Chapter 23

JAPAN

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I INTRODUCTION

i The New Arbitration Law in Japan

Until recently, arbitrations in Japan were governed by the provisions stated in the old Civil Procedure Code and the Law Concerning Procedure for General Pressing Notice and Arbitration Procedure (Law No. 29 of 1890), which had not received substantial reform since 1890 (only 22 years after the era of the Samurai ended in 1868) ('the Old Arbitration Law').

The Old Arbitration Law was believed to be one of the reasons for a surprisingly low number of arbitrations conducted in Japan, in contrast to Japan's presence in the global economy and the increase in the use of arbitration as a means to resolve international disputes.

However, in this 21st-century era of global economics and rapid expansion in cross-border trade, Japanese legislators have found that arbitration plays an important role in resolving international disputes, and have decided that the modernisation of Japanese arbitration law is crucial in providing adequate legal infrastructure to those wishing to resolve their disputes in Japan.

Given the need for reform, and to encourage international arbitrations in Japan, the Japanese Government promulgated a new arbitration law on 1 August 2003 (Arbitration Law, Law No. 138 of 2003) (the 'New Arbitration Law' or the 'Arbitration Law') to replace the Old Arbitration Law.[2]

The New Arbitration Law came into force on 1 March 2004.

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2 An English translation of the Arbitration Law may be found at www.kantei.go.jp/foreign/policy/sihou/law032004_e.html.

Notably, the New Arbitration Law is based on the UNCITRAL Model Law on International Commercial Arbitration (1985) (the 'Model Law'), with limited deviations, and thus, Japan is now a Model Law country.

ii The structure of the Japanese courts

The Japanese court system is a three-tiered judicial system. The district courts are the courts of first instance for civil and commercial cases involving claims exceeding 1.4 million yen. The high courts, as the courts of second instance, have jurisdiction over appeals filed against judgments rendered by the district courts in the first instance. The Supreme Court is the highest court in Japan. There are no specialist tribunals in the Japanese courts for arbitration-related cases.

iii The structure of the Arbitration Law

The Arbitration Law governs arbitrations with their seat in Japan. Japan is not a federal state, and the Arbitration Law is the only law that generally governs arbitrations in Japan. In addition, the Supreme Court rules on Procedures of Arbitration Related Cases (Supreme Court Rules No 27, 26 November 2003) set forth the particulars of the procedural rules for court cases related to arbitrations in Japan.

iv Limited deviations from the Model Law

As stated above, the Arbitration Law is based on the Model Law, and therefore, international arbitration practitioners will find that the Arbitration Law closely resembles the Model Law: the Arbitration Law expressly acknowledges the 'competence-competence' of the arbitration; the Arbitration Law expressly provides that no court shall intervene in arbitral proceedings except where so provided in law; and moreover the Arbitration Law strictly provides narrow grounds for setting aside or refusing enforcement of an arbitral award, by adopting almost *verbatim* those grounds set forth under the Model Law.

But what are the few limited deviations from the Model Law? Among the limited deviations from the Model Law, arbitration practitioners should note that:

a The Arbitration Law governs both domestic and international arbitrations, and applies without distinction to both commercial and non-commercial arbitrations (whereas the Model Law states that it 'applies to international commercial arbitration, subject to any agreement in force between this State and any other State or States').

b The Japanese courts, when faced with the issue of enforcing an arbitration agreement, will simply dismiss the claims that have been brought before the court, and will not issue an order to compel arbitration or stay the litigation (whereas the Model Law provides that the courts shall refer the parties to arbitration).

c The rule provided in the Arbitration Law to the arbitral tribunal, as to which substantive law applies to the merits of the dispute, directs the arbitral tribunal to apply 'the substantive law of the State with which the civil dispute subject to the arbitral proceedings is most closely connected' when the parties fail to make a choice regarding the rules of law applicable to the substance of the dispute

(whereas the Model Law provides that the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable).[3]

d With respect to the appointment of arbitrators in multiparty arbitrations (when the number of parties is three or more), the Arbitration Law provides that the court, upon the request of a party, shall determine the number of arbitrators and appoint the arbitrators if the parties fail to agree (whereas the Model Law is silent on the appointment of arbitrators in multiparty arbitrations).

e The Arbitration Law does not provide a time limit for the correction of an award made by the arbitral tribunal on its own initiative (whereas the Model Law provides for a 30-day time limit for the tribunal to correct its award).[4]

f The Supplementary Provisions of the Arbitration Law set forth special treatment for arbitration agreements involving consumers and individual employees. Under the Arbitration Law, a consumer may unilaterally terminate an arbitration agreement with a business operator to arbitrate disputes that may arise in the future; and an arbitration agreement with respect to disputes that may arise in the future between an individual employee and a business employer shall be null and void (whereas the Model Law does not stipulate any special provisions for consumer arbitrations or labour arbitrations).

g The Arbitration Law provides that, if agreed by both parties, the arbitral tribunal or one or more of the arbitrators selected by the tribunal may attempt an amicable settlement (whereas, the Model Law does not have any provisions to confer such authority on the tribunal).

The deviation described in (g) above with regard to the arbitral tribunal's involvement in a settlement should attract the interest of arbitration practitioners in other jurisdictions (especially common law jurisdictions). We shall therefore explain in greater detail.

Article 38(4) of the Arbitration Law states: 'An arbitral tribunal or one or more arbitrators designated by it may attempt to settle the civil dispute subject to arbitral proceedings, if consented to by the parties.' This provision was inserted into the Arbitration Law to reflect the practices in domestic arbitrations in Japan, where hybrid 'med-arb' procedures are typically used, and many arbitration cases are settled amicably with the active involvement of the arbitrators (statistics related to this practice will be introduced below). However, concerns regarding this practice have been raised from international arbitration practitioners accustomed to different practices in relation to settlement as some considered decision-makers' involvement in the settlement as an unfair, unjust or inappropriate practice. Particularly strong concerns were raised from the viewpoint that information gained by the tribunal during the settlement negotiations – information the tribunal otherwise would not have had access to unless the arbitrators were involved

3 The authors understand that arbitration laws in Germany and Korea have also adopted this rule.

4 However, the Arbitration Law provides that the parties' request for correction of an award is subject to a 30-day time limit upon the receipt of the award (unless the parties agree otherwise).

in the settlement – could affect the decision-making process of the arbitrators when negotiations fail and the tribunal is required to render an award. There were also concerns that the arbitrators' attempts and recommendations to settle the dispute might be viewed by parties unwilling to defer such role to the tribunal as unreasonable pressure (especially on the party refusing to settle the dispute). To address these concerns, and to balance them with Japan's domestic arbitration practices, the legislators decided to clarify the requirement for the tribunal to become involved in a settlement, and consequently, the Arbitration Law requires the parties' consent for allowing the tribunal to attempt settlement.

In addition to the above deviations from the Model Law, below are some brief descriptions of matters concerning arbitrations in Japan that may be of general interest to arbitration practitioners.

v Arbitration agreements

With regard to the validity of arbitration agreements, arbitration agreements must be in written form. Documents signed by all the parties, letters or telegrams exchanged between the parties (including documents exchanged by facsimile) and other written instruments satisfy the 'writing' requirement. Reference in a written agreement to a separate document containing an arbitration clause and an arbitration agreement made by way of electronic or magnetic records (e.g., e-mails) also satisfies the written form requirement.

In addition, the Arbitration Law provides that an arbitration agreement is valid only when the subject matter relates to a civil dispute that can be resolved by settlement between the parties (civil disputes concerning divorce and dissolution of adoptive relations are expressly excluded). Moreover, in order for an arbitration agreement for resolution of future disputes to be binding and enforceable, such agreement must be made in respect of a defined legal relationship (Please also note (f) above with respect to consumer arbitrations and labour arbitrations).

vi Appointment of the arbitrator

The parties are free to agree on the number and procedure for appointing arbitrators. Under the Arbitration Law, there are no citizenship, residency or professional requirements for arbitrators, unless otherwise agreed by the parties. An individual does not need to be qualified to practice law in order to act as an arbitrator in Japan: law professors and architects are permitted to act, and have frequently acted, as arbitrators in Japan.

In the absence of the parties' agreement on the number and the procedure for appointing arbitrators, the Arbitration Law sets forth rules concerning the appointment of arbitrators.

vii Challenge to an arbitrator

The grounds for challenging an arbitrator are: (1) where the arbitrator does not possess the qualifications agreed to by the parties; or (2) where circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence.

With regard to the procedure for challenging an arbitrator, the Arbitration Law provides that the parties may agree on the procedure for challenging arbitrators.

In the absence of such an agreement, the Arbitration Law provides that the arbitral tribunal shall make a decision on any challenge to an arbitrator upon the request of a party. In such a case, the party challenging the arbitrator is required to make a written request to the tribunal, stating the grounds for the challenge, within 15 days after (1) the composition of the tribunal, or (2) becoming aware of the existence of grounds for challenge, whichever is later. If the party requesting the challenge is unsuccessful under the procedure agreed upon by the parties, or the tribunal rejects the challenge, that party may ask a court to render an independent decision on the grounds for the challenge of the arbitrator within 30 days of receiving notice of the decision on the challenge. If the court denies such challenge, there is no further appeal to the higher courts. This ensures that a dispute involving a challenge of an arbitrator is resolved relatively quickly.

The Arbitration Law also expressly stipulates that the arbitral tribunal may commence the arbitration, continue the proceedings and render an award even while the challenge is pending before the court.

viii Party representation

The Japanese Arbitration Law does not impose any formal requirements for party representatives who act as counsel. Article 72 of the Practising Attorneys Law generally prohibits anyone other than attorneys licensed to practice law in Japan from handling, for the purpose of gaining fees, 'legal business,' which includes arbitration. However, the Special Measures Law Concerning the Handling of Legal Business by Foreign Lawyers (Law No. 66 of 1986) sets forth significant exceptions to this general rule. First, a foreign lawyer who is registered in Japan as a special foreign member of the Japan Federation of Bar Associations ('a Registered Foreign Lawyer') may handle certain legal business, such as legal business concerning the law of the country of their primary qualification. Article 5–3 of the Foreign Lawyers Law further provides that a Registered Foreign Lawyer may represent a client in international arbitration proceedings regardless of whether the subject matter concerns Japanese law. Secondly, Article 58(2) of the Foreign Lawyers Law provides that a foreign lawyer (who is not a Registered Foreign Lawyer) qualified to practice law in a foreign country (excluding a person who is employed and is providing services in Japan, based on their knowledge of foreign law) may, notwithstanding the provision of Article 72 of the Practising Attorneys Law, represent clients in international arbitration cases which they were requested to undertake or undertook in such foreign country.

ix Confidentiality

There are no specific legislative provisions requiring that arbitration be conducted on a confidential basis. In practice, however, there is a widely accepted notion that arbitrations should be regarded as confidential unless otherwise agreed by the parties, since arbitrations are generally held in private. Where the applicable arbitration rules do not expressly impose confidentiality obligations upon the arbitrators or the parties, the parties may want to agree on confidentiality obligations.

x Evidence gathering

The Arbitration Law does not provide any detailed rules of evidence. Thus, the parties may agree on the procedural rules on the gathering and taking of evidence, and failing such agreement, the arbitral tribunal may conduct the arbitration in the manner it considers appropriate.

The parties can agree on the rules for disclosure. As a practical matter, where the arbitral tribunal consists of Japanese lawyers only (which is common in domestic arbitration and which can occur even in international arbitrations, particularly where the non-Japanese party appoints a Japanese arbitrator), the arbitral procedure may often be similar to Japanese civil procedure, in which only limited document discovery is available.

The Arbitration Law does not provide any detailed rules of oral evidence. However, it is common for witness statements to be submitted prior to the oral hearing. At the oral hearing, oral direct examination of the witness is normally conducted for a relatively short period of time, followed by a longer cross-examination. Arbitrators normally also question witnesses after the direct, cross and redirect examinations by the parties' counsels.

Arbitrators do not have the power to compel the attendance of witnesses. There is no legislation to give an arbitral tribunal the authority to have a witness undertake an oath under penalty of perjury. Similarly, the arbitral tribunal itself has no authority to enforce an order to produce documents. The arbitral tribunal may make an adverse inference if a party does not observe such an order. With regard to the party witness, the arbitral tribunal may also make an adverse inference if the party witness called by the counterparty refuses to appear or testify without justifiable reason.

With respect to the national courts' assistance, the Arbitration Law stipulates that an arbitral tribunal or a party (with the consent of the arbitral tribunal) can request court assistance in taking evidence (including witness and expert testimony, document production orders and inspection), and that the court will then act in accordance with the procedures under the Code of Civil Procedure. While a judge will preside over the procedures for witness and expert testimony, arbitrators are entitled to attend and pose questions.

xi Interim measures

The Arbitration Law expressly stipulates that, unless otherwise agreed by the parties, the arbitral tribunal may order any party to take such interim or preliminary measures of protection as the tribunal considers necessary in respect of the subject matter of the dispute, and may require any party to provide appropriate security in connection with such measure. Under Japanese Law, interim measures issued by arbitrators are not enforceable in courts.

With regard to the power of a Japanese court to grant interim or preliminary relief in connection with the subject matter of an arbitration, the Arbitration Law expressly confirms that an arbitration agreement shall not prevent the court from granting any preliminary relief before or during the arbitration proceedings. The provision in the Arbitration Law expressly confirming the Japanese courts' power to grant interim relief

in support of arbitration proceedings also applies to arbitrations seated outside of Japan, and where the seat of arbitration has not been determined.

xii Enforcement of foreign arbitral awards

With respect to the enforcement of foreign arbitral awards, Japan is a contracting state to the New York Convention (with a declaration that it will apply the New York Convention to the recognition and enforcement of awards made only in the territory of another contracting state). The provisions of the New York Convention apply to arbitral awards made in other contracting states.

The Arbitration Law has adopted, almost *verbatim*, the provisions regarding the grounds for refusing recognition and enforcement under the Model Law and the New York Convention. Under the Arbitration Law, the grounds for refusing recognition or enforcement, which are as strictly limited as those of the New York Convention, are applied to arbitration awards irrespective of whether the seat of arbitration is within or outside of Japan.

Furthermore, the Japanese courts have consistently taken a pro-arbitration attitude with respect to the enforcement of arbitral awards (for example, Japanese courts have narrowly interpreted 'public policy' in light of the purposes of the Arbitration Law).

xiii Fees and costs

The Arbitration Law provides that the costs of arbitration shall be apportioned between the parties in accordance with the parties' agreement. If there is no such agreement between the parties, the Arbitration Law provides that each party shall bear the costs it has disbursed with respect to the arbitral proceedings. The Japanese Arbitration Law does not provide that the unsuccessful party should always bear the costs of the arbitration.

xiv Local institutions

The Japan Commercial Arbitration Association ('the JCAA') is the leading permanent commercial arbitration institution in Japan which contributes to the resolution of disputes arising from international and domestic business transactions.[5]

Arbitration centres established by local bar associations are frequently used for resolving domestic disputes, but are not commonly used for resolving international disputes. These centres were established to make arbitrations more accessible, and have modest fee schedules and accept the filing of arbitration requests even in the absence of an arbitration agreement. This is on the basis that if and when an arbitration agreement is reached in the course of discussions between the parties, the tribunal will proceed to render an arbitral award. Most of the cases handled by these centres are settled rather than going to a final arbitral award, typically using hybrid 'med-arb' procedures (as seen in the statistics provided below).

In addition, the Tokyo Maritime Arbitration Commission ('the TOMAC') of the Japan Shipping Exchange Inc handles maritime arbitration. A number of domestic construction disputes have been resolved before the Construction Dispute Review Boards

5 www.jcaa.or.jp/e/index.html.

established pursuant to the Construction Business Act. The Japan Intellectual Property Arbitration Centre ('the JIPAC') also provides dispute resolution services in the field of intellectual property, and the Japan Sports Arbitration Agency ('the JSAA') provides services in relation to sports-related disputes.

xv Trends or statistics relating to arbitration

Among the relatively small number of large international commercial arbitration cases with Japan as their seat, the JCAA handles more cases than the other institutions. According to the JCAA's business report for the fiscal year 2010, the JCAA handled 48 cases (25 new cases and 23 carried-forward cases).[6] Most of the cases handled by the JCAA are conducted under the Arbitration Rules of JCAA ('the JCAA Rules') but some cases have been conducted under the UNCITRAL Rules, with the JCAA's administration. The parties to the JCAA arbitrations have been diverse: Japan, United States, United Kingdom, China, Korea, Australia, Ireland, Vietnam, Singapore, Taiwan, Thailand, Turkey, Mongolia, India, France, Indonesia, Cayman Islands, Virgin Islands and Malaysia. The disputes resolved under the JCAA Rules have been related to distribution agreements, purchase agreements, construction agreements, licence agreements, supply agreements and joint venture agreements.

With respect to domestic arbitrations, the use of the hybrid 'med-arb' procedure and the fact that the majority of the cases are resolved through settlement can be seen in the statistics concerning arbitration centres established by the local bar associations. In the fiscal year 2010, a total of 988 new cases were filed with the arbitration centres. Among the 381 cases that were resolved during that fiscal year, 370 cases (97.1 per cent) were settled, four cases (1 per cent) ended with arbitral awards based on settlement, and only seven cases (1.8 per cent) ended with arbitral awards without settlement (Annual Arbitration Statistics (National Version) for the fiscal year 2010, published by the Japan Federation of Bar Associations, Alternative Dispute Resolution Centre).[7]

In addition, only a small number of arbitration-related cases have been brought before the Japanese courts. According to yearly statistics published by the Supreme Court of Japan, only 13 new arbitration-related cases were brought to the Japanese courts in the year 2010 (compared to 2,179,351 new civil and administrative cases overall).

II THE YEAR IN REVIEW

i Developments affecting international arbitration

The most recent and significant development affecting international arbitration in Japan has been the adoption of the New Arbitration Law, which became effective on 1 March 2004.

The most recent amendment to the JCAA Rules concerns arbitrators' impartiality and independence. As of 1 January 2008, the JCAA Rules provide that: 'When a person is appointed as an arbitrator, he or she shall, without delay, submit to the Association

6 www.jcaa.or.jp/jcaa/docs/h22_1.pdf.

7 www.nichibenren.or.jp/jfba_info/statistics/reform/tyusaitoukei_nenpou.html.

his or her written undertaking to disclose any and all circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence, or to declare that there are no such circumstances. The Association shall, without delay, send a copy of such undertaking to the parties.' In addition to the revision in the JCAA Rules, amendments (effective as of 1 July 2009) have been made to the rules regarding JCAA-administered arbitrations under the UNCITRAL Rules (the JCAA's 'Administrative and Procedural Rules for Arbitration under the UNCITRAL Arbitration Rules').

ii Arbitration developments in local courts

As stated in the 'Statistics or Trends relating to Arbitration' section of this chapter, relatively few arbitration-related cases are brought to the Japanese courts every year. We shall therefore introduce notable Japanese court cases that have been published in recent years, in relation to (1) the interpretation of grounds to set aside an award (inability to defend and violation of public policy) (*AIU* case)[8]; (2) determination of law governing the agreement to arbitrate (*Monaco cosmetic distributorship* case)[9]; and (3) interpretation of grounds to set aside an award (violation of public policy) (*Blast-furnace slag* case).[10]

AIU case

In this case, the losing party sought to set aside an arbitral award ordering the payment to the claimant of NT$2.688 billion and related legal fees. The petitioner relied on three grounds under the Arbitration Law: (1) it had been unable to defend in the arbitral proceedings (Article 44(1)(iv)); (2) the arbitral award was in violation of Japan's public policy (Article 44(1)(vi)); and (3) the arbitral proceedings were not in accordance with the agreement of the parties (Article 44(1)(viii)). The Tokyo District Court (the first instance court) rejected all three arguments.

With respect to the issue regarding the inability to defend, which is substantially the same as Article 34(2)(a)(ii) of the Model Law, the petitioner alleged that it had been unable to defend itself in the arbitral proceedings, because the arbitral tribunal found it liable on grounds that were, in the petitioner's view, not exactly the same as those alleged by the respondent.

However, the Tokyo District Court ruled that the inability to defend in arbitral proceedings must be construed narrowly:

> *Arbitral proceedings are proceedings to resolve disputes outside courts based on the parties' consent, and were not intended to be brought to an appellate court; thus, an arbitral award is regarded as a final decision... From this perspective, it is appropriate to interpret that the intention of Article 44(1)(iv) of the said law is to allow courts to set aside an arbitral award only when there exist significant breaches in securing due process of law, such as a party not having been given any chance to defend itself, proceedings having been conducted that a party cannot attend, or*

8 *X KK v. American International Underwriters, Limited*, 292 Hanrei Times 1304, (Tokyo Dist. Ct., 29 July 2009) and *X KK v. American International Underwriters, Limited*, (Tokyo High Ct., 26 February 2010).

9 *KK X v. YK Y,* 236 Hanrei Times 1358 (Tokyo Dist. Ct., 10 March 2011).

10 *KK X v. Y Inc.*, 58 Hanrei Jihou 2128 (Tokyo Dist. Ct., 13 June 2011).

> *a decision having been made based on materials which are unknown to a party. Therefore, the Court cannot find grounds for setting aside pursuant to Article 44(1)(iv) in the case where a party was simply not aware that a certain issue was important.*

Regarding the petitioner's claim of violation of public policy, which is substantially the same as Article 34(2)(b)(ii) of the Model Law, the Tokyo District Court also followed a narrowed interpretation, denying the public policy exception as follows:

> *It should be interpreted that courts are of the view that they should respect arbitral awards to the extent possible. Therefore, it is appropriate to interpret the intention of Article 44(1)(viii) of the Arbitration Law as follows: it is not to allow courts to set aside an arbitral award in the case where it is only found that fact findings or legal decisions by the arbitral tribunal are unreasonable, but rather only in the case where the legal effect resulting from an arbitral award is found to be against public policy in Japan.…[T]he claim merely asserts that the fact findings and legal decision made by the Arbitral Tribunal are unreasonable. Therefore, this court cannot find that the substance of the Arbitral Award is against public policy in Japan by adopting this assertion as grounds therefor.*

The petitioner appealed the Tokyo District Court's decision to the Tokyo High Court, which eventually dismissed the appeal.

With respect to the lack of due process argument, the Tokyo High Court concluded that the Petitioner had been given the opportunity to defend, and as for the public policy exception, the Tokyo High Court also confirmed the Tokyo District Court's narrow interpretation of the Arbitration Law.

Monaco cosmetic distributorship case

In this case, the Tokyo District Court decided on the determination of the law governing the agreement to arbitrate, and dismissed the plaintiff's claim without prejudice to the merits, on the ground that the claim fell within the scope of a valid arbitration agreement under the law it applied. In its reasoning, the court stated that:

> *An arbitration is a procedure for resolving disputes without relying on litigation, as the parties are bound by the arbitral award pursuant to the parties' agreement to defer the resolution of their disputes to the arbitrator (a third party)'s award, and given the nature of arbitration, which is a means for resolving disputes based on the parties' agreement, it is appropriate to interpret that the governing law in relation to the formation and effect of an arbitration agreement in what is called international arbitration is to be determined, in the first place, pursuant to the parties' intent, in accordance with Article 7 of the Act on General Rules for Application of Laws. Even if the said governing law is not expressly agreed in the arbitration agreement, if the parties' implied agreement on the governing law can be found in light of various factors, such as the existence of an agreement with respect to the seat and its content, and the content of the main contract, [the formation and effect of an arbitration agreement should be determined] based on it.*

Blast-furnace slag case

In this case, the Tokyo District Court set aside a JCAA award on the ground that there was a violation of procedural public policy, since the tribunal erroneously stated that a certain material fact was not disputed while, in the eyes of the court, the fact was disputed, and that the tribunal would have reached a different conclusion if the tribunal

had correctly found that such fact had not existed. In its reasoning, the Tokyo District Court stated that:

> *Regardless of the law governing the arbitration proceedings, in light of the Arbitration Law's provisions with respect to procedure and their purposes, [the court] cannot affirm that an award rendered pursuant to an arbitration procedure which violates the procedural public policy of Japan [to have the same effect as a final judgment rendered by the court] because the content of [the award] does not adhere to procedure in accordance with the procedural public policy [of Japan] and therefore violates the fundamental rules of law of Japan, and consequently, such award shall fall under the grounds for setting aside an award provided in Article 44(1)(viii) of the Arbitration Law.*

iii Investor–state disputes

Japan is a contracting state to the Washington Convention on the Settlement of Investment Disputes between States and Nations of Other States (1965) and has signed 28 investment treaties (as of April 2012). Japan is also a signatory to the Energy Charter Treaty.

As of this date, there have been no reports of cases where the Japanese government has been a party to arbitrations under investment treaties. In addition, there has been only one report of an investment treaty arbitration, where a Dutch subsidiary of a Japanese securities company brought a claim against the Czech Republic under the Netherlands–Czech Republic BIT (*Saluka Investments BV v. Czech Republic*, IIC 210 (2006).

III OUTLOOK AND CONCLUSIONS

The recent growth in the Asian market has increased the need for a neutral venue in Asia for arbitrations. It is the view of the authors that Japan, as a nation with a developed economy, modern infrastructure, transportation and accommodation facilities, has the potential to become a preferred venue for arbitrations in Asia. In particular, considering a number of Asian countries are establishing their legal systems based on civil law, you can easily see Japan's potential to be a 'go-to place' for arbitrations in Asia, with legal practitioners trained under a sophisticated legal system based on civil law; neutral, impartial and fair courts; a modern arbitration law based on the Model Law; and moreover, a recent increase in the number of arbitration practitioners who are knowledgeable of the standards and norms of international arbitration. For Japan to further elevate its status as a preferred location for arbitrations in Asia, the authors view that efforts still can be made to create a more user-friendly environment, such as by establishing organisations that provide 'state-of-the-art' hearing facilities and support services, and by training 'specialist judges' for arbitration-related cases.

Appendix 1

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Hiroyuki Tezuka is a partner at Nishimura & Asahi, and heads the firm's international dispute resolution practice group. He specialises in international commercial litigation and arbitration, corporate litigation, and mergers and acquisitions. He has represented many international clients including manufacturers, banking and securities firms, insurance companies and news media in dispute resolutions involving M&A disputes, antitrust laws, corporate governance, insurance laws, intellectual property, defamation, joint ventures, licensing, construction and other commercial matters, as well as international bankruptcy.

In 2007, Mr Tezuka was appointed as a director of the Japan Association of Arbitrators and a fellow of ACICA, and from 2007 to 2008, he was a vice chair of the Arbitration Committee of the IBA Legal Practice Division. From 2006 to 2010, he was the Committee vice chairperson of the Dispute Resolution and Arbitration Committee at the IPBA, and from 2008 to 2010, he was a special member of the Legislative Council of the Ministry of Justice on legislation of international jurisdiction rules. Mr Tezuka has also been a part-time lecturer at Keio Law School since 2011 and has written various articles for both Japanese and English-language publications.

Mr Tezuka graduated from the University of Tokyo (LLB, 1984) and Harvard Law School (LLM, 1992). He was admitted as an attorney in Japan in 1986 and in New York in 1993.

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Yutaro Kawabata is an associate at Nishimura & Asahi, and is a member of the firm's international dispute resolution practice group. His main area of practice includes advising and representing clients in court litigation and arbitration, presenting solutions concerning commercial disputes to domestic and foreign clients, and franchise law and disputes.

Mr Kawabata has served as counsel on over 35 court litigation cases in the district courts, high courts and Supreme Court of Japan. He has also served as counsel in international arbitration cases under the UNCITRAL Rules, the ICC Rules and the JCAA Rules. Mr Kawabata is a member of the International Bar Association, the Inter-Pacific Bar Association, the Chartered Institute of Arbitrators (Associate) and the Japan Arbitration Association (deputy secretary from 2006 to 2008). He is also a lecturer at Keio University.

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