serving as arbitrators, issues concerning conflicts with clients have long existed. In Japan, Article 25 of the Attorneys Act sets out provisions regarding conflicts of interest, which are defined as "cases in which an attorney may not perform their duties." Furthermore, Articles 27 and 28 of the Basic Rules on the Duties of Practicing Attorney (hereinafter referred to as the "Basic Rules"), which are internal regulations of the bar associations, define "cases in which an attorney may not perform their duties" in greater detail. These provisions represent the culmination of years of accumulated case law on attorney conflicts of interest and ongoing discussions within the bar associations. Their practical normative significance is considered extremely important.

5) Yamamoto and Yamada, *supra* note 1), p. 336; Kojima and Inomata, *supra* note 1), pp. 220-221; Kojima and Takakuwa, *supra* note 1), pp. 112-113 [Mori].

6) Commentaries on this decision include: Takashi Inomata, *Case Comment*, Civil Case Remarks No. 58, p. 130 (2019); Aya Yamada, *Case Comment*, Jurist No. 1531, p. 140 (2019); Tatsuya Nakamura, *Case Comment*, Jurist No. 1531, p. 294 (2019); Koichi Miki, *Case Comment*, Hogaku-kenkyu(Keio Univ.) Vol. 91, No. 9, p. 119 (2018); Shunichiro Nakano, *Case Comment*, Min-sho Vol. 154 No. 5 p. 1083 (2018); Norihiko Okada, "Judicial Interpretation", Jurist No. 1517 p. 96 (2018), etc.

7) Eiji Adachi, *Tyusai-handan Torikeshi-moushitate no Sairyō-kikyaku nituite [On the Discretionary Dismissal of Applications to Set Aside Arbitral Awards]*, in Shintaro Kato et al., ed., *Gendai-Minji-Tetsuzuki-hō no Kadai [Issues in Contemporary Civil Procedure Law]* (Japan Shinzansha, 2019), p. 693; Takashi Inomata, *Tyusai-nin no Kihi-jiyū [Grounds for Arbitrator Recusal]*, in Yutaka Takada et al., eds., *Minji-Sōshō-hō no Riron [Theory of Civil Procedure Law]* (Japan Yuhikaku, 2018), p. 3; Tetsuro Morishita, *Tyusai-nin no Kaiji-gimu/Tyōsa-gimu to Tyusai-handan no Torikeshi [Arbitrators' Duty to Disclose and Investigate and the Setting Aside of Arbitral Awards]*, in Noboru Kashiwagi et al., eds., *Kokusai-tōrihiki no Gendaiteki-kadai to Hō [Contemporary Issues in International Transactions and Law]* (Japan Shinzansha, 2018), p. 559, among others.

8) <https://www.ibanet.org/unit/Dispute+Resolution+Section/committee/Arbitration+Committee/3010>

Given the above, attorneys seeking to serve as arbitrators are required to conduct conflict checks for the purpose of disclosing to the parties the grounds for recusal as arbitrators and the grounds subject to the information disclosure obligation. Furthermore, as attorneys, they are also required to conduct conflict checks in their daily practice to determine whether a matter constitutes a "case in which they may not perform their duties" in relation to their clients.

Therefore, this paper aims to examine the code of conduct for attorneys intending to serve as arbitrators. This examination is based on discussions regarding arbitrators' disclosure obligations centered on the 2017 Supreme Court Decision, a comparison of the provisions in the IBA Guidelines with the conflict of interest provisions in Japan's Attorneys Act and Basic Rules, and consideration of the practical implications.

II. The Theory of the 2017 Supreme Court Decision and Subsequent Discussions

In this case, a dispute regarding a transaction arose between a claimant US corporation ("US Company X1") and another claimant US corporation ("US Company X2") and a respondent Japanese corporation ("Japan Company Y1") and another respondent Singaporean corporation ("Singapore Company Y2"), and the case was submitted to arbitration at the JCAA pursuant to a pre-existing arbitration agreement. Three arbitrators were appointed for the arbitration, with an attorney being selected by mutual vote as the presiding arbitrator ("Attorney A"). The arbitral proceedings were then conducted by the three-arbitrator tribunal, and an arbitral award was rendered in favor of Japan Company Y1 and Singapore Company Y2.

Subsequently, US Company X1 and US Company X2 filed a petition to set aside the arbitral award, alleging that grounds for setting aside the award existed under Article 44, Paragraph 1, Items 4, 6, and 8 of the Arbitration Act, because Attorney A had failed to disclose "facts that would be likely give to doubts as to the arbitrator's impartiality or independence" during the arbitration.

The facts were as follows. Attorney A was an attorney at the Singaporean office of a global law firm ("Global Law Firms B"). Approximately one-and-a-half years after Attorney A was appointed as the arbitrator, an attorney ("Attorney C") transferred to Global Law Firm B's San Francisco office. Attorney C represented Japan Company Y1's wholly owning parent company ("Parent Company D1"), and Parent Company D1's wholly owned subsidiary ("Subsidiary Company D2", a wholly owned sister company of Japan Company Y1, as co-defendants in a class action lawsuit in the United States. In addition, when Attorney C transferred to Global Law Firm B, he and his previous firm was required to notify the court of his resignation, but failed to do so. As a result, Attorney C simply transferred to Global Law Firm B, and continued to receive emails and other communications related to the class action as Subsidiary Company D2's legal representative.

The 2017 Supreme Court Decision established two key points. First, merely stating abstractly that facts falling under Article 18(4) of the Arbitration Act might arise in the future

do not constitute "already disclosed" under that provision. Second, it established the Supreme Court's first ruling on the interpretation that, for an arbitrator to be deemed to have violated the disclosure obligation prescribed in Article 18(4) of the Arbitration Act by failing to disclose facts falling under that provision, it is necessary that either the arbitrator was aware of the relevant facts before the conclusion of the arbitral proceedings, or that the facts could ordinarily have been discovered through reasonable investigation by the arbitrator.

Based on this, regarding the specific content of the latter point, the Osaka High Court (March 11, 2019, hanrei-jihō, No. 2453, p. 30) (hereinafter referred to as the "2019 High Court Decision"), after remand, stated the following interpretations. First, whether a fact falls under the information disclosure obligation prescribed in Article 18(4) of the Arbitration Act should be determined objectively based on the nature of the fact itself; it is not appropriate for the determination of whether a fact is subject to disclosure to be influenced by circumstances known only to the arbitrator. Second, it interpreted that for a violation of the disclosure obligation under Article 18(4) of the Arbitration Act to occur, it is necessary that the arbitrator was aware of the facts subject to disclosure in this case, or, even if not aware, that those facts could ordinarily have been discovered through reasonable investigation. These interpretations have the following two characteristics. First, the determination of whether facts fall under the disclosure obligation should be based on an objective standard, not a subjective one. Second, in situations where a general conflict check system is in place, arbitrators themselves are not required to always proactively and independently conduct conflict checks. If the normal operation of such a conflict check system is in place, it is considered that a reasonable scope of investigation under the information disclosure obligation has been conducted. If the subject matter of disclosure is not discovered through this, it does not constitute a violation of the information disclosure obligation. The latter point, in particular, is considered significant as a standard of conduct in practice.

III. Discussion on the Arbitrator's Duty to Investigate

The duty of arbitrators to investigate relevant facts for disclosure is understood as an inherent prerequisite to the disclosure obligation, and there is consensus affirming this view.⁹⁾ However, regarding its scope, two theoretical approaches exist: 1) the complete investigation duty, which holds arbitrators liable to investigate all objectively existing circumstances, and 2) the reasonable investigation duty, which holds that investigation within a reasonable scope suffices. The former approach is said to have no proponents globally.¹⁰⁾

Furthermore, even if one supports the concept of a reasonable duty to investigate, the following issues have been pointed out regarding the adjudication of breaches of the duty to

9) Tatsuya Nakamura, *Issues in Arbitration Law* (Japan Seibundo, 2017), p. 238; Yamamoto and Yamada, *supra* note 1), pp. 335-336; Kojima and Inomata, *supra* note 1), p. 216; Kojima and Takakuwa, *supra* note 1), p. 112 [Mori]; Miki and Yamamoto, *supra* note 2), p. 164 [Idei Statement, Miki Statement]. However, according to *ibid.*, p. 160 [Miki Statement, Idei Statement], some practitioners argue that the burden of the disclosure obligation is heavy.

10) Miki, *supra* note 6), p. 132; Okada, *supra* note 6), p. 99.

disclose information. Specifically, when disputing a breach of an arbitrator's duty to disclose information, the party alleging the breach must prove that the arbitrator knew of the existence of the facts subject to the duty to disclose, or that the arbitrator failed to conduct a reasonable investigation. This raises the issue of the burden of proof.¹¹⁾ It is generally noted that information and evidence concerning an arbitrator's breach of the duty to disclose is typically under the control of the arbitrator and the opposing party to the party asserting the breach.¹²⁾

IV. Code of Conduct for Arbitrators and Attorneys

Japan's Arbitration Act, following the Model Law, does not adopt the subjective standard set forth in the IBA Guidelines, which lists specific factual types regarding arbitrator disqualification grounds and facts subject to the duty of disclosure. Instead, it adopts only an objective standard that abstractly defines the subject facts. However, practical examples regarding grounds for arbitrator recusal and facts subject to disclosure obligations are scarce. While the 2017 Supreme Court decision holds significant theoretical importance, it is merely one example of a possible violation of the disclosure obligation. Consequently, the IBA Guidelines are referenced as a behavioral and evaluative standard in many academic discourses.¹³⁾

When an arbitrator is an attorney, conflicts of interest are strictly scrutinized not only in their role as an arbitrator but also in their general practice as an attorney. The Attorneys Act and the Basic Rules define such conflict as "cases in which an attorney may not perform their duties." Article 25 of the Attorneys Act defines cases where an attorney may not perform their duties due to conflicts of interest. The purpose of this provision is generally understood to be: (1) protecting the interests of the parties, (2) ensuring the impartiality of the attorney's performance of duties, and (3) maintaining the dignity of the attorney. It is explained as being necessary to secure public trust in attorneys, who bear the important mission of upholding fundamental human rights and realizing social justice (Article 1 of the Attorneys Act).¹⁴⁾

Differences between the IBA Guidelines' arbitrator conflicts and Japan's Attorneys Act conflicts are natural given their differing fundamental purposes, yet many similarities exist. The Orange List in the IBA Guidelines contains numerous provisions closely resembling those in Japan's Attorneys Act, particularly the Basic Rules' definition of "cases where an attorney may not perform their duties."¹⁵⁾ However, significant differences also exist. These include the fact that an attorney's duty does not require appropriate disclosure of the existence of conflicts to the client or opposing party, and the consequences of a violation: while it may lead

11) Inomata, *supra* note 6), pp. 132-133; Adachi, *supra* note 6), p. 121; Miki, *supra* note 6), p. 134.

12) Miki, *supra* note 6), p. 134.

13) See note 6) above.

14) Masahiko Takanaka, *Attorneys Act*, 5th Edition (Japan Sanseido, 2020), pp. 117-118.

15) Yoshimi Ohara, *Kokusai-Tyusai no Kousai-Hyoujyun [International Standards for International Arbitration]*, Hōritu-Jiho Vol. 87 No. 4 p. 6 (2015), p. 10.

to the setting aside of an arbitral award for an arbitrator, for an attorney it results only in exclusion from further participation in the proceedings.

V. Considerations

What kind of conflict check system should an attorney or law firm accepting an arbitrator role establish? While there are overlaps between the check system based on the IBA Guidelines and the check system based on cases where the attorney may not perform duties under the Attorneys Act and Basic Rules, the latter cannot cover the former. Therefore, it is considered efficient for attorneys who intend to accept duties as arbitrators to establish the former check system and utilize it for conflicts of interest arising in their regular attorney practice.

Furthermore, according to the 2017 Supreme Court decision and the legal principles applied by the 2019 High Court Decision, regarding the grounds subject to the duty of disclosure arising after an arbitrator's appointment, while prior consent from the parties cannot be obtained, it suffices to have confirmation through a conflict check conducted by an attorney newly joining the same firm. The arbitrator themselves need not proactively and independently conduct such checks. This means arbitrators are not burdened with excessive obligations in performing their duties. Therefore, establishing an objectively sound conflict check system is considered essential for accepting the role of arbitrator and performing duties while maintaining impartiality and independence.¹⁶⁾

Furthermore, advancing this understanding suggests that actively promoting disclosure of information to clients or opposing parties for the purpose of performing legal duties may help prevent future conflicts of interest. While this may increase the workload for attorneys accepting cases, it may be time to consider following the model of informed consent in healthcare.¹⁷⁾ At the very least, the code of conduct regarding arbitrators' conflicts of interest contains elements that could serve as a reference for the code of conduct concerning conflicts of interest when attorneys accept cases.¹⁸⁾



16) Nakano, *supra* note 6), p. 1095, also states the same point.

17) Miki and Yamamoto, *supra* note 2), p. 160 [Idei statement], p. 161 [Yamamoto statement], pp. 161-162 [Kojima statement]. Furthermore, the IBA Guidelines, while referring to this point, affirm that parties may waive potential future conflicts of interest by arbitrators in advance.

18) Miki and Yamamoto, *supra* note 2), pp. 161-162 [Kojima statement] appears to express the same view.

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The Reactivation of International Arbitration in Japan

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I . The Reactivation of International Arbitration in Japan

The globalization of the economy and society advances, the need to develop legal systems to respond to it increases. Contributing to this development is one of the major roles of lawyers. From this viewpoint, the author served as Secretary General and Executive Director of the Japan International Dispute Resolution Center (JIDRC) from 2018 to 2023 in order to lay the foundations for the Reactivation of International Arbitration in Japan.

This paper aims to describe the entire feature of the project of Reactivation of International Arbitration in Japan based on the author's experiences and acquired information during the period.

II . The Situation in Japan to Date concerning International Arbitration

The Japan Commercial Arbitration Association (JCAA), which is Japan's leading arbitral institution, has received on average around fourteen arbitration filings per year.¹⁾ This number is strikingly small when compared with the presence of Japanese companies in the world economy. According to statistics from the International Court of Arbitration of the International Chamber of Commerce (ICC), which Japanese companies use not infrequently, of the approximately twenty seven pending arbitration cases in 2025 in which a Japanese company was a party, Japan was designated as the seat of arbitration in only two cases,²⁾ with all of the remaining cases having a foreign seat. In other words, while Japanese companies do make use of international arbitration as a means of resolving international business disputes (although even then, the number of such cases is small relative to the presence of Japanese companies in the world economy), in many of those cases they are unable to secure Japan as the seat of arbitration.

1) <https://www.jcaa.or.jp/arbitration/statistics.html>

2) <https://jsumundi.com/en/document/pdf/publication/en-2025-icc-dispute-resolution-statistics/>

In international arbitration, the choice of the seat is critically important, as it determines which country's arbitration law will govern the procedure, which courts will have exclusive jurisdiction over matters such as challenges to arbitrators and applications to set aside awards, and whether an award will be characterized as a "foreign" arbitral award under the New York Convention and under the domestic law of various states. In practical terms, because hearings are usually held at the seat of arbitration in the absence of an additional agreement, the choice of seat also effectively determines the default location of the hearings. Furthermore, when viewed in light of the location of the institution's offices and the fact that its staff is ordinarily nationals of that country, using an arbitral institution in one's own country generally facilitates smooth communication with the institution's staff in the conduct of the proceedings.

Seen from this perspective, one can discern a tendency for Japanese companies, even where they agree at the contractdrafting stage to use international arbitration to resolve international business disputes, to lose the opportunity to (i) have disputes resolved under Japanese law by Japanese courts with which they are familiar, (ii) have Japan, their home jurisdiction, serve as the venue for hearings, and (iii) make use of a Japanese arbitral institution with which communication with the institution's staff can proceed smoothly, because they give way to the foreign counterparty on the choice of seat.

Of course, there are situations in which, due to relative bargaining power in business negotiations, Japanese companies must concede various points to their counterparties, including the choice of seat and arbitral institution. Nonetheless, in light of the presence of Japanese companies in the world economy, it remains the case that, even where Japanese companies enjoy strong bargaining power, there is a persistent tendency for them to be unable to designate Japan as the seat of arbitration in their arbitration agreements, and further, to be unable to designate a Japanese institution as the administering arbitral institution.

III. Background Factors Underlying the Situation in Japan

Why has such a tendency arisen? One factor can likely be found in a circumstance peculiar to Japan: namely, that there is almost no need for arbitration as a means of resolving purely domestic disputes. In domestic disputes between Japanese companies, the high degree of homogeneity within Japanese society means that it is not particularly difficult to reach a settlement through bilateral negotiation. Even where settlement efforts fail, resort to the Japanese courts offers an efficient and effective means of dispute resolution. The quality of the courts does not vary by region, and issues relating to jurisdiction rarely become serious.

The same does not hold true for international disputes. Disputes over international jurisdiction frequently become highly contentious, and international arbitration plays an important role in avoiding such conflicts. Yet in today's globalized environment, where even small and medium-sized enterprises are drawn into international transactions in a variety of ways, the reality is that, due to a lack of knowledge and experience in international

arbitration, Japanese companies and their legal advisers pay little attention to the designation of the seat and the arbitral institution and simply accept, without serious negotiation, arbitration clauses proposed by their counterparties.

Another factor contributing to the pattern described above is the situation where, even if a Japanese seat is proposed in actual contract negotiations, strong resistance from the counterparty leads to abandonment of that proposal. In such circumstances, the counterparty tends to invoke arguments along the following lines: (i) Japan lacks a dedicated, reasonably priced hearing facility with modern equipment for arbitration; consequently, hearings must be held at expensive hotels or the like, resulting in unnecessary expenditure, and (ii) there are too few Japanese arbitrators and counsel who are well versed in international arbitration procedure, so that the smooth and effective conduct of arbitration will be impaired if Japan is chosen as the seat and venue for hearings. While counterarguments can no doubt be advanced, there is also the problem that (iii) Japanese companies and their outside Japanese counsel lack sufficient knowledge and experience concerning international arbitration to formulate effective counterarguments and thereby conduct negotiations over arbitration clauses from a position of strength.

As a result, when a dispute actually arises, Japanese companies find themselves shocked to discover that the dispute resolution venue has been fixed abroad. Hesitant to conduct arbitration proceedings overseas, they may then seek to resolve the matter through settlement, even on disadvantageous terms.

IV. Lobbying the Japanese Government and the "Basic Policy on Economic and Fiscal Management and Reform"

When a dispute arises and companies discover, to their dismay, that the dispute resolution venue has been fixed abroad, they often hesitate to pursue arbitration proceedings in a foreign country and seek instead to settle the case, even on unfavorable terms. One might say that this involves a substantial economic loss amounting to what could be termed "lost GDP." This is a loss at the national level, and changing this situation would seem to require a national level project.

With this awareness, from around 2016 the Japan Federation of Bar Associations (JFBA) and the Japan Association of Arbitrators (JAA) began fullscale, coordinated lobbying efforts targeting the Japanese government and relevant stakeholders, including members of the Diet.

In these efforts, they sought to convey the points outlined above: the current state of Japanese companies in relation to international arbitration, the background factors that have given rise to that state of affairs, and the economic losses resulting from it. Building on this, they emphasized the need to (i) establish in Japan a dedicated, reasonably priced hearing facility for arbitration with modern equipment, (ii) develop Japanese human resources well versed in international arbitration, (iii) promote awareness of international arbitration among Japanese companies and lawyers, and (iv) conduct public relations activities to ensure that the resulting changes in Japan are recognized abroad. They stressed that, in order to

implement these measures, it would be necessary to advance the "reactivation of international arbitration in Japan" as a national project, with budgetary support.

In particular, with respect to point (i), they explained that in Asian cities such as Singapore, Hong Kong, Seoul, and Kuala Lumpur, dedicated, well-equipped, and reasonably-priced hearing facilities for arbitration have been established, reflecting a concerted effort to attract the designation of those cities as seats and venues for arbitration, thereby placing their domestic companies in a more advantageous position in dispute resolution. They also described the situation in Asia as a sort of "competition to attract arbitral seats."

These lobbying efforts bore fruit. In the Liberal Democratic Party's "New Judicial Diplomacy Strategy," released in the spring of 2017 by the Research Commission on Judicial System, the establishment of an "Asia-leading 'Japan International Arbitration Center' (tentative name)" was presented as a new policy goal, along with the promotion of Japanese lawyers' active participation in international arbitration (a similar policy was also set out in "Growth Strategy 2017" of the Political Party "KOMETI TO").³⁾ Subsequently, in the Japanese government's "Basic Policy on Economic and Fiscal Management and Reform" (the so-called "HONEBUTO Policy") announced in June 2017, "initiatives to build the foundation for reactivating international arbitration in Japan" were identified as one of the government's priority policies.⁴⁾ To promote these new policies, the "InterMinisterial Liaison Council on the Reactivation of International Arbitration" was established in September 2017 as a governmentwide body bringing together relevant ministries and agencies.⁵⁾

V. Building the Foundations for Reactivating International Arbitration in Japan and Commissioned Survey Projects

In 2018, the LDP's Research Commission on Judicial System set out, in a policy document entitled "Aiming for a Japan where no one is left behind," a three-page section on international arbitration, calling for the development of a "core international arbitration center in Asia" and for "human resource development and recruitment, development of global legal institutions, and public relations and awareness-raising."⁶⁾ That same June, the 2018 edition of the government's "HONEBUTO Policy" again highlighted "initiatives to build the foundation for reactivating international arbitration in Japan," this time as part of the "promotion of economic partnerships" within the section on "initiatives to address priority issues."⁷⁾ In other words, the "reactivation of international arbitration in Japan" came to be more firmly recognized as an economic policy issue.

Within the government's newly created "InterMinisterial Liaison Council on the Reactivation of International Arbitration," the Ministry of Justice and the Ministry of Economy, Trade and

3) https://storage2.jimin.jp/pdf/news/policy/135089_1.pdf

4) https://www5.cao.go.jp/keizai-shimon/kaigi/cabinet/honebuto/2017/2017_basicpolicies_ja.pdf

5) https://www.cas.go.jp/jp/seisaku/kokusai_chusai/index.html

6) https://storage2.jimin.jp/pdf/news/policy/137498_2.pdf

7) https://www5.cao.go.jp/keizai-shimon/kaigi/cabinet/honebuto/2018/2018_basicpolicies_ja.pdf

Industry served as the secretariat. As a first step towards implementing the new policy, the Ministry of Justice arranged a scheme under which a privatelyrun entity would, from April 2018, lease a portion of the NAKANOSHIMA National Government Building, located in central Osaka, and, as discussed in more detail below, convert that leased space and an adjacent area into a hearing facility for international arbitration.

In the summer of 2018, a competitive tender was conducted for "survey and research services concerning measures to reactivate international arbitration," and the selected private entity was commissioned to carry out comprehensive survey and research work on (i) how arbitration procedures are actually being used by Japanese companies, (ii) measures to promote the use of international arbitration at Asian arbitral institutions, and (iii) measures to promote "thirdcountry arbitration." This resulted, in March 2019, in the issuance of a report entitled "Survey and Research on Measures to Reactivate International Arbitration in Japan."

Then, in 2019, with budgetary allocations exceeding 780 million yen over five years, a new tender was conducted for "survey and related services concerning the development of infrastructure to reactivate international arbitration," under which the selected private entity was entrusted with (i) the establishment and operation of a dedicated hearing facility, (ii) the development of Japanese human resources familiar with international arbitration proceedings, (iii) awarenessraising activities on international arbitration for Japanese companies and lawyers, and (iv) overseas public relations activities to ensure that foreign stakeholders become aware of the changes taking place in Japan.

The entity that leased space in the NAKANOSHIMA National Government Building, provided a hearing facility for arbitration in Osaka, and carried out the 2018 survey and research as well as the survey and related services from 2019 onward was the JIDRC, a general incorporated association.

VI. Establishment of the JIDRC

The concept of establishing the JIDRC grew out of the need for an entity to undertake the task of leasing a portion of the NAKANOSHIMA National Government Building and operating a hearing facility for arbitration in Osaka.

By way of background, in December 2017, a privatesector coordinating body corresponding to the government's "InterMinisterial Liaison Council on the Reactivation of International Arbitration" had been established: the "Council for the Establishment of the Japan International Arbitration Center (tentative name)," a coalition of Japanese arbitration and ADRrelated organizations with the JFBA and the JAA serving as its secretariat.

In January 2018, this Council submitted to the Japanese government a proposal to use the NAKANOSHIMA National Government Building—vacated by the International Cooperation Department of the Ministry of Justice's Research and Training Institute—as a facility for arbitration and ADR hearings, as well as for public relations, research, training, awarenessraising, and human resource development. This proposal essentially reiterated, on behalf of a coalition of Japanese arbitration and ADRrelated organizations, a proposal

previously submitted in May 2017 by the Osaka Bar Association in the form of an "Opinion on the Effective Use of Facilities following the Relocation of the International Cooperation Department of the Research and Training Institute."⁸⁾

The proposal was well received by the Ministry of Justice, which serves as the secretariat of the government's "InterMinisterial Liaison Council on the Reactivation of International Arbitration," as being in line with the objectives of the "initiatives to build the foundation for reactivating international arbitration in Japan" set out in the "HONEBUTO Policy." As a result, leasing of a portion of the NAKANOSHIMA National Government Building by a private organization was approved as one of the measures to implement these initiatives.

Because the Council lacked legal personality, however, it could not itself be a party to a lease agreement. Accordingly, volunteers were recruited from among the members of the organizations belonging to the Council, and in February 2018 these individuals established a general incorporated association, the JIDRC. In the following month, the Osaka Bar Association joined as a corporate member, and a lease agreement was concluded for a portion of the NAKANOSHIMA National Government Building. Upon the establishment of this general incorporated association and the partial realization of its original objectives, the "Council for the Establishment of the Japan International Arbitration Center (tentative name)" changed its name to the "Council for the Operation of the Japan International Dispute Resolution Center," and began to function as an advisory body on the operation of the Center. Thereafter, various economic organizations also joined, representing the perspective of users of international arbitration.

After an opening ceremony in April 2018, the JIDRC began, from May of that year, to operate the leased portion of the NAKANOSHIMA National Government Building as a hearing facility for arbitration and as a venue for arbitration-related events. This became one of the principal activities of the JIDRC.

In addition, as a result of successful bids, the JIDRC was entrusted with the survey and research services in fiscal year 2018 and, from fiscal year 2019 onward, with the survey and related services described above. In 2018, it produced the report entitled "Survey and Research on Measures to Reactivate International Arbitration in Japan," and from 2019 it undertook various projects under the survey and related services framework, as described below.

Ⅶ. Establishment of Hearing Facilities exclusively dedicated for Arbitration in Japan

As noted above, from May 2019 hearing facilities were operated at the NAKANOSHIMA National Government Building, located in central Osaka.

However, the NAKANOSHIMA Building—particularly its "International Conference Room," which served as the main room for arbitration hearings—is a joint government facility shared by

8) https://www.osakaben.or.jp/speak/db/pdf/2017/oba_spk-149.pdf

multiple entities, including the Public Prosecutors Office and the International Cooperation Department of the Ministry of Justice's Research and Training Institute. As a result, despite the large number of requests to use the hearing facility since its opening in May 2018, a considerable number of these requests had to be declined because the rooms had already been reserved by other entities. The fact that the facility was not exclusively dedicated to arbitration hearings was therefore a source of difficulty.

By contrast, the new Tokyo facility, located on the fifth floor of the TORANOMON Hills Business Tower, a state-of-the-art high-rise completed in January 2020, was an exclusively dedicated hearing facility for arbitration and was reserved solely for the JIDRC's use following its opening ceremony in March 2020. The facility comprised two large hearing rooms and six small meeting rooms in addition to a reception area and office space for the secretariat, making it possible to conduct two arbitration hearings in parallel. In a typical arbitration, in addition to a large hearing room, three small meeting rooms are required: one each for the parties and one for the tribunal. The two large hearing rooms could be combined into a single larger space for major events, making it possible to hold large-scale arbitration hearings and to organize symposia and similar events on arbitration and ADR.

The facility was equipped with interpretation booths and equipment, monitors displaying real-time transcripts of the hearings. For the real-time transcripts, an AI-based automatic transcription system, eliminating the need for stenographers, was also envisaged. Video conferencing systems, teleconferencing systems, and other state-of-the-art technologies were equipped, with which a "hybrid-style hearing" combining in-person and remote participation could be easily implemented.

By providing this latest facility at reasonable cost, Japan was able to counter one of the main objections raised when Japan is proposed as the seat of arbitration, namely that "Japan lacks a dedicated, reasonably-priced hearing facility with modern equipment, so hearings must be held at expensive hotels or similar venues, resulting in unnecessary expenses." Indeed, based on experience with the Osaka facility, it became apparent that Japan, with its well-developed international airports offering excellent global access, convenient and safe transport links from those airports to the hearing facilities, and its overall convenience, safety, and security, is an attractive venue for hearings even in cases involving only non-Japanese parties, particularly in cases between Western companies and companies from emerging Asian economies. In such cases, Western companies that are reluctant to hold hearings in the designated emerging Asian seat sometimes propose Japan, which is convenient, safe, and easily accessible from the emerging Asian state, as the hearing venue. The establishment of the Tokyo facility thus made it possible to envisage a future in which Japan functions as a "third country" as the venue for hearings and the seat of arbitration.

That said, the opening of the facility in March 2020 coincided almost exactly with the onset of the COVID-19 pandemic. As a result, some arbitration hearings for which reservations had already been made prior to the opening had to be canceled due to the pandemic, and in practical terms the facility experienced difficulties in securing usage. Nonetheless, thanks to innovations enabling hearings to proceed even during the pandemic, the number of users

gradually increased, and during the Tokyo Olympic Games from midJuly to midAugust 2021, the facility was used exclusively by the Court of Arbitration for Sport (CAS) for its ad hoc and antidoping divisions in the host city. In addition, the development of various technologies and the accumulation of knowhow at the facility to support hybrid-style hearings, prompted by the need to respond to the pandemic, attracted worldwide attention.

The government budget for the "survey and related services concerning the development of infrastructure to reactivate international arbitration" was limited to five years from fiscal year 2019. When it became clear that there would be no comparable budgetary allocation from fiscal year 2024 onward, the Tokyo facility regrettably had to be closed in fiscal year 2023. However, its technology and knowhow were subsequently inherited by a privately established "Tokyo Facilities for Arbitration Hearings (TFAH)" located in ARK Hills MORI Tower in Central Tokyo.⁹⁾

VIII. Human Resource Development, AwarenessRaising, and Overseas Public Relations

The JIDRC's role was not limited to managing the Osaka and Tokyo hearing facilities. To counter the objection that "there are too few Japanese arbitrators and counsel with expertise in international arbitration, so choosing Japan as the seat and venue may hinder the smooth and effective conduct of proceedings," it was essential to develop such human resources, and the provision of various training programs was therefore one of the JIDRC's key tasks.

During the fiveyear period in which it carried out the abovementioned "survey and related services concerning the development of infrastructure to reactivate international arbitration," the JIDRC worked in cooperation with institutions such as the ICC, Pepperdine University (USA), Doshisha University, CAS, and the Japan Sports Arbitration Agency (JSAA) to provide training programs on international arbitration, international mediation, and sports arbitration. Notably, the sports arbitration training programs led to the operation of the pro bono services provided by volunteer lawyers during the Tokyo Olympic Games. In the area of international commercial arbitration, the JIDRC established, in cooperation with the Chartered Institute of Arbitrators (CI Arb) and the JAA, which are annually offering qualification courses in international arbitration. Additionally, in order to enable participants to study international arbitration regardless of time and place, the JIDRC also developed and offered an online elearning program. Moreover, a framework was created under which lecturers were dispatched to undergraduate and graduate programs at leading universities to deliver courses on international arbitration.

These arrangements have been maintained as part of the legacy of the JIDRC's fiveyear activities: the qualification course in international arbitration continues under the auspices of the CI Arb and the JAA, while the elearning program and the program for dispatching lecturers to universities have been taken over by the JAA.¹⁰⁾

9) <https://tokyofacilities.com/en/tfah/>

10) <https://arbitrators.jp/3034>; <https://arbitrators.jp/3155>; <https://arbitrators.jp/3289>

Awarenessraising among Japanese companies and their outside counsel concerning international arbitration (point (iii) above), and overseas public relations to publicize the changes resulting from the new policies and measures (point (iv)), were also of great importance. To this end, the JIDRC organized a wide variety of events over the fiveyear period, including international arbitration seminars for Japanese lawyers in cooperation with the JFBA and local bar associations, including those outside major cities, seminars for business enterprises in cooperation with economic organizations such as Japanese Business Federation ("Keidanren"), the Japan Chamber of Commerce and Industry, and various industry associations, and international arbitration seminars held pursuant to friendship agreements concluded with arbitral institutions in Japan and abroad. Seminars organized in cooperation with overseas arbitral institutions also served as activities to promote Japan as a seat and venue for arbitration: prior to the pandemic, some of these events were held in person overseas, such as in Berlin, Germany; during the pandemic, they were primarily conducted online.

The framework for organizing these seminars—including the friendship agreements with domestic and foreign arbitral institutions—has likewise been maintained as part of the legacy of the fiveyear "survey and related services concerning the development of infrastructure to reactivate international arbitration," and has been passed on to the JFBA and the JAA. In this way, the systems developed through the JIDRC's fiveyear activities continue to operate to this day.

IX. Concluding Remarks

I really remember a reaction of a Japanese lawyer some thirty years ago when I answered his question about my field of specialization, as follows:

"Arbitration is a rather niche area to specialize in, isn't it...?"

It is true that arbitration was not actively used in Japan in the past. However, I believe the situation has changed significantly, with arbitration now being used effectively in many fields. Even in the realm of international commercial arbitration, practices that go beyond the provisions of arbitration statutes and institutional rules have evolved into a set of widely shared, cuttingedge "universal" standards, and the ability to deploy these practices strategically will be a key factor in the success of Japanese companies' international business in the years to come. To act as a kind of "stimulant" to further boost this use, the Japanese government implemented the fiveyear "survey and related services concerning the development of infrastructure to reactivate international arbitration," and the various measures. And their legacy have already brought about substantial changes in Japan's international arbitration landscape.

I previous wrote that "over the past thirty years, I have devoted, albeit in my own modest way, all the strength I possess to the development of arbitration and ADR in Japan and throughout the world." My determination to do so remains unchanged today. Indeed, I wish that this paper will someday be regarded as such a record, marking a waypoint on the path toward the further evolution of international arbitration in Japan.



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Implementation of the Singapore Convention on Mediation in Japan*

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I. Introduction—Including an Overview of the Current State of Japanese Law

1. Accession to the Singapore Convention on Mediation and the 2023 Amendments to the Arbitration Act and the ADR Act

The Singapore Convention on Mediation (United Nations Convention on International Settlement Agreements Resulting from Mediation; hereinafter referred to as the "SG Convention") focuses on the unique characteristic of mediation as a procedure that seeks amicable resolution of commercial disputes and can help avoid the termination of business relationships. With the aim of promoting global use, the SG Convention seeks to establish a common framework for the domestic enforcement of the settlement agreements reached through international mediation. Under this scheme, a Contracting State against which enforcement is sought is required to determine, through its competent domestic authorities, whether any grounds for refusal of enforcement exist with respect to the settlement agreement, and to carry out enforcement domestically unless such grounds are found. In principle, this is a procedural structure that ensures the legitimacy of enforcement through the examination of grounds for refusal while respecting the substantive content of the settlement agreement, and it is modeled after the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (hereinafter referred to as the "New York Convention"). More generally, it can be said to belong to the category of schemes concerning the state's compulsory enforcement of the results of private dispute resolution.

Although the SG Convention applies to international commercial dispute mediation (Article 1 of the Convention), mediation under the Convention is defined as "a process, irrespective of the expression used or the basis upon which the process is carried out, whereby parties

*This paper was presented as the Japanese report on the first theme, "Implementation of the Singapore Convention," at the 10th Japan-Korea Civil Procedure Law Joint Conference held in Kyoto in 2024 and was published as Aya Yamada, *Implementation of the Singapore Convention*, 71 MINJISOSHOU-ZASSHI (JOURNAL OF CIVIL PROCEDURE) 185-194 (2025).

attempt to reach an amicable settlement of their dispute with the assistance of a third person or persons ("the mediator") lacking the authority to impose a solution upon the parties to the dispute" (Article 2(3) of the Convention), and there are no provisions regarding the qualifications of mediators. In this respect, it differs significantly from the regulations under domestic law. On the other hand, the grounds for refusal of enforcement include the invalidity or rescission of the settlement agreement under substantive law, the lack of determinacy or comprehensibility of the subject matter of the obligation, the total extinction of the obligation, a serious breach by the mediator of standards applicable to the mediator or the mediation, a failure by the mediator of disclosure of the circumstances that raise justifiable doubts as to the mediator's impartiality or independence, violation of the public policy of that State, and the incapacity of settlement by mediation (Article 5(1)(a)-(f) of the Convention), which share certain commonalities with the grounds for refusal of enforcement of arbitral awards.

Japan deposited its instrument of accession to the SG Convention on October 1, 2023, and it entered into force on April 1 of 2025. Accordingly, Japan enacted the Act for Implementation of United Nations Convention on International Settlement Agreements Resulting from Mediation (Act No. 16 of 2023) as its domestic implementing legislation¹⁾. As described below, Japan has made a declaration of opt-in reservation under the SG Convention (Article 8(1)(b) of the Convention)²⁾, and its domestic implementing law also stipulates that "The provisions of this Act apply when parties to the international settlement agreement have agreed that it could be enforced through civil enforcement based on the Convention or laws and regulations regarding the implementation of the Convention" (Article 3 of the Act).

In contrast to these international trends, the system of recognizing settlement agreements reached through domestic private ADR (mediation) proceedings as title of obligations has been debated since the enactment of the Act on the Promotion of the Use of Alternative Dispute Resolution Procedures (Act No. 151 of 2004) (hereinafter, the "ADR Act"). However, concerns were raised regarding the potential for the indiscriminate issuance of title of obligations, and the implementation of this enforcement system was postponed. However, with Japan's accession to the SG Convention, the significance of conferring enforceability and the effectiveness of promoting ADR have been reaffirmed. Furthermore, since a scheme to ensure the legitimacy of compulsory enforcement has been established by the Convention, the ADR Act was amended (Act No. 53 of 2023) to recognize specific settlement agreements with a final enforcement order³⁾ as enforceable title of obligations (Article 2, Item 5 and Article 27-2 of the ADR Act; Article 22, Item 6-5 of the Civil Enforcement Act). However, consumer

1) The provision is essentially based on the SG Convention, but the Convention provides for other form of relief alongside enforcement. This form of relief is the subject of a settlement agreement that can be invoked to resolve disputes in court. This is already recognized in Japan as an effect of a settlement agreement under the Civil Code (Article 695), so it is excluded from the Act for Implementation of the Convention.

2) Currently, 22 countries have joined the Convention, five of which, including Japan, have made similar declarations.

3) "Specific settlement" refers to "a settlement reached between the parties to a dispute in a certified dispute resolution procedure, where an agreement has been made that civil enforcement may be carried out based on said settlement" (ADR Act, Article 2, Item 5).

disputes, individual labor disputes, disputes concerning personnel and family matters (excluding periodic payment claims related to support obligations, etc. [Article 151-2, Paragraph 1, Items of the Civil Enforcement Act]), and disputes enforced under the SG Convention implementation laws are excluded from this provision (Article 27-3, Items of the ADR Act). Consequently, with regard to the scope of application of the SG Convention, the ADR Act grants enforceability not only to domestic B2B disputes but also to C2C disputes—which fall outside the scope of the SG Convention—and disputes concerning periodic payment claims related to support obligations (spousal support obligations, obligations to share marital expenses, obligations regarding child custody, and maintenance obligations) (Article 22, Item 6-5 of the Civil Enforcement Act).

Furthermore, concurrently with this legislation on mediation, the Arbitration Act—enacted in 2003—was amended (Act No. 15 of 2023), based on the 2006 UNCITRAL Model Law on International Commercial Arbitration, to grant enforceability to orders for provisional measures issued by an arbitral tribunal when an enforceability order has been made (Articles 49 and 50 of the Arbitration Act; Article 22, Item 6-3 of the Civil Enforcement Act)⁴⁾.

While Japan's decision to accede to the SG Convention was unusually swift (and came as a sudden turn of events) for the country, South Korea had already adopted the Model Law on Arbitration in 2016 and signed the SG Convention in 2019; thus, Japan has finally caught up with the global trend in international commercial arbitration and mediation.

2. Background of the Legislation

The background leading to this series of legislative measures includes, at the policy level, the promotion of policies to encourage the use of arbitration and ADR since the reform of judicial system (2001), as well as the recent economic policy of revitalizing international arbitration and mediation⁵⁾. Furthermore, it can be noted that following the enforcement of the ADR Act, many ADR organizations received certification by the Minister of Justice and accumulated practical experience without major issues⁶⁾, while non-certified ADR procedures operated by attorneys also increased; based on these achievements, private-sector ADR has gained a certain level of social credibility. In these current amendments, even among arguments opposing the first draft which provides for granting the enforceability of settlement agreement, no arguments regarding the abuse of enforceable title of obligation were raised; instead, the prevailing view was one of caution regarding the nature of private dispute resolution and the significance of voluntary performance. It is presumed that the accumulated practical experience, increased social credibility to the private-sector ADR, and the

4) Deliberations on the Implementation Act and amendments of ADR Act and Arbitration Act were conducted simultaneously by the Arbitration Law Subcommittee of the Legislative Council, a consultative body of the Ministry of Justice. This was done with a view to promoting the use of ADR, including arbitration, considering the synergy between arbitration and mediation.

5) It is symbolic that in 2020, the amendment to the Act on the Handling of Legal Services by Foreign Lawyers (Act No. 33 of 2020) added legal services related to international arbitration and international mediation cases to the scope of practice for foreign lawyers (see Article 2, Items 11 and 11-2, and Article 5-3 of the same Act).

6) As of 2024, 171 procedures provided by private-sector ADR have been certified.

international trend of promoting mediation formed the backdrop to this outcome.

3. Impact of Granting Enforceability

However, regarding the mobilization of state power to enforce the settlement agreements reached through mediation (hereinafter also referred to as "ADR settlements"), there are criticisms such as indifference to the expectation of voluntary performance unique to ADR and the trust between the parties that forms its basis, the loss of procedural freedom due to the absence of compulsory enforcement, and the risk of parties becoming overly cautious. While these criticisms pertain to the very essence of ADR, on the other hand, if one emphasizes the meta-level flexibility inherent in ADR and arbitration—arguing that the nature of the proceedings should be left to the parties' choice and agreement—it is also possible to respond that making the use of compulsory enforcement dependent on the parties' will results in a broader and more versatile ADR design that encompasses even the methods for realizing settlement agreements.

On the other hand, even assuming that enforceability is to be granted, a theoretical examination is necessary regarding the basis for conferring enforceability on ADR settlements—which are private contracts—including the role of the mediator⁷⁾. Furthermore, the inclusion of the mediator's conduct (such as violations of the standards applicable to the mediator or breaches of disclosure obligations) among the grounds for refusing enforcement⁸⁾ suggests that, although these are grounds raised by the parties and distinct from public policy, they may be viewed as introducing the concept of due process in a broad sense into mediation. While some may view this as a cause for concern regarding the over-structuring of procedures, balancing procedural flexibility with due process is a fundamental requirement for safeguarding the parties' autonomous status and the authenticity of their agreement; it is necessary to examine how this balance can be achieved depending on the type of dispute and the attributes of the parties. For example, in cases such as consumer disputes where a typical disparity between the parties is recognized, the standardization and strict application of due process may be considered; however, in B2B disputes, it may be appropriate to allow a broad range of flexibility in determining the extent of the mediator's involvement through individual agreements. In the future, it would be desirable to examine due process procedures tailored

7) Kazuhiko Yamamoto, *On Provisional Measures in Arbitration and the Enforceability of ADR Settlements*, 50 KEIO LAW REVIEW 309 (2023), at 331, states: "Theoretically, it is also a fact that this amendment harbors issues concerning the very foundation of enforceability....It is also desirable that progress be made in the ongoing debate regarding the enforcement of provisional measures and court settlements in foreign courts, and that some resolution be sought in the future."

8) Article 5, Paragraph 12, Items 5 and 6 of the Convention Implementation Act read as follows (identical to Article 5(1)(e) and (f) of the SG Convention):

(v) Where the mediator has violated laws, regulations, or other rules applicable to the mediator or the mediation conducted by the mediator pursuant to an agreement between the parties (limited to those not relating to public policy), and the violation is serious and affects the conclusion of the international settlement agreement.

(vi) Where the mediator has failed to disclose to the parties facts that could give rise to doubts as to the mediator's impartiality or independence, and such facts are material and affect the conclusion of the international settlement agreement.

to specific types/parties of disputes and provide optimally designed ADR services, much like establishing specialized boutiques for diverse types of disputes. This kind of index is expected to further expand the social recognition of ADR.

4. Issues Specific to Japanese Law

While this report focuses primarily on the issues common to both Japan and South Korea, it also touches upon situations specific to Japanese law.

In Japan, there is an expression known as "the arrival of the Black Ships," and while this might be an apt analogy, Japan's recent accession to the SG Convention has resulted in differences in the qualifications of mediators between international and domestic mediation⁹⁾. Furthermore, specific settlements that can be enforceable in domestic mediation are now limited to those reached through mediation held by the certified ADR organizations. Thus, while in international mediation, ADR settlements reached through mediation—regardless of the mediator's qualifications and without being subject to the regulations of the ADR Act—are recognized as enforceable, domestically, even if the mediation is operated by local bar associations; those ADR organizations can operate legally without certification of ADR Act, but those are excluded from the scope of the current enforceability scheme of the Act unless it has been certified. While this can be seen as a logical consequence of the ADR Act's structure, which grants legal effect only to certified bodies, it appears to lack balance from a practical perspective¹⁰⁾.

Furthermore, although this is a slightly different point, consumer disputes and individual labor disputes have been excluded from the current enforcement scheme due to the inherent disparity between the parties. However, in cases where the consumer/worker is the creditor of the settlement agreement, or, where long-term installment payments have been agreed upon, granting the creditor enforceability is precisely what serves the principle of equity between the parties (the fact that disputes regarding payment of support or custody were exceptionally included in the scope of application likely stems from the same rationale). In the

9) Since conducting mediation as a business may conflict with the Attorney Act (Article 72) as unauthorized practice of law, the ADR Act stipulates that certification by the Minister of Justice is required for persons other than attorneys to conduct mediation as a business. As certification criteria, the Act requires mediators to possess various specialized expertise, as well as to seek advice and guidance from attorneys on the contract with the ADR organization, when they encounter substantial legal issues in the mediation process (ADR Act, Article 6, Item 5).

On the other hand, as stated in the main text, within the scope of application of the SG Convention Implementation Act, even when mediation is conducted domestically (e.g., at a conference room in Japan), as long as it is considered international commercial mediation, ADR Act certification system is not applied to the mediation, even when the mediator is a non-attorney, in order to ensure consistency with the Convention.

10) Under the Act on the Implementation of the SG Convention, international elements are recognized in cases where, for example, both parties are Japanese companies but one party's parent company is a foreign company; consequently, ADR settlements reached through proceedings conducted by a mediator who is not a lawyer are also enforceable (see Article 2, Paragraph 3, Item 1 of the Act; however, legal effects such as the suspension of the statute of limitations under the ADR Act [Article 25] do not apply). In any case, in commercial disputes where combinations of arbitration and mediation, such as med-arb, are frequently used, the fact that the qualifications for mediators and arbitrators differ may make it difficult to conduct proceedings smoothly.

future, it would be desirable to design the system to allow for the expansion of the current scheme—for example, by establishing special provisions for private-sector ADR procedures tailored to specific types of disputes (e.g., consumer, family, construction etc.)—and to enable the selection and structuring of resolution procedures with a view not only how to reach an ADR settlement but also to the realization of the agreement (though realization methods are not limited to judicial civil enforcement).

II. Basis and Justification for the Enforceability of ADR Settlements

1. Justification for Enforcement Based on Settlement Agreements Other Than Court Judgments

In civil enforcement, substantive legitimacy depends on the likelihood of the legal rights that the creditor claims and its immediate enforceability; under the system of "title of obligation," it is sufficient to confirm the existence of a valid title of obligation with final enforcement order. Then it satisfies the requirements for substantive legitimacy¹¹⁾. In the case of a title of obligation based on an agreement between the parties, this substantive legitimacy is not based on a "judgment" of the existence of substantive rights¹²⁾ but rather on the high probability of consistency between the recorded content and the agreed-upon legal rights and obligations, given the formation of the agreement is based on true intents of both parties. At the same time, procedural legitimacy should be ensured by guaranteeing the debtor an opportunity to participate in the agreement forming process of establishing the title of obligation, thereby justifying civil enforcement through the guarantee of both substantive and procedural legitimacy¹³⁾.

Applying this to this ADR settlement enforcement scheme, regarding substantive legitimacy, the authenticity of the agreement is primarily guaranteed by the procedures based on the agreed-upon standards and by the mediator implementing them. Furthermore, the creditor is required to obtain enforcement order at court to make the settlement agreement enforceable, and the parties are provided with an opportunity to present arguments and evidence, and, if necessary, provided with the opportunity for an immediate appeal to the enforcement order (or the decision to deny the creditor's application). It creates a dual system –mediation and court order procedure--to guarantee the legitimacy of the agreement and that can be described as a prudent procedure (however, since there are no general provisions regarding the stage at which the mediator becomes involved, the term "dual" does not imply uniformity). Regarding procedural legitimacy as well, the mediator's mediation allows for a more substantial opportunity for the debtor to participate in the proceedings (compared to direct negotiations or third-party intervention in mediation without established rules), and it

11) Morio Takeshita, *Substantive Law and Procedural Law in Civil Enforcement*, in: his, *SUBSTANTIVE LAW AND PROCEDURAL LAW IN CIVIL ENFORCEMENT* (Yuhikaku, 1990 [first published 1984]), 45, at 55.

12) Teiichiro Nakano and Masaaki Shimomura, *CIVIL ENFORCEMENT ACT* (revised)(Seirin-shoin, 2021), at 151.

13) See Takeshita, *supra* note 11, at 55 ff.; Yamamoto, *supra* note 7 at 312; *COMMENTARY ON THE CIVIL ENFORCEMENT ACT* (2nd ed.) (Kobundo, 2022), at 135 [Shusuke Kakiuchi].

also enables this participation to be objectively documented. Furthermore, as mentioned above, by requiring the parties' agreement to civil enforcement, both parties are compelled to make an explicit determination regarding their own legal status with respect to enforcement; at the same time, it can be said that there is procedural involvement in the sense that they are selecting a procedure that involves weighing enforceability against voluntary performance.

Comparing this to (i) notarial instrument authorizing enforcement (Civil Enforcement Act, Article 22, Item 5) and (ii) arbitral awards (same Act, Article 22, Item 6-2), which are also enforceable titles of obligations other than court judgments,

(i) notarial instrument authorizing enforcement is considered to be a document in which a notary public, acting as a public authority, certifies the substantive validity of the agreement; it is a title of obligation that has been confirmed as valid under substantive law (Notary Act, Article 26) and includes a statement of the debtor of acceptance of enforcement. However, since the notary public becomes involved only after the agreement has been reached, and there is no procedure for the notary public to verify its validity above, the verification of the validity of the agreement-forming process is necessarily limited. This can be said to reflect a balance with the fact that the scope of enforcement based on this title of obligation is limited to monetary claims.

(ii) With regard to arbitral awards, substantive and procedural legitimacy is based on the arbitration agreement by all parties seeking arbitration in lieu of litigation, the assurance of procedural safeguards during the decision-making process under the Arbitration Act, and the fact that these are determined by the arbitral tribunal and a court issuing enforcement order.

With regard to mediation as well, substantive legitimacy is confirmed by an impartial third party (see Article 5(1)(f) of the SG Convention regarding grounds for refusal of enforcement), and regarding procedural legitimacy, if procedures are conducted in accordance with the applicable rules and standards under the agreement to use mediation¹⁴⁾ (see Article 5(1)(e) of the SG Convention regarding grounds for refusal of enforcement), the debtor's opportunity for substantive participation is considered to be guaranteed (otherwise, grounds for refusal would likely be asserted in the enforcement proceedings). That said, it can be pointed out that, compared to arbitration, the institutional safeguards for procedural legitimacy are weaker (relying on case-by-case proof), and in that respect, it seems that the adoption of the SG Convention scheme has expanded the scope of justification of enforcement. However, in Japan, the fact that the ADR Act requires parties to agree enforceability if they want to make the settlement as a title of obligation (opt-in) strengthens procedural legitimacy in a standardized and institutional manner. This can be seen as a manifestation of a policy unique to Japanese law.

14) See Tokyo High Court Judgment of June 22, 2011 (2116 HANREI-JIHO 64). Since a settlement agreement effectively ends the dispute (Civil Code, Articles 695 and 696), to that extent, the mediation agreement is valid and effective, and is based on the parties' intention to seek alternative dispute resolution through settlement. This can be said to be similar to arbitration. If so, it seems reasonable for the state to assist in the compulsory enforcement of the resolution through an enforcement order or similar means.

2. Comparison with Settlement Agreements Reached Through Bilateral Negotiations

From this perspective, the following arguments can be cited to justify the enforceability of ADR settlements: (i) the mediator's simultaneous assurance of substantive legitimacy (the genuineness of the agreement) during the settlement process (mediation); (ii) the ex post assurance of substantive legitimacy through the enforcement order procedure; and (iii) the mediator's compliance with the rule or standards (guidelines) applicable to the specific case and the assurance of procedural legitimacy through the enforcement order procedure. Regarding point (iii), it is often considered that the guarantee of the debtor's opportunity to participate in the proceedings can be confirmed in a more standard manner based on the minimum due process requirements¹⁵⁾. The agreement on civil enforcement will also serve as the basis for substantive and procedural legitimacy.

Now, since the SG Convention does not stipulate the manner in which an impartial third party participate the negotiation as a mediator, even if the mediator is involved only in the final stage of reaching an agreement, this will not constitute grounds for refusing enforcement as long as it aligns with the rules/standards intended by the parties (excluding those related to public policy) and the other requirements are met. Regarding involvement after an agreement has been reached, this presents a difficult issue; however, if (i) the substantial confirmation of the parties' intent in relation to the specific case is recognized, (ii) this is asserted and proven, and (iii) no violation of the applicable rules/standards is found, it may be necessary to recognize the enforceability of the settlement¹⁶⁾.

Under Japanese law, if there were no restrictions on the enforceable title of obligation in such cases, the relationship with the notarial instrument authorizing enforcement—which imposes restrictions on the scope of claims—could be called into question. However, as a thought experiment, it is possible to consider whether there is room to recognize enforceability in situations where the mediator's involvement is minimal (i.e., a settlement agreement reached through bilateral negotiations). For example, if parties choose a settlement through bilateral negotiations to resolve a dispute, and their intention to end the dispute (i.e., not to file a lawsuit) is clearly recognized upon the formation of a settlement agreement as a contract (Civil Code, Article 695), it is theoretically possible to interpret this as a reasonable intention to resolve the dispute to the extent that it can be equated with an ADR settlement that anticipates the realization of settlement agreements through civil enforcement. Generally, the enforceability of an arbitral award is based on the reasonableness of the intention to choose dispute resolution as an alternative to litigation. If there are cases where the same rationality of intent can be recognized in a settlement agreement reached through bilateral negotiations—provided that the formation of the settlement agreement is a

15) Even if “rules/standards” were asserted that deny one of the parties the substantial opportunity to participate, they would likely be deemed to be “matters relating to public order” (see Article 5(1)(f) of the Convention and the parenthetical note in Article 5, Paragraph 12, Item 5 of the Convention Implementation Act).

16) If the confirmation by the “mediator” (in quotation marks) results in a partial modification of the agreement, it would be easy to say that condition (1) has been satisfied; however, whether cases where the “mediator” confirms that no modification is necessary can be excluded would inevitably depend on the facts of the case.

condition—then, from a legislative perspective, it is conceivable that a legal policy, which expands this scheme to the settlement agreement without mediator's involvement, could be adopted under the current enforcement framework, at least not excluding a priori. I'd like to quickly add, this policy would involve establishing a system of public adjudication through means such as enforcement orders, thereby recognizing the substantive and procedural legitimacy of settlement agreements reached through bilateral negotiations.

However, under such a system, the absence of (i) must be compensated for by (ii), which further increases the costs to the courts. Furthermore, due to difficulties in proving their claims and other factors, the parties face low predictability regarding the enforceability of the settlement agreement, and it must be acknowledged that the costs remain extremely high¹⁷⁾. Furthermore, it is difficult to correct irrational behavior in bilateral negotiations¹⁸⁾, and the presence of an impartial third-party (mediator) is beneficial for rationalizing the negotiation process. That said, in principle, basing grounds for enforceability on a settlement agreement is not inconsistent with other forms of title of obligations, such as notarial instrument authorizing enforcement. Also, theoretically, the scheme does not exclude the enforceability of settlement agreement through bilateral negotiation, recognition of enforceability in the results of negotiations between attorneys, for example, are not necessarily ruled out in Japan.

III. Remaining Issues

While long-argued legislative goals regarding arbitration and ADR have been achieved, numerous practical challenges remain regarding enforcement, such as how to explain, treat or withdraw parties' enforcement agreements, how to treat the settlement agreement of which content is difficult to convert into the enforceable instruments, measures to address unsuccessful enforcement, and responses to actions to dispute the claims. Furthermore, to promote the active use of arbitration and ADR, it is necessary to explicitly acknowledge the diversity of ADR methods—such as those not intended for civil enforcement—and to design clear procedures that take into account the feasibility of enforcement based on the type of dispute. Additionally, there is an urgent need to enhance soft measures, such as outreach to potential users and legal practitioners advising on procedure use, training for mediators and arbitrators, the widespread adoption of (multi-tiered) dispute resolution clauses, and improvements to institutional rules/standards.

In the medium to long term, as mentioned above 1.(1), institutional measures will be required to address the discrepancies between international and domestic mediation, and there may be room to reconsider the structure of the certification system provided under the ADR Act. Furthermore, regarding settlement agreements reached through ODR (Online Dispute Resolution), it is currently anticipated that existing systems will handle them. While

17) Under a system where an ODR platform records negotiations and documents agreements in place of a mediator, costs may be reduced.

18) As insights from behavioral economics demonstrate, various biases and irrationalities are inherent in negotiations.

ODR is to some extent dependent on developing technology, making it difficult to establish normative frameworks in advance, the use of ODR may increase in a country like Japan where both the number of lawsuits and the number of ADR and arbitration cases are low, so this development warrants close attention.

Internationally, the scope of disputes with an international dimension arising from cross-border transactions is expanding, particularly in countries such as South Korea, and the distinction between B and C is effectively blurring. Consequently, the importance of ADR and arbitration—which, in practice, serve as primary and final resolution procedures—appears to be entering a new phase. It is desirable to use this conference as an opportunity to further expand the exchange of information and personnel regarding ADR and arbitration, and to actively promote the sharing of training and other resources among countries that share common procedural foundations.





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Just and Due Procedure of ADR in relation to constitutional requirements¹⁾

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I . Introduction

In addition to litigation, alternative dispute resolution ("ADR") provides an alternative framework for resolving civil disputes. In both systems, civil disputes are resolved through structured procedures. While the Arbitration Act sets out certain rules governing arbitration – which can be considered the quintessential form of ADR –, the procedural framework in arbitration is in principle determined by the parties' agreement²⁾. Of course party autonomy is not absolute. The procedure conducted in violation of the "rules regarding public policy", the resulting arbitral award may be set aside or refused recognition and enforcement³⁾.

In practice, it is uncommon for parties to stipulate detailed procedural rules, and even more unusual for proceedings to depart from such an agreement. Nevertheless, in order for arbitral tribunals and other ADR bodies to conduct proceedings with confidence, it is important to clarify the specific requirements of procedural public policy⁴⁾.

Although the efforts towards international harmonization are gradually advancing, they remain incomplete⁵⁾. It is therefore necessary to examine procedural public policy from the perspective of Japanese law.

1) This article is based on "Just and Due procedure of Arbitration" Journal of Japanese Arbitration and ADR Vol. 18 p.1ff, with some additions and revisions. I would like to sincerely express my gratitude to Japan Association of the Law of Arbitration and Alternative Dispute Resolution for granting permission to reprint this article.

2) Arbitration Act Art.26 (1) prescribes that "The rules of an arbitration procedure which the Arbitral Tribunal should observe shall be as provided by the agreement of the parties, provided, however, that such rules shall not violate the provisions concerning public order provided in this Act." (https://www.japaneselawtranslation.go.jp/ja/laws/view/2784/en#je_ch8).

3) Arbitration Act Art.44 (1)(vi) prescribes that the composition of the Arbitral Tribunal or the arbitration procedure is in violation of "Japanese laws and regulations". And Arbitration Act Art.45 (1)(vi) prescribes that 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". This difference stems from the provisions governing international jurisdiction. This difference stems from the provisions governing international jurisdiction. Article 44 shall apply to the case where the place of arbitration is in Japan, and Article 45 and 46 shall apply to the case where the place of arbitration is in Japan and the case where the place of arbitration is outside Japan (Art. 3(1),(3)).

II. ADR and the Constitution of Japan

The Constitution is the supreme law in Japan (Art. 98), and its requirements undoubtedly form part of public policy. The Constitution establishes the judiciary as the body that resolves legal disputes and sets forth the fundamental principles governing judicial proceedings. Article 32 of the Japanese Constitution of Japan guarantees not only "access to the courts", but also the right to "a fair trial" conducted in accordance with prescribed procedural principles.

Indeed, Japanese case law recognizes the final, conclusive and binding determination of "*substantive legal rights and obligations*" as an "inherent function of the judiciary," and which is constitutionally guaranteed through litigation⁶⁾.

Even though the precise legal effect of an arbitral award – particularly with respect to whether it has *res judicata* effect – is at issue⁷⁾, an arbitral award is accorded the same legal effect as a final judgment (Article 45 of the Arbitration Act). Arbitration undeniably serves as an alternative mechanism to the definitive resolution of disputes, because an arbitration agreement operates as a bar to litigation. Since an arbitration agreement constitutes a

4) A violation of procedural public policy constitutes a ground for refusal under the prevailing view. Koji Takahashi, "Nihonhou kara mita tekiseitetzuzuki paranoia (due process paranoia)-hanreinokentou to shohousen- ("Due Process Paranoia" from the Perspective of Japanese Law: A Review of Case Law and Proposed Solutions)" (JCA Journal, Vol. 66, No. 8, p. 13 ff.), argues that arbitral tribunals, fearing a refusal of recognition or enforcement, "tend to hesitate to pursue bold procedural steps," which "leads to prolonged proceedings and the resulting escalation of costs." As a measure to curb this "due process paranoia," he proposes that procedural public policy should not be made a requirement for the annulment of an arbitral award or the refusal of its recognition and enforcement. Since many aspects of procedural public policy are already grounds for the annulment of an arbitral award (Arbitration Act Article 44(1), particularly subparagraphs 3, 4, 6, and 8 thereof), it does not seem necessary to make them grounds for refusal of recognition and enforcement as well. However, there is a time limitation for setting aside an arbitral award (Article 44, Paragraph 2), and for arbitral awards where Japan is not the seat of arbitration, setting aside the award is not an effective remedy; therefore, a violation of procedural public policy should also be a ground for refusal of recognition or enforcement. Indeed, it is undesirable for the requirement of due process to have a chilling effect not only on arbitral tribunals but also on ADR providers. To eliminate or reduce this chilling effect, the content of the fundamental principles that must be observed in dispute resolution proceedings and the minimum degree of compliance required should be clarified in order to ensure that proceedings are conducted with confidence.

5) Masaharu Onuki, "kokusaishojichusai no kihonjitemukoza" ("Basic Practice of International Commercial Arbitration (7)") JCA Journal, Vol. 70, No. 4, p. 32, notes that "while the globalization and standardization in international commercial arbitration are progressing, the conduct and style of proceedings differ depending on whether the legal culture is civil law-based or common law-based."

6) See the decisions of Supreme Court; June 30, 1965, Minshu, Vol. 19, No. 4, p. 1089; March 2, 1966, Minshu, Vol. 20, No. 3, p. 360; May 8, 2008, Kasaigeppo, Vol. 60, No. 8, p. 51, etc. Conversely, Supreme Court held that constitutional guarantees do not extend to procedures where the right/obligation is not determined to be final and conclusive, and that the constitutional provisions regarding the judiciary do not apply to civil matter.

In my view, some kind of binding effect should be recognized for decisions or adjudications (whether it is *res judicata* or not is a matter for separate consideration), and the application of constitutional principles such as due process conducted by court or other state agencies should not be denied (the opinions of Justice Tahara and Justice Nasu in the Supreme Court's Judgement 2008 are persuasive and should be upheld). This applies equally to administrative procedures and quasi-judicial procedures, even if they are not conducted by courts. Shigeki Matsui, in "saiban wo ukeru kennri" ("The Right to a Trial") p. 249 (Nihonhyoronsha, 1993), opposes the previously dominant view that has "interpreted Articles 32 and 82 of the Constitution in conjunction."

preclusive defense, the parties are barred from litigation. Parties waive their right to a court trial in exchange for resolution via arbitration. Accordingly, the legitimacy of arbitration as a substitute for litigation must also be examined from a constitutional perspective.

A similar logic applies to other forms of ADR. In civil mediation, mediation records are recognized as having the same legal effect as a court-approved settlement (Civil Mediation Act Art. 16), and in family mediation, mediation records are recognized as having the same legal effect as a final judgment or adjudication (Family Court Procedure Act Art. 268 Para.1). While the precise legal characterization of this effect remains debated, these mechanism clearly serve to bring a final resolution to disputes. It therefore follows that procedural fairness is also required in these proceedings.

More broadly, ADR shares with litigation the fundamental function of dispute resolution. As such, it is arguably reasonable to assume that constitutional principles applicable to litigation also inform the legitimacy of ADR procedures⁸⁾.

It is generally understood that the Constitution imposes the following requirements on litigation: (1) equality and fairness (Art. 14), (2) public hearings (Art. 81), (3) timely adjudication, and (4) due process, including the right to a hearing (Art. 32)⁹⁾. The following discussion thus focuses sequentially on these 4 requirements.

III. Equality and Fairness

Parties must be treated equally and fairly in dispute resolution proceedings (Arbitration Law Art.25 (1)). This principle reflects Art. 14 of the Constitution with regard to proceedings in national courts, such as litigation. In arbitration, Art. 25 Para. 1 of the Arbitration Act explicitly stipulates this and is also an internationally recognized¹⁰⁾.

Proceedings that favour one party cannot be regarded as legitimate. Adjudicators and

7) There is room for debate regarding the legal nature and substance of *res judicata*, the subjective and objective scope of its application, and procedural issues such as whether it constitutes a matter subject to ex officio investigation or a matter of defense. While it may be inappropriate to refer to this binding effect as *res judicata*, I will set aside this conclusion for the time being. Miyuki Watanabe, “*kokusaichusai niokeru chusaihandanno res judicata*” (“*Res Judicata of Arbitral Awards in International Arbitration*”) in Festschrift in Honor of Professor Yasuo Ueno on His 70th Birthday, p. 781 (Kobundo, 2017), recognizes that arbitral awards possess “*final and binding effect*,” but notes that “*arbitral awards based on the parties’ agreement*” do not “*fully align with court judgments in terms of treatment*” and points out “*differences arising from the arbitration’s nature of private law*” even with regard to their objective scope.

8) Takaomi Takizawa, “*chusainiokeru sihosugui*” (“*Judicialism in Arbitration*”) JCA Journal, Vol. 68, No. 6, p. 17, states that “under a system that guarantees the right to a final judgement in litigation, it is recognized, as an exception, that the other institutes other than courts may be entrusted with dispute resolution,” and refers to this as “judicialism.” Given that arbitration serves as an alternative to litigation, it is inappropriate to require arbitration to have the same procedural structure as litigation; rather, it must satisfy the minimum requirements necessary for it to function as an appropriate dispute resolution system, and clarifying the content and extent of these requirements remains an important challenge

9) See Teiichiro Nakano, “*minjisaiban to kenpo*”(“*Civil Trials and the Constitution*”) in “*minjitetsuzuki no genzaimondai*”(“*Current Issues in Civil Procedure*”) (Hanreitaimuzu 1989), pp. 12 ff.

10) Arbitration Law Art.25 (1) stipulates that “*parties shall be treated with equality in an arbitration procedure*”.

arbitrators conducting the proceedings must not only refrain from conducting proceedings in a manner that favours one party, but they must also avoid any conduct that could give rise to a reasonable suspicion of bias.

The neutrality of the adjudicator or arbitrator is therefore fundamental¹¹⁾. A decision rendered through a procedurally unfair process cannot be legitimized, even if it is correct under substantive law. Likewise, a dispute resolution system that fails to ensure procedural equality and fairness cannot be regarded as appropriate or reliable. Such deficiencies would lead not only to dissatisfaction from the parties, but also undermine the integrity of the system as a whole.

In all adjudicative proceedings, impartiality is essential. In litigation, mechanisms such as disqualification and recusal ensure judicial neutrality. Similar safeguards also exist in non-contentious proceedings, civil mediation proceedings classified as ADR, and family court proceedings (Non-Contentious Proceedings Act Art. 11 et seq., Civil Mediation Act Art. 9, Family Court Proceedings Act Art. 10 et seq.).

Arbitration adopts comparable principles. Arbitrators may be challenged not only where they *"fail to satisfy the requirements provided by the agreement of the parties"*, but also where there are *"reasonable grounds to doubt the impartiality or independence of the arbitrator"* (Arbitration Act Art. 18 Par.1). At the same time, the structure of arbitration introduces certain practical distinctions. In tribunals composed of three arbitrators, each party typically appoints one arbitrator, and those arbitrators jointly appoint a presiding arbitrator (Arbitration Act Art. 17 Para. 2). Although all arbitrators are required to act impartially, the expectations placed on party-appointed arbitrators differ in practice, and the party-appointed arbitrators are often expected to ensure that the appointing party's case is fully understood within the tribunal.¹²⁾ By contrast, the presiding arbitrator is expected to maintain a higher degree of neutrality. These differences may affect how challenges to arbitrators are assessed. Regardless of who appointed the arbitrators, they remain arbitrators, but the roles expected of them in the proceedings differ.

Nevertheless, all arbitrators must not only act impartially but also avoid any situation that could create doubts about their impartiality. This includes refraining from making any contract with parties or their representatives outside of the proceedings, and avoiding any form of

11) The same issue arises with respect to the administrative body. Arbitration institutions must carefully consider the candidates for arbitrators. The impartiality of candidates for arbitrators within an arbitration institution affects the fairness of the proceedings itself.

12) The role of arbitrators in a panel can be understood by referring to the roles of commissioners on the Labor Relations Commission. The Labor Relations Commission, where dispute between labor unions and employers (collective labor-management disputes) or between individual workers and employers regarding working conditions (individual labor-management disputes) is resolved, is composed of three commissioners, representing the public interest (public interest commissioners), representing workers (worker commissioners), and members representing employers (employer members). Labor and management representatives also participate in the review proceedings and express their opinions from their respective perspectives when the public interest commissioners issue an order. While all commissioners must remain neutral, there is a difference in the degree of neutrality required of each commissioner.

advisory involvement with either of the parties, even on matters unrelated to the case¹³⁾. As in judicial proceedings, both actual impartiality and the "*appearance of impartiality*" are required¹⁴⁾. This strict requirement of impartiality is reinforced by the disclosure obligations imposed on arbitrators¹⁵⁾. Prospective arbitrators must disclose any circumstances likely to give rise to doubts regarding their impartiality or independence (Arbitration Act Art. 18 Para.3). The scope of this obligation may vary depending on the arbitrator's role¹⁶⁾.

If proceedings are conducted in a manner that violates equality and fairness, the resulting award may be subject to challenge or denied recognition and enforcement. However, equality must be understood in substantive terms. Procedural management or intervention by the arbitrator – such as requesting further clarification or evidence – does not necessarily violate equality where it is directed at ensuring fairness. Moreover, where proceedings were in fact conducted fairly and the parties participated voluntarily, they should not be permitted to rely on minor institutional defects to challenge the outcome¹⁷⁾.

In consensual procedures such as mediation issues of equality arise less frequently. Instead, the focus shifts to the validity of consent. Agreements must not be obtained through improper means, such as misrepresentation or undue influence by the mediator. Transparency in process is therefore essential, as defects in consent may arise where relevant information is concealed.

IV. Public Procedure (Transparency)

Article 82 of the Constitution of Japan provides that trials shall be conducted and judgment

13) Shoko Shigeno, "saikojinminhoin ga kihijiyu ni gaitosuru chusainin ga kuwawatte okonawareta chusaihandan nituki torikesarenakerebanaranai to kaito saretai jirei—chugokushojihunsokaiketu no riron to jitumu (35)" ("A case in which the Supreme People's Court of China ruled that an arbitral award rendered with the participation of an arbitrator who was subject to grounds for recusal must be set aside—Theory and Practice of Commercial Dispute Resolution in China (35)") JCA Journal, Vol. 70, No. 4, pp. 14 ff., discusses a case in which the Supreme People's Court of China set aside an arbitral award because the presiding arbitrator had "met secretly with a representative of one of the parties and exchanged views on the details of the case."

14) The neutrality of the arbitration institution itself must also not be called into question. The arbitration institution must not be controlled by any specific company or its affiliated organizations. If it receives financial support, great care must be taken, as this could raise doubts about its impartiality. The Japan Center for Settlement of Traffic Accident Disputes, which faced skepticism at its inception, can be considered a success story.

15) See Shintaro Kato=Aoi Inoue, Kokusaichusai niokeru riekisouhann nikansuru IBA gaidorain-2024nenn kaisei no kousatu" ("IBA Guidelines on Conflicts of Interest in International Arbitration-A Review of the 2024 Amendments") Journal of Japanese Arbitration and ADR vol.20, pp1-9.

16) An arbitrator assumes this obligation to the appointing party based on being nominated as a candidate. Obligations toward the parties are contractual, whereas obligation toward the court is based on public law. The Supreme Court ruled that arbitrators should disclose to the parties not only "*facts of which they were aware*" but also "*facts that could ordinarily be ascertained through a reasonable investigation*" (Decision of December 12, 2017, Minjishu Vol. 71 No. 10 p. 2106).

17) This constitutes a forfeiture of rights based on the principle of good faith. Whether or not the parties were aware of the institutional defect regarding neutrality and safeguards is irrelevant. Parties who have voluntarily availed themselves of the proceedings and received neutral and fair procedural treatment should not be permitted to challenge the systemic defect.

declared publicly (Constitution Art. 82). Accordingly, litigation proceedings are, in principle, open to the public.

However, the scope of this principle has been at issue, particularly in light of the rise of interests such as privacy and trade secrets¹⁸⁾. The Supreme Court of Japan has held that Article 82 of the Constitution does not apply to judicial proceedings other than litigation. As a result, proceedings such as family mediation and adjudication are conducted in private (Family Affairs Procedure Act Art. 33), reflecting the need to protect highly sensitive personal and familial information and materials¹⁹⁾. Civil mediation and non-contentious proceedings are likewise conducted privately. In contrast, arbitration offers flexibility: the parties are generally free to decide whether to conduct proceedings publicly or privately. In practice, confidentiality is one of ADR's main attractions, and public proceedings are exceptional.

That said, transparency is an important element of procedural fairness. This does not mean that proceedings must be public in all cases; rather, the key distinction is between transparency between the parties and the public's right to access information.

Transparency between the parties is essential. Both in adjudicative and consensual ADR, the parties must have access to information to understand and participate in proceedings²⁰⁾. As a general rule, submissions, evidence, and procedural developments must be shared with both the tribunal and the parties. A lack of such disclosure risks "surprise" outcomes and undermines procedural legitimacy.

Nevertheless, exceptions may be justified. Because ADR is based on party autonomy, the parties may agree to limit disclosure, provided the procedure remains fair and reliable. For example, in disputes involving trade secrets, full disclosure to the opposing party may be undesirable. In such cases, limited disclosure may be permitted if adequate safeguards are in place, and if the tribunal is appropriately qualified and trusted. An arbitrator may allow limited disclosure in such a case, provided that adequate measures are in place to ensure the fairness of the procedure²¹⁾. This reflects the need to balance procedural fairness with substantive interests, such as confidentiality.

In consensual processes such as mediation, transparency plays a slightly different role. While full adversarial disclosure may not be required there, the process must still ensure that consent is informed and not impaired by the concealment of material information. This reflects the need to balance procedural fairness with substantive interests, such as confidentiality. Therefore, except in cases where emotional entanglements or other factors make it uncomfortable or inappropriate for the parties to meet face-to-face, mediation, conciliation or

18) See Matsui, (Note 6), pp. 219 ff.

19) See Tatsuya Tsutsumi, in Masaki Matsukawa, Yasunori Honma and Seiichiro Nishioka eds., "commentar jinjisoshoho · kajijikentetsuzukiho" ("Commentary on Personal Status Litigation Act and Domestic Relations Case Procedure Act Procedure Act") (Nihonhyoronsha, 2013), p. 177

20) The prevailing view denies the *res judicata* effect of a court settlement on the grounds of a lack of appropriate procedural safeguards. This means This is because disclosure to the parties concerned forms the basis of legitimacy.

21) For example, one possible approach would be for the procedural administrator—such as an arbitrator—to provide an appropriate summary of the information in question to prevent the opposing party from being caught off guard or suffering other disadvantages.

court-settlements are in principle required to be conducted with the parties present²²⁾. The practice primarily conducting by non-face-to-face hearing should be revised.

Article 82 of the Constitution provides that trials shall be conducted and judgment be declared publicly. This principle promotes procedural fairness via public oversight of the trial process, and also supports the public's right to free access to information.

However, in civil proceedings, the public nature of proceedings may conflict with other interests, such as privacy and trade secrets. It is therefore generally accepted in academic writing that the public's interests in access to judicial proceedings must be balanced against the parties' interests, including the right to a fair trial and the protection of substantive rights.

This balance is struck differently in ADR proceedings, such as arbitration. Because ADR is based on party autonomy and typically concerns private interests, greater weight is given to the parties' preferences. As a result, whether proceedings are conducted publicly or privately is generally left to the parties' discretion²³). In practice, ADR is characterized by its confidential nature, and public proceedings remain exceptional.

Where parties agree to a public hearing, this should in principle be respected. Hearing should, in principle, be held in public. If they disagree, the tribunal must determine whether the proceedings should be public, having regard to all relevant circumstances, including any imbalance of bargaining power and the potentially coercive nature of the arbitration agreement. The presence of a public interest in the dispute may also be a relevant factor²⁴⁾.

Issues of transparency also arise in relation to the method and scope of disclosure. Unlike court proceedings, which are conducted in public courtrooms, arbitration does not readily accommodate public access in the same manner. Alternative methods, such as online access²⁵⁾ or the publication of awards (subject to the redaction of private information) may be

22) Even in such cases, having a lawyer present as a representative is likely to ensure that proceedings proceed smoothly. While there may be cases where no lawyer is present as a representative, appropriate and objective legal advice from a lawyer should always be available. This is an issue with the judicial system itself, relate to both litigation and ADR.

23) The question arises as to whether proceedings may be conducted in camera if the parties to the litigation agree to keep them private. See Manabu Honma, “tojisha no goi nitomozuku minjisoshō no kokai no haijō”(“Exclusion of Public Hearings in Civil Litigation Based on the Consent of the Parties”) *Ritsumeikan Law Review*, Vol. 417–418, pp. 236 ff. (2024).

24) Although such cases do not involve private substantive rights, in the case of sports arbitration concerning matters such as the selection of Olympic team members or doping, they should be made public upon request by the claimant, in light of their public interest. See Mutu and Pechstein v. Switzerland-40575/10 and 67474/10, Judgement 2.10.2018 (<https://hudoc.echr.coe.int/eng/#/%22itemid%22:%220002-12113%22>). In sports arbitration, various issues have been raised regarding its relationship with International Covenants on Human Rights. Also see Hellen Keller/Anja Dillend, Sportschiedsgerichtsbarkeit: Die Perspektiven des Europäischen Gerichtshofs für Menschenrechte, Band 25: Kollektiver Rechtsschutz in Europa – Gerichtsöffentlichkeit und Digitalisierung– Sportschiedsgerichtsbarkeit, pp.150 (edited by Hess and Hau, March 2025), On the Pechstein case, see Eiji Adachi, Der Grundsatz der Öffentlichkeit des Verfahrens und die Gewährleistung von Verfahrensgrundrechten in der Sportschiedsgerichtsbarkeit, Rikkyo Hogaku No.109. PP.1(2023)

25) On the possibility of streaming court proceedings online, see Manabu Homma, “The Public Nature of Civil Litigation in the Digital Era and Its Challenges,” **Journal of Civil Procedure**, No. 69, pp. 148 ff. (Horitsubunkasha, 2023).

considered.

More fundamentally, transparency must be distinguished according to its audience. Public access to arbitration proceedings would enable third parties to obtain information about the proceedings. However, disclosure between the parties ensures that each party has access to the other's submissions and evidence. These forms of transparency are subject to different considerations. At the same time, the confidentiality of information obtained in the course of the proceedings must be protected²⁶⁾.

V. Timely adjudication and resolution

Rights shall be protected in a timely manner. It has long been said that even court judgments have deadlines. As well known in discussions regarding the international parallel procedure, if foreign proceedings are excessively delayed, it cannot be treated as a substitute for domestic proceedings. In terms of alterability, arbitration and other forms of ADR are comparable to foreign procedures. They are required appropriate and prompt resolution, and decisions or awards must be rendered in a timely manner. Arbitrators, procedural administrators, and the parties should strive to ensure prompt hearings. Although arbitral awards are generally not subject to review, this does mean that the duration of proceedings will necessarily be short²⁷⁾. Where proceedings are unduly delayed, the arbitrator or the procedural administrator should not hesitate to terminate them, even if doing so renders the prior proceedings futile. In such cases, the arbitration agreement may become invalid and can no longer be relied upon as a defense against a lawsuit yet, thereby allowing a lawsuit to be filed.

However, excessive emphasis on speed should be avoided, and the need for a thorough hearing must not be compromised. A balance must therefore be maintained between timeliness and substantive fairness.

VI. Due process

Procedures have to comply with due process. This applies to both criminal and civil proceedings, as well as to ADR.

Procedures that follow the fundamental rules of the civil procedural law generally satisfy due process. However, not all procedural rules are essential; some reflect technical and historical developments rather than core requirements. Examples of this include the oral principle, the principle of direct examination and the adversarial system.

In ADR between private parties, the process must allow meaningful participation and

26) See Nobumichi Teramura, Leon Trakman, Confidentiality and privacy of arbitration in the digital era: pies in the sky, *Arbitration International*, 2024 XX, pp.1.

27) See Von Josef Fröhlingdorf, *Zweite Instanz im Schiedsverfahren? Die spanische Perspektive*, p.127, *Zeitschrift für Schiedsverfahren* 3/2015.

produce an outcome that parties can accept, whether in the form of an arbitral award or a settlement.

At its core, due process requires that parties are given a fair opportunity to present their cases. In arbitration, this includes the right to submit arguments and evidence (Arbitration Act Art. 25 (2)), and the right to a rationally sufficient period of time for preparation. (Arbitration Act Art.31). It is not enough for parties to be given a formal opportunity to be heard, the arbitrator must genuinely consider the relevant facts and evidence²⁸⁾. A decision that is based on materials that is not disclosed to the parties and which takes them by surprise will undermine the fairness of the proceedings²⁹⁾, and violate the parties' right to be heard. Cross-examination is not always required for due process. However, where witnesses have been called and witness evidence relied on, parties must be given the opportunity to attend the witness examination and cross-examine the witness.

Furthermore, in adjudicative ADR, the arbitrator or adjudicator must provide parties with its essential reasoning in order to ensure the legitimacy of the process (Arbitration Act Art. 39 (2), save for in exceptional cases where the parties explicitly waive their rights to demand a justification³⁰⁾.

Finally, due process does not require a "substantively correct decision or award" to be made. Errors in the fact-finding process or in the interpretation and/or application of the law do not invalidate a decision if the arbitrator has engaged sincerely with the parties' evidence and submissions³¹⁾. However, arbitrary decision-making is unacceptable, and cannot be deemed proper. Fairness must be demonstrated through reason decision-making.

Due process also forms one aspect of public policy and may be a ground for setting aside an arbitral award³²⁾,

At the same time, arbitrators should not conduct the proceedings in an unnecessarily

28) Due to Federal Court of Justice, Decision of July 17, 2019, I ZB 90/18 (https://www.bundesgerichtshof.de/SharedDocs/Entscheidungen/DE/Zivilsenat/I_ZS/2018/I_ZB_90-18.pdf?__blob=publicationFile&v=1), by virtue of the right to request a hearing (das Gebot rechtlichen Gehörs), the adjudicator is obligated to grasp the claims deemed essential (der wesentlich Kern des Vorbringens) by the parties and to rule on the principal issues of the dispute (eine zentrale Frage des jeweiligen Verfahrens).

29) Also see Hiroshi Takahashi, "jutenkougai minjishohoho" ("Essential Lectures on Civil Procedure Law [Volume 1] (2nd Revised Edition) (Yuhikaku, 2013), p. 419.

30) Of course there is no need for detailed justification, and we should avoid repeating the mistakes of overly meticulous trials.

31) In international arbitration, determining how to address errors in choice, interpretation and application of the governing law presents a difficult interpretive challenge. See Kazuhiko Yamamoto, "chusaihandan niokeru junkyoho nituite" ("On the Governing Law in Arbitral Awards") in Essays in Honor of Professor Yasuo Ueno on the Occasion of His 70th Birthday: The Theory of Modern Civil Law (Kobundo, 2017), pp. 737 ff.

32) Determining the applicable law in international arbitration, as well as issues regarding its interpretation and application and remedies for errors in this regard, are complex matters. See Kazuhiko Yamamoto, "chusaihandan niokeru junkyoho nituite" ("On the Governing Law in Arbitral Awards") in Essays in Honor of Yasuo Ueno's 70th Birthday: "Theories of Modern Civil Law" (Kobundo, 2017), pp. 737 ff.; Shunichiro Nakano, "kokusaichusai niokeru junkyoho no chosa · tekiyo" ("Investigation and Application of the Governing Law in International Arbitration") in Essays in Honor of Yasunori Homma's 70th Birthday "Procedural Safeguards and Modern Civil Procedure Law" (Shinzansha, 2022), pp. 701 ff..

cautious and rigid manner. Excessive concerns about due process – also known as "due process paranoia"³³⁾ – can lead to inefficiency. Ultimately, a balance must be struck between procedural fairness and efficiency. Arbitrators must use their wide procedural discretion to conduct procedures efficiently, especially in international cases.

VII. Conclusion

In terms of the interpretation and application of the law, ADR is not superior to litigation. However, even judicial decisions are not guaranteed to interpret and apply the law "correctly." The legitimacy of dispute resolution outcomes do not rest on the correctness of the interpretation and application of the law, but on the integrity of the procedure by which the decision is reached³⁴⁾.

In this sense, a dispute cannot be regarded as properly resolved unless due process has been observed. ADR proceedings, like litigation, must therefore comply with due process. That said, ADR is not required observe and apply the full set of procedural rules applicable to litigation. Rather, the essential requirements are that parties are afforded due process and their right to be heard is respected.

To safeguard confidence in the process, arbitrators and adjudicators must ensure the appropriate level of transparency, including disclosing relevant information where necessary. In cases involving public interests, additional disclosure may be required in light of the public's right to access information. Furthermore, in adjudicative ADR, an decisions or awards should include sufficient reasoning to demonstrate that the outcome was reached through a fair process.

At the same time, the pursuit of procedural fairness must not undermine the flexibility that constitutes a key advantage of ADR. Accordingly, it is important to preserve the distinctive advantages of ADR while ensuring that its procedures remain fundamentally fair.



33) See Aleksander Godhe, Tribunal duties and exclusion of evidence in international arbitration: the tug-of-war of fairness and efficiency, *Arbitration International* vol. 41 pp.103, 2025

34) Yasuhei Taniguchi, "minjisoshō no kisōron I" ("Fundamental Theory of Civil Procedure I") (Shinzansha, 2013), p. 236 ff.

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Digitalization of Civil Court Proceedings 2026 Onwards

Judge of the Nagoya High Court

Fumiyasu Miyazaki¹⁾

When I came back to the judiciary in April 2025, I felt almost dizzy at the landscape, which was different from what I had known before I was seconded outside six years earlier.

Court staff communicate via online chat, parties exchange their documents through web meeting tools connecting the courts and parties, preparatory proceedings are held online, and judges bring their laptops into the courtroom.

On top of these practical developments, a major legislative change has recently taken effect: the digitalization of civil litigation. Further digitalization of other court proceedings, including those related to arbitration, is slated for 2028.

These amendments are expected to improve access to justice and to contribute to a more reliable judiciary.

In this article, I provide an overview of the digitalization of court proceedings in 2026 and thereafter.

I . Civil litigation

The Act Partially Amending the Code of Civil Procedure (the Act) was enacted in 2022. Part of it, which enables online oral hearings, had already come into force by 2024.

The remaining part of the Act completes the transition to full digitalization of civil litigation proceeding, characterized by the replacement of paper files with electronic files, mandatory electronic filing by attorneys, electronic service, and online witness examinations.

The Rules of Civil Litigation, governing technical matters regarding civil litigation, was also amended in line with the Act.

These amendments came into effect on 21 May 2026.

1) The views expressed in this article reflect the personal opinions of the author and do not represent any organizations.

1. Electronic filing and digitalization of case records

In civil court proceedings, there are numerous exchanges of documents between the parties and the court.

At the stage of commencing an action, a claimant previously had to submit a complaint with a revenue stamp (filing fee), together with copies to be served on the other party, as well as supporting evidence and copies thereof. All of these documents were processed in paper form. Facsimile transmission was widely used for various types of documents, including memoranda.

In the past few years, as the use of web meeting tools connecting the courts and parties has become more common, documents have also begun to be exchanged online. However, this was a practical workaround; the parties were normally required to submit the same documents uploaded online in paper form as well.

The new law permits electronic filing as a default method of submission, which is to be carried out through the electronic court filing system.²⁾

Under the new rules, parties no longer need to use facsimile transmission or submit paper copies.³⁾

2. Mandatory online submission

The law mandates that attorneys who were retained by a party submit documents online.

The same goes for representatives appointed by the government or local municipalities.⁴⁾

If they fail to submit online, the submission will be considered improper and will be rejected, unless there are compelling reasons that hinders online submission, such as glitches with the court's online submission system.⁵⁾

Although a person unrepresented by an attorney is not required to submit online, any paper submissions will be scanned after the submission and become part of the electronic case file.⁶⁾

Thus, it will become possible to review cases through the electronic case files stored in the court system.

3. Service

Certain types of documents, such as complaints and judgments, are required to be served on the parties.

Service serves an important function in triggering various legal effects that are associated with procedural rights and time limits. The service of the complaint on the defendant sets the adversarial stage for civil litigation, and if the defendant fails to appear at an oral hearing, the court may render a default judgment. Parties are required to file a notice of appeal within two

2) Code of Civil Procedure, Article 132-10 (1)

3) They need to become familiar with the use of the electronic system instead. This drastic change clearly entails a work-style reform inside and outside the courts.

4) Code of Civil Procedure, Article 132-11

5) Code of Civil Procedure, Article 132-11 (3). Which circumstances are considered to be “compelling reasons” is left to interpretation. Shinji Wakimura, *Ichimon Itto [Questions and Answers] on the new code of civil procedure*, 30 (2024)

6) Code of Civil Procedure, Article 132-12,13

weeks after the service of judgments.

Traditionally, service is carried out by sending documents to the parties' addresses by post; however, creation of an electronic system that administers the case bundles online enables parties to access the electronic case files anytime through the system.

Under the new rules, courts send an online notice to the parties when a document to be served has been uploaded.⁷⁾

Service takes effect at the time when the document is inspected or downloaded by the party, or when one week has elapsed since the online notice was sent.⁸⁾

However, there may be cases where a *pro se* party does not wish to be served by electronic means. Also, there may be cases where it is not feasible to send an online notice when the recipients' contact information is unknown. Accordingly, the new law still provides for more traditional means of service, by which the court sends a printed copy of the electronically filed documents.⁹⁾

Nonetheless, parties mandated to file electronically, such as attorneys, are to be served by electronic means.¹⁰⁾

4. Online oral hearings and online witness examinations

Traditionally, parties must physically attend the courtroom at the first oral hearing to present their pleadings, while the following proceedings are from time to time conducted remotely through telephone conferences. After several conferences are held and the core legal issues are identified, the case moves on to witness examinations, where the parties are required to appear in person again.

Since June 2024, online oral hearings have been available, so parties are no longer required to attend in person solely to present their pleadings if the judge finds online hearings appropriate.

In addition, from May 2026, online witness examinations are also available if the judge finds it appropriate and any of the following conditions are met: (1) the witness is unable to attend the courtroom in person due to their physical condition or other circumstances; (2) the witness's courtroom testimony would result in their suffering serious emotional distress under pressure; or (3) the parties agree.¹¹⁾

5. Service abroad / Witnesses located abroad

Service abroad shall be conducted through the designated authority, ambassador, minister or consul of Japan in the foreign State in accordance with relevant agreements.¹²⁾

Likewise, if a witness is located abroad, the examination shall be conducted through the

7) Code of Civil Procedure, Article 109-2

8) Code of Civil Procedure, Article 109-3

9) Code of Civil Procedure, Article 109

10) Code of Civil Procedure, Article 109-4

11) Code of Civil Procedure, Article 204

12) Code of Civil Procedure, Article 108

designated authority, ambassador, minister or consul of Japan in the State in accordance with relevant agreements.¹³⁾

In contrast to these paths, online service abroad and online examination of witnesses located abroad raise various challenges and therefore do not appear feasible at this stage.¹⁴⁾

6. Transitional measures

There is an important caveat in relation to the effective date of the Act; cases brought before the date of enforcement continue to follow the rules before the amendment. This transitional measure creates a situation in which judges simultaneously have to handle electronic bundles on the one hand, and paper bundles on the other.

The boundary is whether the complaint was filed before 21 May, irrespective of the timing of appeal. Accordingly, even when the notice of appeal is filed after 21 May, the case shall be conducted entirely on paper.

7. Civil enforcement of a judgment

Previously, when parties wished to enforce a judgment, they were required to submit to the enforcement authority (typically the court responsible for enforcement) the certified copy of the original judgment, i.e., a paper copy.

Full digitalization of civil litigation involves rendering judgments in electronic form; wet ink signatures are no longer required.

As original judgments are stored digitally, there is no longer a paper certified copy thereof.¹⁵⁾

Under the new rules, a party wishing to enforce the electronically rendered judgment shall submit a document certified as equivalent to the judgment.¹⁶⁾

Furthermore, if the judgment is rendered electronically and stored in the unified system, the enforcement court may confirm the existence and contents of the judgment through the system.

To make use of this environment, a party wishing to enforce a judgment may submit, in lieu of the aforementioned certified document, information necessary to identify the case in the system, such as the court and case number.¹⁷⁾

II. Arbitration related court cases

When parties seek to enforce arbitral awards in Japan, they must submit the awards to a court in Japan and apply for an enforcement order. When parties challenge the validity of the award, they file an application to set aside the award.¹⁸⁾

13) Code of Civil Procedure, Article 184

14) See Wakimura, *supra* note 5 at 53

15) In lieu of the signatures, measures against unauthorized alteration are taken. Rules of Civil Procedure, Article 155

16) Civil Execution Act, Article 25

17) Civil Execution Act, Article 18-2

18) Moreover, when disputes arise over the number of arbitrators, the appointment of arbitrators, the challenge or removal of arbitrators, the authority of an arbitral tribunal, or the examination of evidence, the court plays a key role in resolving them.

These cases are treated as arbitration-related cases, which are currently handled on paper. Accordingly, parties wishing to enforce an award must submit a duly certified copy of the arbitral award.¹⁹⁾

However, following the digitalization of civil litigation, arbitration-related court cases are also due to be digitalized by 2028.²⁰⁾

This amendment involves parties' submission of an electronic record of the contents of the arbitral award together with an electronic document that certifies they are identical to the original award, in lieu of the paper copy thereof.²¹⁾

Also, in line with the civil litigation reform, digitalization of case records and mandatory electronic filings for attorneys are due to be extended to arbitration-related cases in court.²²⁾

These sequential amendments to the Arbitration Act involve substantial changes to article numbering; care should be taken.

III. Enforcement of settlement agreements under the Singapore Convention on Mediation

Procedures for the enforcement of settlement agreements under the Singapore Convention on Mediation are also to be digitalized by 2028.

Similarly to arbitration-related court cases, this amendment involves parties' submission of an electronic record of the contents of the settlement agreement together with an electronic document that certifies the settlement agreement was reached in mediation.²³⁾

Also, in line with the civil litigation reform, digitalization of case records and mandatory electronic filings for attorneys are introduced.²⁴⁾

IV. Other areas

In addition to the aforementioned procedures, insolvency, civil provisional remedies, family adjudication, and labor adjudication are also to be digitalized.

Stepping back and looking at the judicial system as a whole, digitalization of criminal procedures and creation of the basis for an open database of civil judgments are scheduled to be implemented by March 2027 and May 2027 respectively; these are beyond the scope of this article.

19) Additionally, Japanese translation of the award is required unless judges decide otherwise.

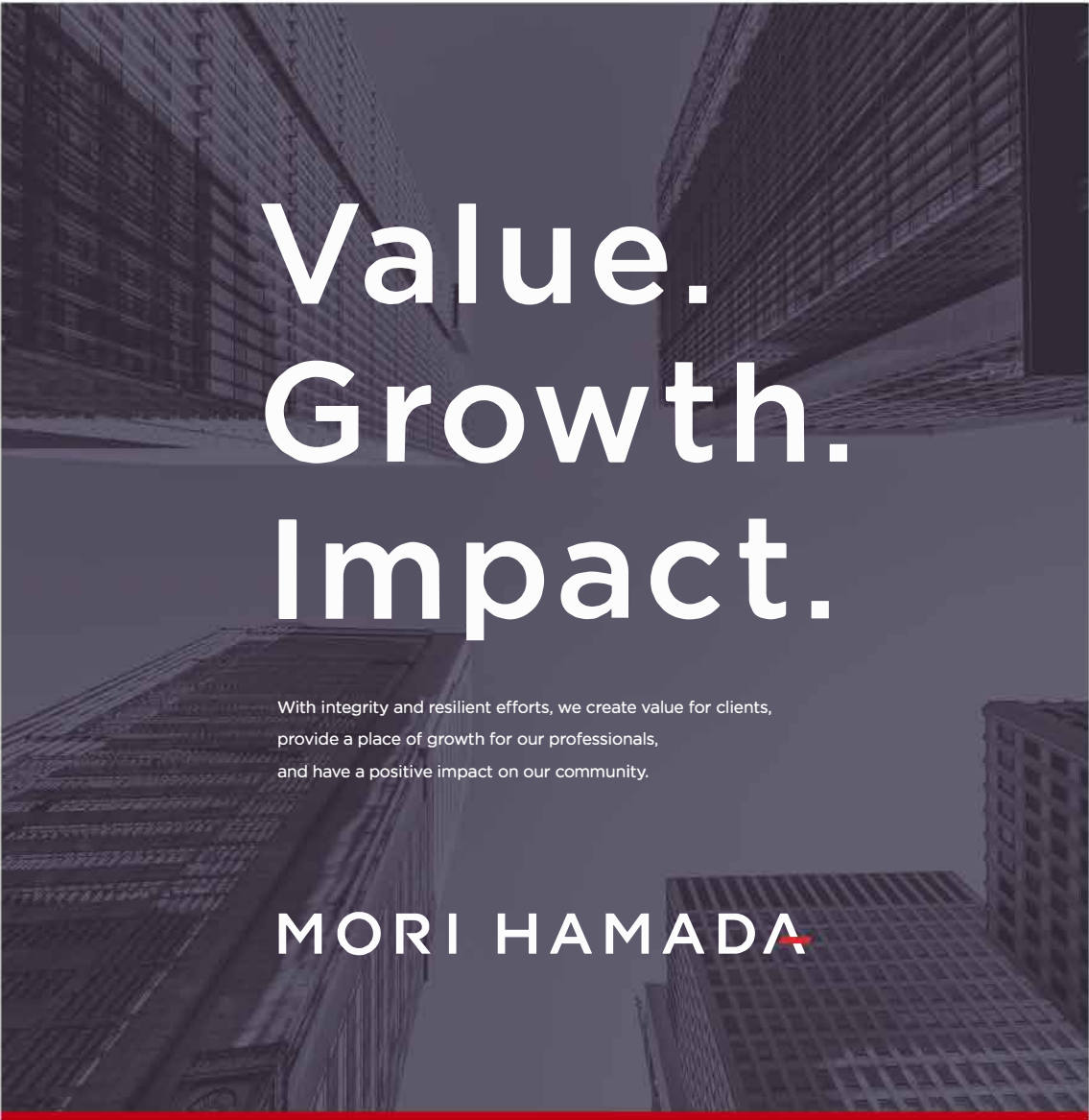
20) The Arbitration Act was amended in 2023 and entered into force in 2024 to align with the UNCITRAL Model Law. In contrast, the amendment in 2023 to be implemented by 2028 focuses on digitalization of court procedures in arbitration-related cases. For the former, see Fumiyasu Miyazaki, "Overview of the amendment to Japan's Arbitration Act" (2024) 5 *Japan Commercial Arbitration Journal* 28

21) Arbitration Act, Article 48 (2)

22) Arbitration Act, Article 10 - 12

23) Act for Implementation of the United Nations Convention on International Settlement Agreements Resulting from Mediation, Article 5 (3)

24) Act for Implementation of the United Nations Convention on International Settlement Agreements Resulting from Mediation, Article 8 - 10



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Recent Developments in UNCITRAL's Work in the Area of Dispute Resolution - Towards Increased Efficiency and Digitalization in International Dispute Resolution¹⁾

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I. Introduction

1. An Overview of UNCITRAL

The United Nations Commission on International Trade Law (UNCITRAL) is a subsidiary organ of the United Nations General Assembly (UNGA), established in 1966 by a General Assembly resolution with the mandate of promoting the unification and harmonization of international trade law.³⁾ The UNCITRAL Secretariat is based in Vienna, Austria.

As of the time of writing, UNCITRAL is composed of 65 countries elected by the UNGA from among the 193 Member States of the United Nations (UN); however, that number will be increased to 70 in July 2025. The 70 seats are allocated by region, specifically: 16 for Africa, 16 for Asia and the Pacific, 10 for Eastern Europe, 12 for Latin America and the Caribbean, and 16 for Western Europe and others. Member States of the UNCITRAL serve a six-year term, and as half of the membership is renewed every three years, elections are held every three years to select 35 member States.

At the time of its establishment, UNCITRAL had 29 member States. Following two expansions in its membership, the number increased to 36 in 1973 and to 60 in 2002. It was then increased in stages from 60 to 65 in 2022, and from 65 to 70 in 2025, pursuant to a resolution to enlarge UNCITRAL's membership that was adopted by the UNGA under Japan's leadership. In recent years, as the importance of rulemaking in the field of international trade has grown, many States have shown strong interest in participating in UNCITRAL's work as member States. Elections at the UN are basically held at the United Nations Headquarters,

1) This is an English translation of the paper under the same title, which was originally published in Japanese in the journal "Arbitration – ADR Forum Volume 9," p. 51. This English translation was drafted by Takashi Takashima, Director, International Office, Litigation Bureau, Ministry of Justice, and Hibiki Yasuda, Attorney, International Office, Litigation Bureau, Ministry of Justice. On 1 April 2026, Takashi Takashima was reappointed as Judge of the Second Civil Division of the Tokyo High Court.

2) The views expressed in this paper are those of the author's and do not necessarily reflect the views of the United Nations.

3) Resolution 2205(XXI) of 17 December 1966.

including those for UNCITRAL membership, to select States and individuals to serve as members of international organizations, and many of these elections are competitive, with outcomes decided by voting. In the case of UNCITRAL membership elections, however, it was once customary to select member States without a vote. However, amid growing interest in international trade law, in December 2018, the election for UNCITRAL membership was held with a voting procedure to select 30 member States whose terms would expire in 2019. This was the first contested election in UNCITRAL's history because more candidates ran than there were available seats in both the Asia-Pacific and the Western Europe and other States regional groups. Against this backdrop, after being re-elected, Japan, as a member State of UNCITRAL since its inception, announced in 2019 that it would seek adoption by the General Assembly of a resolution to enlarge UNCITRAL's membership, arguing, among other things, that nearly 20 years had passed since the previous expansion in 2002 and that it was necessary to respond to changes in the global situation, such as the emergence of new economies and legal systems. Japan hosted the multilateral negotiation process and served as its chair. Although the negotiations led by Japan were difficult, given each country's preference for allocating more seats to its own regional group, which gave rise to the challenging issue as to how to distribute the additional seats appropriately, the diplomatic efforts carried out over two years through cooperation between Japan's Ministry of Foreign Affairs and Ministry of Justice ultimately bore fruit. In December 2021, the General Assembly adopted a resolution to enlarge UNCITRAL's membership by consensus.⁴⁾

An important reason why UNCITRAL's instruments have been widely accepted as an international framework is due not only to their high quality owing much to the work carried out from a specialized and technical standpoint, but also that they are underpinned by the legitimacy that comes from the fact that they have been adopted at the UN through an inclusive multilateral negotiation process, including with respect to its composition.

2. Organization of Work of UNCITRAL

UNCITRAL basically carries out its work through deliberations at its Commission sessions, as well as through the sessions of six Working Groups (Working Groups I to VI) established under the Commission, each of which generally meets twice a year. The UNCITRAL Secretariat supports the work of the Commission and the Working Groups not only by providing conference services, but also by conducting research at their request, organizing and clarifying issues, and preparing documents, including drafts of legal texts under consideration. The development of UNCITRAL's outcome documents begins when a Working Group is entrusted with a mandate by the Commission to undertake work on a specific topic, and it is completed when the Commission adopts the texts prepared by the Working Group. The instruments adopted by the Commission, such as conventions and model laws, are eventually adopted or approved by the UNGA.

4) A/RES/76/109. Also see Junji Nakagawa and Kazumochi Kometani (eds.), *Learning the Strategic Use of International Economic Rules* (Bunshindo, 1st Ed., 2022), pp. 192-195 (Takashi Takashima).

At present, the Working Groups are engaged in drafting outcome documents on the following themes: Working Group II on dispute settlement, Working Group III on Investor-State Dispute Settlement reform, Working Group IV on electronic commerce, Working Group V on insolvency law, and Working Group VI on negotiable cargo documents. As of the time of writing, no work has been assigned to Working Group I. Instead, its sessions are being utilized, for example, to hold expert meetings aimed at (i) examining whether there is scope for, and whether it would be useful to undertake work to develop instruments in the field of international trade law in response to climate change, and (ii) assessing, in light of the emergence of new types of assets, such as digital assets, whether there is a need to revise existing UNCITRAL outcome documents in the area of security interests.

UNCITRAL's instruments in the field of dispute resolution include, for example, the UNCITRAL Model Law on International Commercial Arbitration (the Model Law), the UNCITRAL Arbitration Rules, and the United Nations Convention on International Settlement Agreements Resulting from Mediation. Since dispute resolution procedures, including arbitration, are regarded as essential to the effective enforcement of substantive rules, they are treated as particularly important. Accordingly, the sessions of Working Group II attract broader participation by States and provide a forum for vigorous and engaged debate.

At its fifty-seventh session, held from 24 June to 12 July 2024, the Commission adopted the outcome documents that Working Group II had put together to that point, and decided to give the Working Group a mandate for new work to undertake. This paper, first, provides an overview of the content of the most recent outcome document adopted and the process by which they were finalized, second, outlines the substance of the new mandate conferred on Working Group II and the background to that decision, and, third, offers an outlook on the Working Group's future work.

II. SPEDR Model Clauses

On 1 July 2024, the Commission adopted an outcome document entitled the "UNCITRAL Model Clauses on Specialised Express Dispute Resolution (SPEDR)," consisting of four model clauses (the SPEDR Model Clauses).⁵⁾ While the title appears not to be easy to find the exact equivalent in Japanese, it is intended, in essence, to convey the idea of UNCITRAL Model Clauses designed for dispute resolution that requires both expertise and speediness. The acronym "SPEDR" was adopted on the acknowledgement that its pronunciation ("*speeder*") aptly evokes the notion of swiftness.

The SPEDR Model Clauses consist of the Model Clauses on Highly Expedited Arbitration, on Adjudication, on Technical Advisers, and on Confidentiality.⁶⁾ Since some of these require a non-literal translation into Japanese, they are referred to below in the original English language.

5) A/79/17, paras. 90-93.

6) Available at <https://uncitral.un.org/en/texts/arbitration>.

1. Progress of Working Group II's work

The Commission had previously been considering a joint proposal by Japan and Israel to undertake work on technology-related dispute resolution, as well as a proposal by Switzerland to undertake work on adjudication. At its fifty-fifth session in 2022, the Commission noted that both proposals were aimed at achieving three shared objectives: resolving disputes in a very short time frame, facilitating the understanding of specialized technical matters, and ensuring the confidentiality of proceedings. With a view to achieving those objectives, the Commission decided to mandate Working Group II to proceed with the development of Model Clauses and other instruments, based on the UNCITRAL Expedited Arbitration Rules, so that parties could flexibly and readily adopt procedural options suited to the content and nature of their disputes and to their needs.⁷⁾

The UNCITRAL Arbitration Rules are, by their nature, regarded as a contractual text, and the UNCITRAL Expedited Arbitration Rules annexed to the UNCITRAL Arbitration Rules are likewise regarded as having the same contractual character. If the parties agree to resolve disputes by arbitration under the UNCITRAL Arbitration Rules, these rules therefore apply. If the parties agree to resolve disputes by arbitration under the UNCITRAL Expedited Arbitration Rules, they apply as *lex specialis*, and the UNCITRAL Arbitration Rules also apply to the extent they do not conflict with the UNCITRAL Expedited Arbitration Rules. Since the basis for the application of the UNCITRAL Arbitration Rules or the UNCITRAL Expedited Arbitration Rules lies in the principle of freedom of contract, the parties are also free to modify the content of those rules by agreement. The Annex to the UNCITRAL Arbitration Rules contains a model clause which provides standard wording for matters on which the parties may agree when consenting to arbitration under the UNCITRAL Arbitration Rules for ease of the parties' agreement. With this existing model clause in mind, the mandate was entrusted by the Commission with a view to complementing areas in which the UNCITRAL Expedited Arbitration Rules or, furthermore, the UNCITRAL Arbitration Rules do not fully meet actual needs in practice. Moreover, the fact that the Commission, having adopted the UNCITRAL Expedited Arbitration Rules at its fifty-fourth session in 2021, decided the following year to proceed with work on developing Model Clauses that would allow the content of those rules to be modified by parties' agreement, also reflected a growing need to respond in a finely tuned manner to accommodate the increasingly diverse needs of disputing parties and potential users of arbitral proceedings.

The work of compiling the SPEDR Model Clauses and the accompanying Explanatory Notes was conducted in Working Group II over four sessions, from the seventy-sixth session (October 2022) through the seventy-ninth session (February 2024).⁸⁾ On 1 July 2024, during its fifty-seventh session, the Commission adopted the four Model Clauses put together by Working Group II and approved in principle the contents of the Explanatory Notes, noting that some work remained, such as fine-tuning wording in certain parts, and therefore requesting

7) A/77/17, paras. 223-225.

8) See A/CN.9/1123, A/CN.9/1129, A/CN.9/1159, and A/CN.9/1166.

Working Group II to complete that work during its eightieth session.⁹⁾ In response, Working Group II concluded its consideration of the Explanatory Notes on 30 September of that year during the eightieth session.¹⁰⁾

2. An Overview of the SPEDR Model Clauses

As described above, the SPEDR Model Clauses¹¹⁾ are texts intended to be used when concluding an arbitration agreement. Unfortunately, no Japanese translation has been made available. To give Japanese-speaking users an overview of the SPEDR Model Clauses and facilitate their consideration as to whether to use such clauses, the objectives and essential features of the four Model Clauses in the SPEDR Model Clauses are outlined below.

(1) Model Clause on Highly Expedited Arbitration

The Model Clause on Highly Expedited Arbitration is intended to streamline and accelerate the arbitration procedure even further than the UNCITRAL Expedited Arbitration Rules. Article 16 of the UNCITRAL Expedited Arbitration Rules provides that, generally, the arbitral tribunal should complete the proceedings up to the rendering of the award within six months (paragraph 1), and that only where there are exceptional circumstances may the tribunal extend that period up to nine months (paragraph 2). By contrast, the SPEDR Model Clause provides that the proceedings up to the rendering of the award should be completed within 45 days, and that, where there are exceptional circumstances, the period may be extended to 90 days. The SPEDR Model Clause also shortens various time limits during the proceedings, such as the time periods for appointing arbitrators and for consultations to be held between the arbitral tribunal and the parties, reflecting the overall reduction in the time from commencement to the conclusion of arbitral proceedings. It is considered that this Model Clause may be attractive to companies for which, if a dispute arises, waiting for resolution under the procedure contemplated by the UNCITRAL Expedited Arbitration Rules could make it difficult to continue business operations, e.g., due to cash-flow constraints. Nevertheless, agreeing to resolve disputes through arbitration on such an extremely short time period as contemplated by this Model Clause entails accompanying risks, such as the possibility that the opportunity to prepare and present claims and evidence may be limited and thus, parties are advised to consider such risks when deciding whether to adopt this Model Clause.

(2) Model Clause on Adjudication

As a method of dispute resolution, adjudication is internationally recognized. In some countries it has been incorporated into domestic law, including by conferring enforceability on determinations rendered through adjudication procedures. It is also sometimes adopted as a dispute resolution mechanism in contracts for projects aimed at constructing large buildings or plants in which companies from different nations are involved both as the employer and contractor. Based on contracts, such as building construction contracts under which the parties assume contractual obligations to be performed in stages over a certain period of

9) See fn. 4.

10) A/CN.9/1193, paras. 13–42.

11) The full text of the SPEDR Model Clauses is available at <https://uncitral.un.org/en/texts/arbitration>.

time, even minor differences in views between the parties can develop into serious confrontation. When the parties' positions become sharply divided, each party may withhold performance of its own contractual obligations on the grounds of the other party's non-performance and thereafter come to focus exclusively on pursuing each other party's liability for breach of contract; as a result, it is not uncommon for performance of the contract to become impossible.

Adjudication serves to prevent such situations from arising. Specifically, in many cases an adjudicator who has technical expertise relevant to the contract at issue promptly issues a determination through a streamlined procedure, thereby enabling the parties to overcome differences in position and opinion that emerge during contract performance and to facilitate smooth performance of the contract. Focusing on the usefulness of this function of adjudication, the Model Clause on Adjudication incorporates it as part of an arbitration-based dispute resolution mechanism. At the same time, because adjudication is designed to deliver a swift and interim resolution, it is also necessary to ensure that a party dissatisfied with the adjudicator's determination has a sufficient opportunity ultimately to challenge it later in arbitration.

Accordingly, the Model Clause on Adjudication adopts the following structure: (a) a party may submit a dispute to adjudication and for any dispute in respect of which a party seeks resolution by adjudication, an adjudicator shall render a determination generally within 30 days; (b) with respect to the adjudicator's determination, the parties assume a contractual obligation to comply with it, and a party may seek performance of that obligation from the other party, and if necessary, through an arbitration in which the only matters that may be in dispute are whether the obligation has been performed and whether the adjudication was conducted in accordance with the prescribed procedure, the party may obtain, within seven days from the constitution of the arbitral tribunal, an arbitral award (as a title of obligation) confirming that obligation; and (c) the parties may, at any time, seek resolution by arbitration under the UNCITRAL Arbitration Rules or the UNCITRAL Expedited Arbitration Rules with respect to all contractual disputes, including disputes that had been the subject of adjudication.

Under (c) above, even a party that has already performed an obligation arising from the adjudicator's determination may subsequently allege that the determination was erroneous and seek restitution through arbitral proceedings; for that reason, some have questioned the effectiveness of adjudication. However, it is said that in practice, once all contractual obligations have been performed, the parties tend to accept the adjudicator's determination, fully satisfied or not, and rarely wish to challenge it anew through arbitration, which entails significant time and cost. Similar benefits are therefore expected to be gained from the adjudication mechanism contemplated by the Model Clause on Adjudication.

(3) Model Clause on Technical Advisers

The Model Clause on Technical Advisers draws inspiration from mechanisms used in courts in various countries to introduce specialized expertise in a flexible manner through means other than the formal expert witness, particularly Japan's "technical advisers" system under

the Code of Civil Procedure and is therefore likely to be familiar to Japanese legal practitioners.¹²⁾

The Model Clause on Technical Advisers principally provides that, by permitting the arbitral tribunal to appoint a technical adviser, the tribunal may receive from that technical adviser the assistance necessary to gain a full understanding of the case in proceedings where technical matters are at issue, thereby enabling an appropriate resolution of the dispute. Although Article 29 of the UNCITRAL Arbitration Rules contains a provision on experts appointed by the arbitral tribunal, that mechanism corresponds to the appointment of an expert akin to an expert testimony under Japan's Code of Civil Procedure. By contrast, the UNCITRAL Arbitration Rules do not contain any provision equivalent to Japan's technical adviser system, which enables the flexible introduction of specialized knowledge needed for the tribunal to understand the parties' submissions and evidence. In the Model Clause on Technical Advisers, as in the technical adviser system, particular emphasis is placed on the need to ensure clarity as to the role of technical advisers and to secure due process for the parties. In other words, the role of technical advisers is clarified as being essentially different from that of a tribunal-appointed expert who offers opinions on technical issues in dispute: technical advisers are tasked to assist the arbitral tribunal's technical understanding by providing "explanations," in principle based on the technical standards in their field of expertise. The parties must be given a reasonable opportunity to comment on those explanations.

The Model Clause on Technical Advisers has been highly praised by representatives with experience in arbitral practice who participate in the work of Working Group II, including its Chair, Mr. Andrés Jana (Delegation of Chile), as a tool that is likely to be extremely effective in the procedural administration of international arbitration.

(4) Model Clause on Confidentiality

Notwithstanding the fact that the confidentiality of proceedings is often a key motivation for parties to choose international arbitration as a means of dispute resolution, UNCITRAL's arbitration-related instruments, such as the UNCITRAL Arbitration Rules and the UNCITRAL Model Law on International Commercial Arbitration, do not expressly provide for the confidentiality of proceedings. The Model Clause on Confidentiality is intended to address this to accommodate the needs of the parties. That said, there are situations in which the parties are under a legal obligation to disclose information relating to arbitration, or in which disclosure is necessary to seek the setting aside or enforcement of an arbitral award, and it would therefore be inappropriate to impose an absolute duty of confidentiality on the parties without exception. Accordingly, the Model Clause on Confidentiality sets out the parties' confidentiality obligations with respect to all information relating to the arbitration, including the existence of the arbitral proceedings, while also specifying exceptional circumstances in which the duty of confidentiality does not apply.

12) The term "Technical Advisers" is used as the English translation of "*senmon-iin*" (専門委員) under Japan's Code of Civil Procedure. In addition, fn. 7 to para. 12 of A/CN.9/WG.II/WP.236 introduces the key features of the technical adviser system under Japan's Code of Civil Procedure.

III. Developing a Legal framework on the Recognition and Enforcement of Electronic Arbitral Awards

1. Stocktaking – DRDE Project

(1) Establishment of the Project

The DRDE Project is an abbreviated name of UNCITRAL's project on the "Stocktaking of Developments in Dispute Resolution in the Digital Economy." Following a proposal by the Government of Japan, as well as the decision of the Commission to establish the Project and the endorsement of the UNGA of that decision, the DRDE Project was launched and its implementation began in December 2021. As of November 2024, the DRDE Project continues to be carried out and is steadily delivering outcomes. Since assuming my current position *[Note: As of the time of writing this paper]* in September 2022, I have been responsible for its implementation as the manager of the DRDE Project.

(2) Mandate of the DRDE Project

The mandate of the DRDE Project is for the UNCITRAL Secretariat to: (i) investigate and analyze the impact that various digital technologies and technology-enabled services are having on dispute resolution; (ii) to assess, through that work, whether there are gaps or deficiencies in the existing legal norms applicable to dispute resolution and whether there is a need to remedy them; and (iii) having carried out the aforementioned, to propose future work such as revising existing international legal frameworks in the field of dispute resolution or developing new ones. It was considered that such gaps or deficiencies in legal norms had arisen because existing legal frameworks were not designed with today's uses of digital technologies in mind. The ways in which problems may become manifest include not only situations in which existing legal norms hinder the use of digital technology, but also situations in which the use of digital technology poses risks of negatively affecting fundamental principles of dispute resolutions, such as due process and fairness, yet existing legal frameworks do not provide adequate responses to those risks. The DRDE Project has been implemented from the outset with these two types of problems in mind.

(3) Method of implementation of the Project

Since the outcomes of the DRDE Project are to be fed back into the work of the UN, it is desirable that they broadly reflect the realities of different countries and regions. However, the information that can be obtained through desk-based research is limited, and conducting country-by-country research around the world is not realistic given constraints of time and funding. Accordingly, as the Project's basic method of implementation, it was decided to hold panel discussions involving practitioners and researchers in countries across different regions of the world, with the aim of helping to identify and map the issues to be addressed under the DRDE Project; this initiative was named the "World Tour." The World Tour was effective not only in gathering the necessary information, but also in widely publicizing the fact that the UNCITRAL Secretariat was conducting the DRDE Project, thereby fostering understanding of its objectives and significance. As a result, it gradually came to be regarded as attractive content that looks ahead to the future of international dispute resolution, and the Secretariat

began to receive offers from governments and arbitral institutions to host discussions for the DRDE Project on occasions, such as arbitration events. Thanks to these generous offers, discussions under the DRDE Project were held 13 times in nine countries-Japan, the United States, Guatemala, France, Austria, Côte d'Ivoire, Singapore, China (Hong Kong), and Germany-between December 2022 and March 2024. In these discussions, practitioners and researchers were invited not only from the host country, but also from surrounding countries and regions, to meet the need to ensure the universality or comprehensiveness of the implementation of the DRDE Project.

(4) Outcome of the Project

As noted above, the mandate of the DRDE Project was not framed with specific issues or conclusions in mind. When I first began implementing the DRDE Project, after surveying a range of digital technologies and technology-enabled services that I considered to be influencing international arbitration and mediation procedures, I focused on the fact that, in arbitral proceedings, the submission of written submissions and evidence in digital form has significantly increased the volume of information that arbitral tribunals must handle, and that parties sometimes propose the submission of data generated using advanced technologies. I therefore thought it might be possible to consider, as part of procedural rules, adding provisions aimed at enhancing the clarifying and narrowing the disputed issues, as well as provisions aimed at ensuring due process when a party submits data produced using advanced technologies as written submissions or evidence. However, having carried out work through the DRDE Project without any preconceived expectations as to what outcomes would be obtained, useful insights and views were gathered-particularly through discussions held as part of the World Tour-and the following issues emerged.

Firstly, in arbitral proceedings, written submissions and documentary evidence are prepared in electronic form, and electronic means are used for exchanges between the parties, and between the parties and the arbitral tribunal. In addition, many aspects of the proceedings, such as case management conferences, hearings, and the examination of witnesses, are conducted using electronic means, including via videoconferencing. Nevertheless, it was pointed out in almost all discussions that, in practice, the prevailing approach was still for a claimant to send a written notice to the other party of its intention to refer the dispute to arbitration, and that arbitral awards were also generally prepared in paper form and sent to the parties. It thus became clear that a complete transition from paper-based to digital procedures remains a challenge faced by many countries.

Secondly, with respect to the use of artificial intelligence (AI), a field in which technological advances have been particularly remarkable in arbitration and mediation proceedings, practitioners and researchers showed strong interest. Several practical use cases were introduced, and views were expressed on them. As for concrete responses to the procedural risks that may arise from using AI, it was noted that, in the United States, courts had concerns that AI can "make stuff up" by generating false factual statements when it did not actually have an answer to a question. Some examples were cited in which courts, alarmed by incidents, such as attorney submissions prepared with the assistance of AI tools that

referenced non-existent case law, have ordered counsel to submit a certificate stating either that they did not use AI in preparing the document, or that, if they did use AI tools, they verified the content. It was also discussed that if an arbitrator or mediator used AI tools, fundamental issues arise, such as whether the resulting decision can truly be regarded as a decision by a "human," as well as concerns from the perspective of due process. While rules governing the use of AI by arbitrators or mediators are needed, it was also noted that there were limited means to ensure compliance by arbitrators or mediators with such rules.

Furthermore, the discussions noted that it had become increasingly common for dispute resolution procedures, such as arbitration or mediation, to be conducted through platforms or services that utilize platforms. In addition, it was also noted that new forms of dispute resolution had emerged in which the use of platforms was a core component, such as providers offering services that complete arbitration or mediation proceedings entirely on a platform, or dispute resolution services offered as ancillary services to e-commerce conducted via a platform. Considering these developments, it was pointed out that there was a need for standards that should apply to such platforms and services so as not to undermine the procedural interests of users. Relatedly, opinions were expressed regarding the significance and necessity of UNCITRAL preparing documents, such as guidelines or protocols that consolidate procedural viewpoints to consider when using videoconferencing, which was one example of a platform and whose use was particularly promoted during the COVID-19 pandemic for hearings in arbitral proceedings. While some participants took a positive view, others urged caution, noting that in practice the guidelines and protocols prepared by arbitral institutions and similar bodies were already functioning effectively, and therefore questioning whether there was a need for UNCITRAL to produce its own instrument.

After organizing and carefully examining the information and views obtained through the World Tour discussions as well as conducting additional research and analysis to supplement them, the UNCITRAL Secretariat submitted two Secretariat notes at the fifty-sixth session of the Commission held in 2023, providing an interim report on the implementation of the DRDE Project.¹³⁾ It also prepared and submitted two Secretariat notes at the fifty-seventh session of the Commission held in 2024: one reporting on the progress of the DRDE Project's implementation, and the other presenting proposals for future work as an outcome of the Project.¹⁴⁾

One of the items of future work proposed by the UNCITRAL Secretariat in its note was that consideration should be given to mandating a Working Group to develop legal texts on the recognition and enforcement of electronic arbitral awards, with the aim of removing legal obstacles that hinder the making of electronic arbitral awards to become prevalent practice and, thereby, ensuring the certainty of their recognition and enforcement. This proposal was based on findings indicating problems such as: in some countries' domestic implementation of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York

13) A/CN.9/1154 and A/CN.9/1155.

14) A/CN.9/1189 and A/CN.9/1190.

Convention), it is understood that arbitral awards must be made in writing; enforcement authorities, including courts, still operate procedures premised on paper documents; and domestic laws on electronic signatures vary from country to country. Another proposal was that consideration should be given to whether work should be undertaken, either in parallel with the work on recognition and enforcement of electronic arbitral awards, or after completing that work, to provide a legal basis for notices of arbitration submitted by electronic means. In addition, as part of the implementation of the DRDE Project, the Secretariat suggested that monitoring and further examination should be continued with respect to issues arising from the use of AI in dispute resolution, as well as issues arising from platform-based dispute resolution.

2. Entrusting of a New Mandate by the Commission

On 1 July 2024, the same day that the SPEDR Model Clauses were adopted, the Commission considered the two Secretariat notes relating to the DRDE Project. The Commission highly commended the UNCITRAL Secretariat for its implementation of the DRDE Project and, taking account of the proposals for future work set out in those notes, mandated Working Group II to proceed with work on the recognition and enforcement of electronic arbitral awards and, once that work was completed, to proceed with work on electronic notices, including electronic notices of arbitration. The Commission also requested the UNCITRAL Secretariat, in preparation for the commencement of work on the recognition and enforcement of electronic arbitral awards, to hold a two-day colloquium (an expert meeting) during the eightieth session of Working Group II.

3. Work of Working Group II

Following the decision of the Commission, Working Group II, as part of its eightieth session, held a colloquium entitled "UNCITRAL Colloquium on the Recognition and Enforcement of Electronic Arbitral Awards" on 1 and 2 October 2024, in preparation for commencing work on the recognition and enforcement of electronic arbitral awards. The UNCITRAL Secretariat invited 20 experts from different regions to serve as speakers at the colloquium.

Working Group II reaffirmed that the Secretariat note submitted to the Commission to propose future work had mentioned that possible forms of the instruments to be developed in order to address issues relating to the recognition and enforcement of electronic arbitral awards could include: (a) an instrument of international law, such as a protocol supplementing the New York Convention; (b) amendments to the UNCITRAL Model Law on International Commercial Arbitration; or (c) a recommendation concerning the interpretation of the New York Convention. Considering these options and drawing useful insights from the discussions among experts at the colloquium, the Working Group proceeded with its deliberations. As a result, a range of views was expressed regarding what form the outcome should take to resolve the issues relating to the recognition and enforcement of electronic arbitral awards, and the positions broadly fell into two camps.

One view was that attempts to amend or supplement the New York Convention could lead

to a negative perception that undermines a flexible interpretation under which the recognition and enforcement of electronic arbitral awards are already possible within the Convention's existing framework and could ultimately risk impairing the Convention's role as the cornerstone of international arbitration. The other view was that the appropriate form of the instruments should be decided in light of the nature of the issues and the solutions required; that it would be premature to prejudge the form before examining the substance of the instrument; and that no option concerning the form of the instrument, including the option of preparing a protocol to the New York Convention, should be excluded at the outset. While Working Group II has not yet reached consensus on the issues concerning the form of the legal instrument, the objective to be achieved through the work is extremely clear: by establishing a legal framework for the recognition and enforcement of electronic arbitral awards and thereby enhancing legal certainty, it will enable parties in practice to have confidence in the entire process of preparing arbitral awards electronically and using those awards in electronic form in court enforcement proceedings. Further progress in Working Group II's work is therefore hoped for.¹⁵⁾

IV. Conclusions

In this paper, I have introduced recent developments in UNCITRAL's work in the field of dispute resolution. Of course, providing up-to-date information is also one of the paper's important objectives. More fundamentally, however, the paper aims to examine the distinctive nature of UNCITRAL as a subsidiary body of the UNGA and the specificities of how it operates. Specifically, it sheds light on the significance of its initial phase within the long process of international rules development, as the origin of international rules. To support this notion, it illustrates how proposals grounded in careful and thorough research and analysis, including the stocktaking of developments, emanating from the implementation of the DRDE Project, subsequently led to the meaningful development of rules. If this paper can contribute in any way to fostering the understanding it is intended to promote, I would be most delighted.



15) For an overview of the colloquium held at the eightieth session of Working Group II and its deliberations, see A/CN.9/1193, paras. 43-72.



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Overview of the Act to Promote the Utilization of Electronic Civil Court Information

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I . Introduction

The Act to Promote the Utilization of Electronic Civil Court Information (Act No. 49 of 2025) (the "**Act**") establishes a new system where a designated organization,¹⁾ which is a private entity designated and supervised by the Minister of Justice (the "**Designated Organization**"), can obtain information on civil judgments from the Supreme Court, namely information on electronically prepared judgments and other decisions rendered in civil and administrative litigation proceedings, process such information as necessary through pseudonymization, and provide it to users for a fee.

The Act was submitted to the Diet based on the recommendations contained in the report dated July 29, 2024, of the Expert Panel on the Digitalization of Information on Civil Judgments (the "**Panel**") that was established by the Ministry of Justice.

The Act was enacted on May 23, 2025. Some provisions of its provisions took effect on January 15, 2026. On the said day, the Enforcement Regulations of the Act (Ministry of Justice Ordinance No. 1 of 2026) (the "**Ministry of Justice Ordinance**") were also promulgated.

This article provides an overview of the Act and the Ministry of Justice Ordinance. Any views expressed herein are solely those of the authors.

II . Provisions of the Act

1. Purpose and Overview of the Act

With recent advances in digital technology, it has become technically feasible to utilize information on civil judgments in new ways. Such information can be used not only to analyze individual cases, but to analyze trends across all the cases, perform more sophisticated statistical analyses, and serve as materials for machine learning to provide higher-quality legal

1) A "designated organization" is an administrative term of art generally understood to mean a legal entity established under the Civil Code and which has been designated by an administrative agency pursuant to a special statute to perform specified public functions (see Katsuya Uga, *Administrative Law*, Vol. III, 6th ed., p. 335).

services.

With the recent amendments to the Code of Civil Procedure and related laws promoting the digitalization of civil litigation procedures, judgments and other decisions can now be prepared in the form of electronic records.²⁾ As a result, it has become possible to make further use of information on civil judgments in all types of cases, including those that may not individually have precedential value or attract public attention, by, among others, conducting comprehensive trend analyses, performing more refined statistical analyses, and exploring other new forms of utilization. In light of the fact that with the advancement of the digital society, the demand for information on civil judgments has become increasingly diverse, the Act aims to establish a foundation for the proper and effective use of such information, thereby contributing to the development of a creative and vibrant society (Article 1).

To establish such foundation, it is considered effective for the government to fulfill its responsibilities by, for example, formulating the necessary measures and implementing them through cooperation and coordination among the relevant parties under the Basic Policy. Accordingly, the Act sets out the responsibilities of the government in promoting the utilization of information on civil judgments (Article 3) and provides for the formulation of the Basic Policy by the Minister of Justice (Article 4).

Since information on civil judgments contains the names, addresses and other details of the parties involved in litigation, when utilizing such information properly and effectively, it is necessary to establish a new system where the information is provided only after appropriate processing, such as masking or replacing identifying details with symbols or other substitute identifiers, to protect the rights and interests of the parties. To this end, the Act establishes a system where the Designated Organization— designated by the Minister of Justice— processes information on civil judgments and provides it to third parties, and prescribes matters concerning the designation, supervision and other aspects concerning the Designated Organization.

2. Outline of the New System

(a) Overview of the Functions to be Performed by the Designated Organization

Under the new system, the Designated Organization shall perform the following principal functions:

- i. organize information on civil judgments and conduct the necessary pseudonymization to develop a database capable of meeting the needs of the general public (Article 6(1)(i));
- ii. provide pseudonymized information on civil judgments to users by electronic means (Article 6(1)(ii));
- iii. manage the information on civil judgments and other related data in its possession (Article 6(1)(iii)); and
- iv. perform other functions incidental thereto (Article 6(1) (iv)).

2) The supplementary resolutions adopted by the Legal Affairs Committees of both the House of Representatives and the House of Councilors in connection with the Act provide that, in digitizing litigation records, efforts shall be made to ensure that judgments are made accessible in a manner that facilitates public research and analysis.

The Designated Organization shall perform these functions in accordance with the Act and its operational rules (the "**Operational Rules**").

The following mandatory matters should be included in the Operational Rules:

- i. matters concerning the methods of processing information on civil judgments (Article 8(2)(i));
- ii. matters concerning the conclusion of contracts for the provision of information on civil judgments (Article 8(2)(ii));
- iii. matters concerning the secure management of information on civil judgments and other related data (Article 8(2)(iii));
- iv. matters concerning fees (Article 8(2)(iv));
- v. matters concerning the handling of complaints (Article 8(2)(v)); and
- vi. other matters necessary for the performance of the functions of the Designated Organization as prescribed by the Ministry of Justice Ordinance (Article 8(2)(vi)).

The Designated Organization must establish its Operational Rules in accordance with the Basic Policy determined by the Minister of Justice and obtain its approval of the said rules (Article 8(1)).

(b) Scope of Information on Civil Judgments Covered by the System

The system is intended to promote the proper and effective utilization of information contained in electronic judgments and related materials prepared pursuant to the provisions of the Code of Civil Procedure, as amended by Act No. 48 of 2022. It does not cover information contained in electronic orders and other documents prepared in civil execution proceedings and related procedures that are being digitized under the Act on the Development of Laws to Promote the Utilization of Information and Communications Technology in Civil Proceedings (Act No. 53 of 2023). Accordingly, the Act limits the information on civil judgments to be included in the database to information prepared in civil or administrative litigation proceedings, and defines such information as follows:

- i. electronic judgments;
- ii. electric records that serve in lieu of electronic judgments (i.e., electronic records of so-called "record judgments"); and
- iii. electronic orders and other decisions that relate to judgments that are useful for understanding the interpretation and application of laws, as specified by the Ministry of Justice Ordinance (Article 2(1)(i)).

Given that electronic orders and decisions vary widely in both content and form, and the necessity of including them in the database is not uniform, the Act provides that only those decisions "related to judgments that are useful for understanding the interpretation and application of laws, as specified by the Ministry of Justice Ordinance" shall be included. Under Article 2 of the Ministry of Justice Ordinance, the following shall be included:

- i. Decisions dismissing an appeal to the Supreme Court (item (i)),
- ii. Decisions rejecting an appeal to the Supreme Court (item (ii)),
- iii. Decisions not to accept an appeal to the Supreme Court (item (iii)),
- iv. Decisions correcting a judgment (item (iv)), and

v. Decisions modifying such correction (item (v)).

The Panel identified the above decisions as being necessary for understanding the outcome of civil cases and the precise content of the civil judgments. The Panel also noted that certain other decisions, such as orders concerning document production or provisional relief under the Administrative Case Litigation Act, are highly valuable for analyzing judicial reasoning and procedures. Thus, after the system begins operating, the scope of decisions to be included in the database will be reviewed in light of operational experience and user feedback.

(c) Handling of Parts Subject to Statutory Restrictions on Inspection

To enable the Designated Organization to operate and provide information on civil judgments, it is essential that it obtain the information from the Supreme Court. Therefore, the Act provides that the Designated Organization may request the Supreme Court to provide information on civil judgments (Article 7(1)), except for portions of case records for which inspection or copying is restricted under the Code of Civil Procedure or other laws. Restricted portions include, for example, highly confidential matters concerning the private life of the parties (Article 92(1)(i) of the Code of Civil Procedure) and trade secrets (Article 92(1)(ii)). Because these portions are not available for public inspection, it would be inappropriate for the Supreme Court to provide them to the Designated Organization.

Furthermore, when a court issues a confidentiality order regarding names, addresses, or similar information, such information is not recorded in the electronic judgment; instead, substitute information is entered therein (Article 133(5) of the Code of Civil Procedure). Thus, the Designated Organization will not obtain information subject to confidentiality orders.

(d) Approach to Pseudonymization

Under the Act, "pseudonymized information on civil judgments" refers to information on civil judgments that has been processed so that no individual can be identified without crossreferencing it with other information, and such information will constitute the material to be provided to users. The Designated Organization is required to delete all or part of the information subject to processing or replace it with other information (Article 2(1)(iii)). Such processing must also comply with the standards prescribed by the Ministry of Justice Ordinance (Article 13(1)).

Article 15 of the Ministry of Justice Ordinance specifies the following categories of information subject to processing:

- i. all or part of names, dates of birth, addresses, and other information that can identify a specific individual (item (i));
- ii. all personal identification codes (item (ii)); and
- iii. all or part of information that, if misused, could result in financial harm (item (iii)).

The detailed methods of processing will be set forth in the Operational Rules as matters concerning the Designated Organization's method of processing information on civil judgments (Article 8(2)(i)). With respect to item (i), the Panel recommended that full names, submunicipal address units (i.e., administrative divisions smaller than cities or counties, such as special wards in Tokyo), and the month and day of birth be pseudonymized. With respect to item (ii), information such as telephone or fax numbers, and email addresses will likely also

fall within the scope of pseudonymization. Information under item (iii), such as credit card numbers and bank account numbers, will likewise be subject to pseudonymization.

As noted above, although the Act requires that certain personal information, such as the names of identifiable individuals, be processed, the names of judges involved in preparing electronic judgments will not be subject to such processing. This is because users have a strong interest in this information, and, in light of the fact that electronic judgments do not ordinarily contain matters relating to the private life of the judges, the risk that disclosure of their names would harm their rights or interests is deemed minimal.

Accordingly, the Act excludes from pseudonymization the "names and other information of judges who rendered the judgment and other persons specified by the Ministry of Justice Ordinance as those whose rights and interests are unlikely to be harmed even without the measures prescribed in this item" (Article 2(1)(iii)).

Article 3 of the Ministry of Justice Ordinance further provides that, in addition to judges, the details of the following persons are likewise excluded from pseudonymization:

- i. attorneys representing the parties (item (i)(a)); and
- ii. the Minister of Justice and the designated agents representing the State (item (i)(b)).

In addition, where it is evident from the information on civil judgments itself that pseudonymization is unnecessary because its disclosure will not harm the individual's rights or interests, such as in the case of historical figures, such information need not be pseudonymized (item (ii)).

(e) Additional Pseudonymization and Related Measures and Handling of Complaints

Because pseudonymized information on civil judgments is processed so that individuals cannot be identified without cross-referencing it with other information, it cannot, by itself, identify any specific individual. However, information that could enable identification when combined with other information, such as publicly reported information, may remain.

To address such instances, the system contemplates that, where there are particular circumstances requiring pseudonymization beyond the standard level to protect the rights and interests of litigation participants, the Designated Organization will take the necessary measures, such as performing additional pseudonymization, upon the request of users or litigation participants. Article 10(1)(iii) of the Ministry of Justice Ordinance accordingly requires the Designated Organization to investigate the matter and take necessary measures when a complaint is filed alleging that the distribution of pseudonymized information on civil judgments has been infringed, or may infringe, an individual's rights or interests.

The specific procedures for handling such matters will be set forth in the Operational Rules as "matters concerning the handling of complaints" (Article 8(2)(v)). The Panel noted that, from the standpoint of protecting the rights and interests of litigation participants, it would be desirable, where feasible, to accept requests for additional pseudonymization before the information is provided to users, and to implement such measures prior to providing the information. The system will be operated in accordance with this recommendation.

(f) Approach to the Provision of Information

Under the system, the costs required to pseudonymize information on civil judgments will

be borne by the beneficiaries; accordingly, information will be provided on a fee basis. In light of the nature of information on civil judgments as a public good, such information must be provided at an appropriate price. The Act therefore requires matters concerning fees to be specified in the Operational Rules and such matters will require the approval of the Minister of Justice (Article 8(2)(iv)).

To make effective use of information on civil judgments, it is often beneficial to analyze it together with the outcomes of appellate proceedings in the same case or to conduct an analysis by case category. The Act defines such information as "information related to civil judgments" and imposes on the Designated Organization a duty to make efforts to collect, organize, and provide it to users (Article 2(1)(iv), Article 7(2)). Article 4 of the Ministry of Justice Ordinance specifies as information related to civil judgments, information necessary to identify related proceedings, such as the original judgment (item (iii)), information indicating the case category (item (v)), and information about whether an appeal has been filed (item 6). Because the types of information useful for promoting effective utilization may vary depending on how the information is to be used and because new needs may arise with advances in digital technology, the scope of civil judgment-related information must continuously be reviewed even after the system begins operations.

Given that information on civil judgments has the character of a public good that should be shared with society as a whole, it must be ensured that pseudonymized information on civil judgments is not provided arbitrarily. Accordingly, the Act provides that the Designated Organization may not refuse to enter into an information-provision contract except where the applicant has engaged in fraud or other wrongful acts in connection with the application, or where other justifiable grounds exist as specified by the Ministry of Justice Ordinance. Likewise, the Designated Organization may not terminate an information-provision contract except where there are serious grounds, such as a contractual breach by the user, which make continuation of the contractual relationship difficult, or where other justifiable grounds exist as specified by the Ministry of Justice Ordinance (Article 10(1) and (2)).

Specifying contractual breach as a ground for termination ensures the proper use of pseudonymized information on civil judgments through the information-provision contract. For example, if pseudonymized information on civil judgments is used in a manner that infringes the rights or interests of litigation participants, the Designated Organization must be able to suspend provision of such information under the contract. To that end, the contract for providing such information will likely prohibit such improper use and allow the termination of the contract if the user violates the said prohibition.

(g) Overview of the Designated Organization's System under the Act

Under the system, the Designated Organization is expected to obtain information on civil judgments from the Supreme Court in a centralized manner and develop a core database so that such information can be widely made available to users. To ensure that pseudonymization and related processing are carried out efficiently in a centralized manner, and to avoid the risk of information leakage or improper dissemination, and enable the uniform handling of requests for additional pseudonymization from litigation participants, the Act provides that

only one Designated Organization shall be designated nationwide. In addition, the Designated Organization must be a non-profit organization, such as a general incorporated association or a general incorporated foundation, rather than a for-profit entity like a stock corporation (Article 5(1)).

The management and provision of civil judgment information must be carried out properly and reliably, and for that purpose, the Designated Organization must develop the necessary systems. Accordingly, the Act requires the Designated Organization to possess the financial basis and technical capability necessary to perform these functions properly and reliably (Article 5(1)(i)). It is also required that the composition of the officers and employees of the Designated Organization not pose a risk to the fair implementation of the information on civil judgments' management and provision services (Article 5(1)(ii)), and that, if the said organization engages in activities other than these services, such activities must not risk compromising the fairness of the information on civil judgments' management and provision services (Article 5(1)(iii)).

(h) Supervision by the Minister of Justice

In addition to examining whether an applicant satisfies the requirements to be designated as the Designated Organization (Article 5(1)), the Minister of Justice has the authority to approve the Operational Rules, which sets out the manner in which the Designated Organization conducts its operations (Article 8(1)), as well as the business plans and revenue and expenditure budgets prepared for each fiscal year (Article 9(1)).

The Minister of Justice is further vested with the authority to issue orders necessary for it to exercise supervision (Article 16), require reports and conduct onsite inspections (Article 17(1)), and revoke the designation of the Designated Organization (Article 18(1)). Through these powers, the Minister exercises the necessary oversight over the Designated Organization's performance of its duties.

(i) Penal Provisions

The Act establishes penal provisions for the improper provision or misappropriation of information deleted during the pseudonymization process or other such information (Articles 20 and 21). Although information on civil judgments is, in principle, accessible to anyone under the Code of Civil Procedure, the centralization of such information with the Designated Organization means that the improper use by any person engaged in its management and provision could cause widespread and significant harm. Moreover, if information on civil judgments were to circulate through channels not contemplated by the system, public trust in the system would be undermined.

In light of these considerations, the Act limits criminal liability to cases involving the provision or misappropriation of information subject to pseudonymization (i.e., information not intended to be provided to users under the system) for the purpose of obtaining unlawful gain.

3. Considerations for Litigation Participants

The operation of the system, which involves compiling information on civil judgments into a

broad database and providing it to users, requires appropriate consideration for the privacy and other interests of litigation participants to secure broad public understanding and trust. As noted above, the system is designed to protect the rights and interests of litigation participants by:

- i. ensuring that the Designated Organization does not obtain information subject to confidentiality orders or orders restricting access under the Code of Civil Procedure;
- ii. requiring the Designated Organization, when providing information on civil judgments to users, to pseudonymize names, addresses, and other information of individual litigants in accordance with the Ministry of Justice Ordinance and the Operational Rules; and
- iii. allowing the Designated Organization to perform additional pseudonymization upon the request of litigation participants or other persons, depending on the circumstances of the individual case.

Although additional pseudonymization may be carried out upon request even before information is provided to users, the effectiveness of this mechanism depends on such request being made at an appropriate time. Therefore, it is essential that information about the system be properly disseminated to litigation participants.

During the Panel's discussions, it was noted that the initial pseudonymization standards should be published in advance to assist litigation participants in making requests for additional pseudonymization. It was also suggested that, to avoid situations where a restricted access order is issued after civil judgment information has already been provided to users, it would be desirable to establish a certain interval between the time judgment is rendered and the time the Designated Organization can obtain the civil judgment information. The Ministry of Justice intends to work with relevant institutions to ensure appropriate dissemination and communication so that litigation participants can make the necessary requests with minimal burden.

4. Expected Uses

Because the Act focuses on promoting new forms of utilization of civil judgment information through digital technology, in principle, primary users are expected to access the entire database by paying the prescribed usage fees. The system does not contemplate, at least in its initial phase, the provision of individual civil judgment records on a one-by-one basis, as doing so would require substantial system development costs and could lead to higher usage fees. Primary users are expected to include case-law database providers and legal-tech companies. Individual legal practitioners and researchers are expected to make secondary use of databases developed by such primary users, which will include enhanced search functions, case annotations, and formats suitable for reading.

The system establishes the foundation for the utilization of civil judgment information. While the specific forms of utilization will depend on private-sector innovation, it is anticipated that the information provided under the system will contribute to the public interest by supporting faster and more appropriate alternative dispute resolution (ADR), serving as a basis for various innovations, including AI development, and fostering new products and services that

will enhance the quality of legal services. In particular, in the field of ADR, Online Dispute Resolution (ODR), which utilizes digital technology to facilitate dispute resolution procedures online, has been making significant advances in recent years. By combining such systems with AI trained on information on civil judgments, new services can emerge, thereby contributing to the expansion of access to justice.

III. Effective Date of Provisions of the Act

The provisions of the Act concerning the designation of the Designated Organization and related matters took effect on January 15, 2026. After the Designated Organization completes the necessary preparatory steps to perform its functions and services, the remaining provisions of the Act shall take effect on a date to be specified by a Cabinet Order within two years from the date of promulgation of the Act (May 30, 2025).





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A Message from JCAA

President

Shinsuke Kitagawa



It is our great pleasure to present the seventh volume of the Japan Commercial Arbitration Journal. We wish to express our sincere appreciation to all authors and contributors whose efforts have made this publication possible. The Journal continues to foster discussion within the arbitration community and to serve as a valuable forum for sharing perspectives on, and developments in, the field.

As part of our ongoing efforts to enhance the quality and responsiveness of our services, the JCAA has established a User Committee comprising leading Japanese and international practitioners based in or active in Japan. Through closer engagement with users, we aim to ensure that our services continue to evolve in line with the needs of the international dispute resolution community.

At the same time, the JCAA is reviewing its arbitration rules with a view to future revisions that will enhance efficiency and better address users' needs and expectations. Through these initiatives, we seek to further strengthen the accessibility, quality, and effectiveness of our services.

These efforts were reflected in the JCAA Global Arbitration Forum 2025, held on 27–28 November 2025 at the Tsunamachi Mitsui Club in Tokyo as part of the Japan International Arbitration Week. The Forum welcomed nearly 400 participants from around the world, both in person and online, and provided a vibrant platform for discussion, networking, and collaboration.

Looking ahead, the JCAA Global Arbitration Forum 2026 will take place on 12–13 November 2026 at the Tsunamachi Mitsui Club. The Forum will continue to showcase Japan's evolving role in international arbitration and provide another opportunity for meaningful exchange among practitioners and users. Further information will be made available on the JCAA website in due course.

The JCAA remains committed to providing ADR services of the highest standard. We are sincerely grateful for the confidence and support of our users and stakeholders, and we look forward to contributing further to the development of arbitration in Japan and beyond.

Finally, to improve convenience for our users and visitors, the JCAA Tokyo Head Office relocated in October 2025 to the Fukoku Seimei Building in the Kasumigaseki/Hibiya area, close to many government ministries and offices. We warmly invite you to visit our new office and exchange views with us on the future of arbitration in Japan.



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