Baker McKenzie.

Dispute Resolution
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International Arbitration Update No. 18

New Arbitration and Mediation Laws in Japan

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Since announcing measures to strength Japan as a hub for international arbitration and mediation in April 2018, Japan has undergone several steps in both the public and private sectors to seek to achieve this goal.[1]

International arbitration in Japan has long been governed by the Arbitration Act of 2003. From 1 April 2024, however, the amended arbitration act ("**Amended Arbitration Act**") took effect.[2]

The overhaul of the underlying legislation appears to be a pivotal phase in Japan's arbitration reforms. The Amended Arbitration Act brings Japan alongside major regional destinations for arbitration, such as Hong Kong and Singapore, while allowing Japan to compete more easily with emerging centres such as South Korea and Thailand.

On the same date as the Amended Arbitration Act took effect, Japan took another key step in relation to Alternative Dispute Resolution ("**ADR**") by ratifying the United Nations Convention on International Settlement Agreements Resulting from Mediation ("**Singapore Convention**") through domestic legislation ("**New Mediation Act**").[3]

Following their introduction in Japan's Diet in 2023, both acts have been subject of much commentary and discussion (not least at the very well-attended International Chamber of Commerce event, "2nd ICC Arbitration Day" in April 2024).[4]

With the dust having settled following the coming into force of the acts, in this client alert, we summarise the key changes introduced in the Amended Arbitration Act and the New Mediation Act.

1. The Amended Arbitration Act – What's New?

The Amended Arbitration Act brings Japan in line with the revised 2006 UNCITRAL Model Law[5], setting Japan apart from many other major jurisdictions globally.

(i) Enforcement of Interim Remedies

The Amended Arbitration Act introduces an enforcement scheme for interim

[1] See https://www.gov-online.go.jp/eng/publicity/book/hlj/html/202308/202308_08_en.html
[2] Act Partially Amending the Arbitration Act (Act No. 15 of 2023). A translation of the act can be found at: https://www.japaneselawtranslation.go.jp/ja/laws/view/4440
[3] See Act for Implementation of United Nations Convention on International Settlement Agreements Resulting from Mediation (Act No. 16 of 2023). A translation of the act can be found at: https://www.japaneselawtranslation.go.jp/ja/laws/view/4441
[4] See https://2go.iccwbo.org/2nd-icc-tokyo-arbitration.html
[5] See https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/19-09955_e_ebook.pdf

and/or provisional measures issued by arbitral tribunals. Until now, while parties could seek interim measures from an arbitral tribunal, any measures that were granted were not enforceable in the courts of Japan.

The amendments allow parties to enforce interim measures from an arbitral tribunal in Japan's courts where such measures are either preventative or restorative, or else prohibitive. For clarity, this applies to arbitrations seated both in Japan and elsewhere in the world.

For arbitrations seated in Japan, there are now several options to seek enforceable provisional relief from an arbitral tribunal, as opposed to seeking the same through the courts (a process that was difficult for non-Japanese parties and unwieldy to most parties). These options may include measures for:

- Anti-suit injunctions.
- Asset preservation.
- Orders to maintain the status quo.
- Evidence preservation.

As a matter of the new law, the courts of Japan will be obliged to grant enforcement of such interim measures granted by an arbitral tribunal unless limited statutory grounds for rejecting enforcement exist.

(ii) Formalities of Arbitration Agreements

While the previous law required an arbitration agreement to be in writing, the Amended Arbitration Act provides that, if a non-written contract incorporates a written, electronic or magnetic record by reference, such non-written contract shall be deemed to have been made in writing.

Practically speaking, this means an arbitration agreement may meet the "in writing" requirement for a valid arbitration agreement, even where it has been concluded orally, by conduct, or by other specified means.

(iii) Translations in Arbitration-related Court Proceedings

In the Amended Arbitration Act, the court has discretion to decide not to require a Japanese translation of a written arbitral award (or to require only a partial translation) in applications for recognition or enforcement of arbitral awards.

While this amendment does depend on the court exercising its discretion, this is in stark contrast to the previous position in which a full translation of the arbitration award was required.

This change also puts Japan ahead of several other countries in the region, which still require translation of documents submitted to the courts in cases pertaining to international arbitration.

(iv) Jurisdiction of the Tokyo and Osaka District Courts for Arbitration-related Proceedings

With an apparent view to building up a track record for international arbitration-related cases, the Tokyo or Osaka district courts will now be able to exercise concurrent jurisdiction over arbitration-related matters.

The intention of this revision is to increase certainty by ensuring that judges with experience in international arbitration-related cases are appointed.

2. What Does the New Arbitration Act Not Cover?

The New Arbitration Act represents a fairly monumental step for Japan in ramping up its presence as a key international hub in the region. With this being said, there are a certain elements that are missing from the new law that many say should have been included.

(i) Confidentiality

One of the key advantages of arbitration as taken against litigation in most jurisdictions is that arbitration is – either by statute, agreement or the rules of arbitral institutions – confidential.

The assumed confidentiality of arbitration is not included in the New Arbitration Act.

Accordingly, parties to an arbitration agreement would be best served by including the confidentiality of proceedings either in the arbitration agreement itself, or in the procedural orders or terms of reference during an arbitration.

(ii) Emergency Arbitrator Decisions

In certain circumstances, a party to an arbitration may wish to seek interim relief prior to the appointment of an arbitral tribunal. From a practical standpoint, the establishment of the tribunal can take a number of months.

During this period, most arbitral institutions include so-called "emergency arbitrator procedures" to allow parties to obtain arbitral relief in cases of the utmost urgency.

The decisions of emergency arbitrators are not, however, enforceable under the New Arbitration Act.

Accordingly, there may be certain urgent types of relief that parties may need to seek from Japan's courts before a substantive arbitral tribunal is formed.

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While non-exhaustive and not to take away from the major impact of the New Arbitration Law, these two items can certainly be seen as "misses" that may well end up being subject of revision in the future.

3. The New Mediation Law – What Does It Mean for Japan?

The Singapore Convention provides a harmonised framework for the enforcement of international settlement agreements reached through mediation.

Those familiar with the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 ("**New York Convention**") may draw a parallel as the Singapore Convention representing "the New York Convention, but for mediation."

From 1 April 2024, Japan joined the growing number of countries to accede to and ratify the Singapore Convention, which provides an additional avenue of ADR for those involved in disputes.

Under the New Mediation Law, parties will be able to enforce international settlement agreements reached through mediation by way of an effective mechanism for such enforcement. Practically speaking, a party will be required to submit the settlement agreement and other pertinent documents, following which the court must enforce the agreement unless one of limited grounds exist.

In common with other jurisdictions, in the enacting legislation, Japan states that it shall apply the Singapore Convention only to the extent that the parties to the settlement agreement have agreed to the application of the Singapore Convention. Accordingly, aside from the settlement agreement itself, an agreement on the application of the Singapore Convention will be required for the enforcement of a settlement agreement reached through mediation in Japan.

With respect to the status of the Singapore Convention more broadly, as of the date of this client alert, 57 countries have signed the convention, with 14 currently having become party to it, *i.e.*, those 14 countries have ratified, accepted, approved or acceded to the convention.[6]

Notably, with respect to how those countries tie back to those with whom Japan is commonly commercially engaged[7]:

Inbound Foreign Direct Investment		
No.	**Country**	**Status**
1	United States of America	Signed 7 August 2019 (not yet ratified)
2	China	Signed 7 August 2019 (not yet ratified)
3	Australia	Signed 10 August 2021 (not yet ratified)
4	Netherlands	Not signed or ratified[8]
5	Singapore	Signed 7 August 2019, ratified on 25 February 2020

Outbound Foreign Direct Investment		
No.	**Country**	**Status**
1	United States of America	Signed 7 August 2019 (not yet ratified)
2	Australia	Signed 10 August 2021 (not yet ratified)
3	United Kingdom	Signed 3 May 2023 (not yet ratified)

[6] See https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXII-4&chapter=22&clang=_en

[7] Statistics pertaining to Foreign Direct Investment in 2023 derived from: https://www.mof.go.jp/english/policy/international_policy/reference/balance_of_payments/ebpfdii.htm

[8] The European Union is yet to sign or ratify the Singapore Convention, despite having been closely involved with the negotiations of the treaty.

4	Netherlands	Not signed or ratified
5	Singapore	Signed 7 August 2019, ratified on 25 February 2020

Given the present signatories and those that have ratified the Singapore Convention, one may expect that the Singapore Convention will likely be of significant practical effect for those engaged in disputes with parties from the aforementioned countries in the coming years.

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

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