

## **The Rules for JCAA to Act as Appointing Authority with Parties' Agreement (in ad hoc arbitration or in arbitration administered by the rules of other arbitral institution)**

As part of an agreement to ad hoc arbitration, the parties may agree to empower an arbitral institution to appoint an arbitrator. In addition, while they agree that the arbitration shall be conducted under the arbitration rules of arbitral institution "A", it may be agreed to authorize institution "B" to appoint an arbitrator. Where the parties so agree, there are currently no specific rules for the JCAA to act as appointing authority.<sup>1</sup> Of course, the parties can conclude an agreement with the JCAA on this, but since what services are to be provided at what costs are unclear, the negotiation process would be time consuming, and the parties are unlikely to entrust the appointment of arbitrator to the JCAA.

The major arbitral institutions, including the ICC, have established specific rules for the appointment of arbitrator to be applied in such a case. With incorporating the relevant Articles in the Commercial Arbitration Rules and with reference to the provisions of the major arbitral institutions, new rules for the JCAA to serve as appointing authority are drawn up.

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<sup>1</sup> The UNCITRAL Arbitration Rules were mainly for ad hoc arbitration, with no involvement of arbitral institutions. In the case of arbitration administered by the JCAA under the UNCITRAL Arbitration Rules, the JCAA's Administrative Rules for UNCITRAL Arbitration apply, and Article 8 of these Rules provides that the JCAA shall appoint the arbitrators.

## Appointing Authority Rules (Draft)

Article number	Draft clauses	Reference clauses	Remarks
Article 1 (Purpose)	<p>Appointing Authority Rules (the “<b>Rules</b>”) provide for the procedures and the other necessary matters relating to appointment of arbitrator where the Parties agree to empower the JCAA to appoint an arbitrator, or the Parties agree to be governed by the Rules.</p> <p>However, the Rules shall not apply where the arbitration is conducted under the UNCITRAL Arbitration Rules supplemented by the Administrative Rules for UNCITRAL Arbitration of the JCAA, the Commercial Arbitration Rules of the JCAA, or Interactive Arbitration Rules of the JCAA.</p>		The Rules are applicable to arbitration conducted under the rules of other institutions as well.
Article 2 (Definitions)	<ol style="list-style-type: none"> <li>1 The term “<b>JCAA</b>” means the Japan Commercial Arbitration Association.</li> <li>2 The term “<b>Party</b>” or “<b>Parties</b>” means the applicant(s), the responding party (parties), or both parties.</li> <li>3 The term “<b>in writing</b>” includes hard copy and electronic documents. “<b>Electronic documents</b>” include electronic, magnetic and any other recording media used in information processing by a computer or other electronic device.</li> </ol>	Based on Article 2 of the Commercial Arbitration Rules (the term “claimant” is changed to “applicant” and “respondent” to “responding party”).	
Article 3 (Language)	Communications between the JCAA and the Parties, or between the JCAA and the arbitrator candidates shall be made in either English or Japanese.	Based on Article 11 of the Commercial Arbitration Rules. The only difference is that “arbitrator” is changed to “arbitrator candidates”.	
Article 4 (Communication)	<ol style="list-style-type: none"> <li>1 Any notice, submission or transmission under the Rules (collectively, a “<b>Communication</b>”) shall be made by courier, registered mail, e-mail, facsimile, or any other reasonable means, unless otherwise</li> </ol>	Based on Article 7 of the Commercial Arbitration Rules. The only difference is that “the arbitrators” in paragraph 7 is removed.	

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	provided.		
2	A Communication shall be sent to the street address, habitual residence, or place of business of the recipient (including the street address or habitual residence of the recipient's representative, if the recipient is a legal entity or other association), the e-mail address usually used by the recipient (if the recipient has designated an email address, such e-mail address), facsimile number or any address designated by the recipient (collectively, an " <b>Address for Communication</b> ").		
3	Delivery of a Communication shall be effective upon receipt.		
4	If the intended recipient refuses to receive a Communication, the Communication shall be deemed to have been received on the fourth day after dispatch or on the day of the refusal where such date is verified.		
5	If a Party (other than the intended recipient) uses reasonable efforts to ascertain an Address for Communication but no Address for Communication can be identified, a Communication may be sent to the last-known Address for Communication. In this case, the Communication shall be deemed to have been received on the fourth day after dispatch.		
6	If a Communication is deemed to have been received under Article 4.5, any subsequent Communication may be made in accordance with Article 4.5.		
7	If any Party relocates or makes any change to its Address for		

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	<p>Communication, the Party shall promptly designate and notify the new Address for Communication to the JCAA, and the other Parties.</p>		
<p>Article 5 (Period of Time)</p>	<p>1 In calculating a period of time under the Rules, the initial calendar day shall be excluded.</p> <p>2 Holidays and non-business days occurring during the running of the period of time are included. If the last day of the period falls on a holiday or non-business day at the place of the recipient, the period shall be extended until the next following business day.</p>	<p>Same as paragraphs 1 and 2 in Article 12 of the Commercial Arbitration Rules.</p>	
<p>Article 6 (Application)</p>	<p>1 To request appointment of arbitrator under the Rules, the applicant shall submit in writing to the JCAA an application (the “<b>Application</b>”) setting forth the following:</p> <ul style="list-style-type: none"> <li>(1) a request that one or more arbitrators to be appointed by the JCAA under the Rules;</li> <li>(2) a reference to the agreement that empowers the JCAA to appoint an arbitrator;</li> <li>(3) the Parties’ full names (if a Party is a legal entity or other association, the corporate name and the name of the Party’s representative), street addresses and other known contact details;</li> <li>(4) the full name, street address and other contact details of the Parties’ counsel (if applicable);</li> <li>(5) the full name, street address and other contact details of any appointed arbitrator(s);</li> <li>(6) The details of the agreement between the Parties or the applicant’s opinion, if any, on matters relating to the appointment of arbitrator, including the followings:</li> </ul>	<p>Based on Article 14 of the Commercial Arbitration Rules.</p>	

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	<p>(a) the number of arbitrators;  (b) the method of appointment of arbitrator;  (c) the place of arbitration; and  (d) the language to be used in the arbitral proceedings.</p> <p>(7) the request for arbitration and any answer.</p> <p>2 The applicant shall submit to the JCAA the Application, together with a copy of the agreement set forth in Article 6.1 (2) and any agreement set forth in Article 6.1(6).</p> <p>3 The applicant shall pay the application fee set forth in Article 11 when it submits the Application. If the applicant fails to pay the application fee within the time limit designated by the JCAA, the JCAA shall consider that no Application has been made.</p>		
Article 7 (Notice of Application)	<p>1 After confirming that an Application has been made in conformity with Article 6, the JCAA shall promptly notify the responding party thereof.</p> <p>2 The responding party shall submit its opinion on the Application (including the reasons, if any, why no arbitrator should be appointed by the JCAA) to the JCAA within two weeks from the date of receipt of the notice set forth in Article 7.1.</p> <p>3 If the JCAA finds that the opinion submitted by the responding party under Article 7.2 is justified, the JCAA may decline to appoint an arbitrator.</p> <p>4 If the responding party fails to submit its opinion to the JCAA within the time limit under Article 7.2, the JCAA may proceed with the appointment of arbitrator as requested in the Application.</p>	Based on Article 16 of the Commercial Arbitration Rules.	

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Article 8 (Scope of Appointment)	<p>Where the JCAA proceeds with the appointment of arbitrator, it shall provide the following services in accordance with the content of the Application:</p> <ul style="list-style-type: none"> <li>(1) appointment of a sole arbitrator;</li> <li>(2) appointment of one or more arbitrators if several arbitrators are to be appointed;</li> <li>(3) appointment of the presiding arbitrator; and</li> <li>(4) appointment of a substitute arbitrator in the case of challenge, removal, resignation or death of arbitrator before the termination of arbitral proceedings.</li> </ul>		The challenge or removal of the arbitrator shall be in accordance with the applicable arbitration law. Where Japanese arbitration law applies, please see Articles 18-21.
Article 9 (Appointment and Method)	<ol style="list-style-type: none"> <li>1 The JCAA shall appoint an arbitrator in accordance with the agreement of the parties, and the applicable arbitration rules.</li> <li>2 Where there is no agreement or applicable arbitration rules as set forth in Article 9.1 regarding the method of appointment of arbitrators, the JCAA shall, having regard to the opinions of the Parties, appoint an arbitrator in pursuant to the procedure below: <ul style="list-style-type: none"> <li>(1) The JCAA shall send the Parties a list of several arbitrator candidates. Each Party shall, within one week from the date of receipt of such list, notify the JCAA of the arbitrator candidate(s) to whom it objects and number the remaining arbitrator candidates in the order of preference.</li> <li>(2) The JCAA shall, promptly after receiving the notice under Article 9.2 (1) from both Parties or, if either Party fails to send such notice to the JCAA within the time limit</li> </ul> </li> </ol>		

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	under Article 9.2 (1), after the expiration of such time limit, appoint an arbitrator, taking into account the order of preference indicated by the Parties and any other circumstances, and promptly notify the Parties thereof.		
Article 10 (Exclusion of Liability)	JCAA (including its directors, officers, employees and other staff) shall not be liable for any act or omission in connection with the proceedings conducted under the Rules unless such act or omission is shown to constitute willful misconduct or gross negligence.	Same as Article 13 of the Commercial Arbitration Rules.	
Article 11 (Application Fee)	The application fee that the applicant shall pay to the JCAA when it submits application under the Rules is JPY100,000 plus consumption tax per appointment of one arbitrator.		
Supplementary Provisions	The Rules shall come into effect on July 1, 2021.		