

Client Alert

30 September 2021

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International Arbitration Update No. 11

The Japan Commercial Arbitration Association introduces New Rules

The main arbitral institution in Japan, the Japan Commercial Arbitration Association ("**JCAA**"), has introduced its revised Commercial Arbitration Rules ("**New JCAA Rules**")¹ and new Appointing Authority Rules ("**Appointing Authority Rules**"),² effective as of 1 July 2021.

While the JCAA Rules were revised as recently as 1 January 2019, the New JCAA Rules introduce two key changes to the existing rules and the newly introduced Appointing Authority Rules will likely provide a distinct aspect to dispute resolution in Japan.

In this client alert, we summarize the key changes introduced in the New JCAA Rules and the key functions of the Appointing Authority Rules.

1. Revisions to the JCAA Rules

Applicable to arbitrations commenced after 1 July 2021, the New JCAA Rules introduce two major changes to the existing JCAA Rules:

- i. expedited procedures will apply to arbitrations in which the amount in dispute does not exceed JPY 300,000,000 (around USD 2,750,000), except in certain circumstances; and
- ii. a new category of administrative fees will apply to "small claims" in which the amount claimed does not exceed JPY 5,000,000 (around USD 45,000).

As regards the new maximum claim value for expedited procedures to apply, the new JPY 300,000,000 ceiling represents a considerable increase from the previous upper limit of JPY 50,000,000 introduced under the previous revisions to the JCAA Rules.

This new upper limit appears targeted at keeping pace with other major arbitral institutions in the region, such as the Singapore International Arbitration Centre ("**SIAC**"), whose rules set the upper limit of the amount in dispute at around USD 4,500,000, and the Hong Kong International Arbitration Centre ("**HKIAC**"), whose maximum amount in dispute is around USD 3,200,000. Perhaps more significantly in terms of the JCAA's most direct competitor in the region, the JCAA's new maximum claim value far exceeds that in the Korean Commercial Arbitration Board's ("**KCAB**") current rules — around USD 450,000.

In one press release on the introduction of the New JCAA Rules, the JCAA noted that, in 47.4% of JCAA-administered arbitrations between 2011 and 2020,

¹ See

https://www.jcaa.or.jp/en/common/pdf/arbitration/Commercial_Arbitration_Rules2021_en.pdf

² See

https://www.jcaa.or.jp/en/common/pdf/arbitration/Appointing_Authority_Rules2021_en.pdf



the amount in dispute did not exceed JPY 300,000,000.³ As such, this recent revision should better serve the JCAA's "typical user" in ensuring arbitrations are as swift and efficient as possible.

It is worthy of note that, in addition to the ability of parties in arbitration to "opt out" of the expedited procedures that existed under the previous JCAA Rules, the New JCAA Rules empower the JCAA to decide not to apply the expedited procedures where it is "clearly inappropriate" to apply this process.⁴

Other key changes to the expedited procedures under the New JCAA Rules include the following.

- The time limit for counterclaims and set-off defenses increases from two to four weeks.
- With the tribunal's permission, the parties may now amend their claims, counterclaims or set-off defense after constitution of the tribunal.
- While the number of arbitrators shall in principle be one, the parties may agree for a three arbitrator tribunal to decide an arbitration.
- The tribunal shall seek to render its award: (i) within six months of constitution of the tribunal; or (ii) in cases with a value of less than JPY 50,000,000, within three months of constitution of the tribunal.

Lastly, the New JCAA Rules clarify that document-only procedures shall be adopted unless the arbitral tribunal, after consultation with the parties, decides it is necessary to conduct a hearing.

Separately, with respect to administrative fees, the New JCAA Rules insert a new category of fees for "small claims." Here, for claims with a value not exceeding JPY 5,000,000, the administrative fee will be 10% of the economic value of the claim.

This new "bracket" of administrative fees appears again to seek to expand the use of JCAA arbitration for smaller claims and perhaps for fairly typical JCAA users. Indeed, the JCAA noted in a press release that, between 2011 and 2020, 21.43% of JCAA administered arbitrations had an amount in dispute of less than JPY 50,000,000.

2. The New Appointing Authority Rules

While parties selecting arbitration as the dispute resolution mechanism applicable to their contracts often choose to use the rules of an arbitral institution for the conduct of the arbitration, parties may choose not to use such rules — so-called "ad hoc" arbitration.

In such circumstances, parties may agree to empower an arbitral institution to appoint, or assist with appointing where the parties cannot agree, an arbitrator.

By way of the JCAA's Appointing Authority Rules, the JCAA may assist with the appointment of arbitrators in ad hoc arbitrations where the JCAA is selected as an appointing authority by the parties. Moreover, the JCAA may assist with the appointment of arbitrators in arbitrations conducted under the rules of other

³ See https://www.jcaa.or.jp/files/new_s_attach/detail_attach00000202-31.pdf

⁴ *Id.*



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arbitral institutions under the Appointing Authority Rules where they are designated to do so.

The Appointing Authority Rules provide an additional string to the JCAA's bow as regards the services it is able to offer arbitration users and follows the example of other major arbitral institutions — including the ICC — in establishing specific rules for such circumstances.

3. Conclusion

Through the revisions in the New JCAA Rules and the newly introduced Appointing Authority Rules, the JCAA appears to seek to accommodate the diverse needs of arbitration users and to enhance competitiveness with other major arbitral institutions in the region.

Additionally, having clearly taken into account the sums that are relatively commonly in dispute in JCAA arbitrations, the New JCAA Rules demonstrate an apparent desire to improve access for parties with smaller claims to arbitration by offering lower administrative fees.

Lastly, the Appointing Authority Rules provide welcome clarity for parties who wish to use an arbitral institution for assistance with the appointment of arbitrators in circumstances where they are unable to agree on an arbitrator (whether in a non-JCAA arbitration or an ad hoc arbitration).

If you would like to discuss any of the issues raised in this alert, please do not hesitate to contact us.