



JAPAN LEGAL UPDATE

Global Disputes

JCAA Establishes New "Interactive Arbitration Rules"

Effective January 1, 2019, the Japan Commercial Arbitration Association ("JCAA") modified the choices of rules available to the parties to an arbitration. In addition to amending the existing rules for UNCITRAL Arbitrations and Commercial Arbitrations, the JCAA established a new third option, termed "Interactive Arbitration." The new Interactive Arbitration Rules are unique in that they: (i) compel communication from the arbitral tribunal to the parties and (ii) introduce a system of fixed compensation for arbitrators.

With respect to the compulsory communication, the rules for Interactive Arbitration require that the arbitral tribunal provide summaries of each party's positions and an issues list related to it as early as possible in the proceedings. Subsequently, and prior to deciding whether to hold a hearing for witness examination, the tribunal must provide a written summary of its preliminary views on the issues (Article 48).

The JCAA expects that informing the parties of the arbitral tribunal's preliminary views will encourage earlier resolutions of disputes by settlement. While such disclosure of preliminary views is commonplace in Japanese court proceedings, it is not typical in court cases or arbitrations in common law countries. The JCAA explained that they "expect there would be a certain demand in international business disputes between parties of civil law jurisdictions and domestic disputes between Japanese companies where parties would not be comfortable with the way of conducting arbitral proceedings typical in common law countries." It will be interesting to see to what extent the JCAA's idea will be accepted by companies in civil law countries, including Japan.

With respect to the fixed compensation element, in contrast to the time-based compensation scheme for arbitrators under the JCAA's Commercial Arbitration Rules, the Interactive Arbitration Rules introduced a relatively low fixed fee, which is tied to the amount of the claim rather than the amount of time spent (Articles 94 and 95). Although the parties would likely welcome the lower fees, arbitration practitioners have expressed concerns that it may be difficult to attract skilled arbitrators under this system. Parties should consider this potential drawback before selecting the Interactive Arbitration Rules, particularly in the context of large and complex disputes, where, given the low fee, it may be particularly difficult to attract skilled arbitrators.

In order for the Interactive Arbitration Rules to govern a dispute, the parties must either notify the JCAA of this selection prior to selecting arbitrators or expressly agree to these rules in the applicable arbitration

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provision. Where parties have agreed to a JCAA arbitration but have not specified which rules apply, the Commercial Arbitration Rules will apply by default.

As stated above, the existing Commercial Arbitration Rules were also amended and now impose upon arbitrators a duty to conduct a reasonable investigation as to whether they have any conflict issues. This is an effort to promote impartiality and independence in the wake of the Osaka High Court's decision to set aside an arbitral award (please see the [September 2016 issue](#) of this newsletter).

Labor & Employment

Cabinet Approves Labor Measure Basic Policy

On December 28, 2018, the Cabinet approved the Labor Measure Basic Policy. The Policy was formulated under the "Law for Comprehensive Promotion of Labor Policy, the Stabilization of Employment of Workers and Enhancement of Working Life, etc." It announces basic goals for labor reform, including shortening work hours, promoting equal treatment of workers across different industries, diversifying working types, improving working conditions, and promoting diversity. Companies should review the Policy closely because they may be required to make changes based on its new labor measures.

Corporate Governance

Legislative Council Adopts Outline for Amendment to the Companies Act

On February 14, 2019, the Legislative Council adopted the Outline for the Amendment to the Companies Act (in relation to Corporate Governance, etc.) and submitted it to the Minister of Justice. The Outline is substantially in line with the Interim Proposal for the Amendment to the Companies Act submitted last year by the Sub-Committee of the Legislative Counsel (please see the [March 2018 issue](#) of this newsletter), although the Outline ultimately proposed a requirement that listed companies (as well as certain large nonlisted companies) appoint at least one outside director. This position had not been finalized as of the Interim Proposal, which had acknowledged the divergent viewpoints on this issue. According to media reports, a bill for the amendments based on the Outline will be submitted to the current ordinary session of the Diet. Progress of this situation should be monitored.

Privacy & Cybersecurity

Framework to Easily Transfer Personal Data between Japan and EU Established

On January 23, 2019, the Personal Information Protection Commission of Japan designated the European Union as an eligible region under Article 24 of the Act on the Protection of Personal Information in Japan, and the European Commission adopted its adequacy decision to Japan under Article 45 of the General Data Protection Regulation. Thus, a framework to easily transfer personal data between Japan and the European Union was established. Please see the [August 2018 issue](#) and [October 2018 issue](#) of this newsletter for this framework.

Projects & Infrastructure

Amendment to the Water Supply Act Enacted

The Act to Partially Amend the Water Supply Act ("Act") was enacted on December 6, 2018, and promulgated on December 12, 2018. In order to further public and private collaboration in the water supply business, the Act introduces a system where a local government, with the approval of the Minister of Health, Labour and Welfare, may grant a private company the right to operate and manage water utilities (i.e., a concession) while the local government continues to serve as a water supplier. Companies that may be positioned to take advantage of such water utility grants should review the Act closely. The Act will come into force no later than December 12, 2019, on a date to be specified by a Cabinet Order.

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