

# Japan's New Arbitration and Mediation Laws

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## INTRODUCTION

In recent years, the Japanese government has taken various steps to promote the use of alternative dispute resolution in cross-border disputes, including the use of arbitration and mediation. These steps have involved both substantive and procedural reforms aimed at modernizing the underlying legislative framework and local arbitration rules.

In a continuation of this policy, on 21 April 2023, the Japanese Diet approved the Act to Partially Amend the Arbitration Act (Act No. 15 of 2023) (“Amended Arbitration Act”) and the Act for Implementation of the United Nations Convention on International Settlement Agreements Resulting from Mediation (the “Singapore Convention”) (Act No. 16 of 2023) (“Mediation Act”). The precise dates on which these pieces of legislation will come into force are yet to be announced: the Amended Arbitration Act is scheduled to come into force within a year, and the Mediation Act will come into force with Japan’s accession to the Singapore Convention.

## THE KEY TAKEAWAYS FROM THE AMENDED ARBITRATION ACT

The Amended Arbitration Act contains four key changes to Japan’s arbitration framework. The existing framework is based on the 1985 UNCITRAL Model Law on International Commercial Arbitration. The amendments seek to incorporate changes made in the 2006 UNCITRAL Model Law, which has been followed by many other jurisdictions.

### Enforcing Interim or Provisional Measures

Under the current regime, there is no specific mechanism by which Japanese courts can enforce tribunal-ordered interim or provisional measures. This has led to considerable uncertainty. The Amended Arbitration Act establishes a mechanism for Japanese courts

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to enforce interim or provisional measures that are typically granted by arbitral tribunals, including measures aimed at:

- preserving assets to satisfy claims;
- maintaining the status quo between the parties;
- prohibiting conduct harmful to the arbitration process; and
- preserving evidence for the arbitration.

### **Validity of an Arbitration Agreement**

The current law requires an arbitration agreement to be in writing to be valid and is highly prescriptive in specifying what constitutes an agreement in writing. It contains no provisions on contracts concluded through other means, such as oral agreement. In line with the 2006 UNCITRAL Model Law, the Amended Arbitration Act enables an arbitration agreement to meet the writing requirement even where it is part of a contract that has been concluded orally, by conduct, or by other means under certain conditions.

### **Jurisdiction over Arbitration-Related Court Proceedings**

The current law sets out several bases on which court jurisdiction in arbitration-related proceedings can be established. These include party agreement, place of arbitration, or the general venue of the counterparty, depending on the type of petition filed at court. Where more than one district court with jurisdiction exists, the first court at which the petition was filed has jurisdiction.

The new law also permits the Tokyo or Osaka district courts to exercise concurrent jurisdiction over arbitration-related proceedings, including for the examination of evidence and the enforcement of arbitral awards.

The concentration of arbitration-related cases in the Tokyo and Osaka district courts is likely to foster increased expertise in those courts on arbitration-related issues. In turn, this should improve the confidence of international arbitration users in turning to the Japanese courts for assistance when it is required.

### **Translations of Arbitral Awards**

The requirement to provide translations of documents can often unduly increase the costs associated with arbitration proceedings and create delays. Any party seeking to enforce a non-Japanese arbitral award in Japan is currently required to submit a Japanese translation to the court. The Amended Arbitration Act alleviates this burden by giving

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courts the discretion to waive this requirement in whole or in part, including in respect of awards for interim or provisional measures.

### THE KEY TAKEAWAYS FROM THE MEDIATION ACT

The Singapore Convention is a framework for enabling the enforcement of settlement agreements resulting from mediation in cross-border commercial disputes. Fifty-six States have signed the Singapore Convention since it was opened for signature in 2019. The Convention requires each member State to enforce mediated settlement agreements, with limited exceptions for declining enforcement.

Japan is not yet a party to the Singapore Convention. The Mediation Act sets out a mechanism for the enforcement of international settlement agreements, preparing Japan's domestic law for Japan's future accession to the Convention.

Pursuant to the Mediation Act, in order to enforce an international settlement agreement in Japanese courts, a party must submit the settlement agreement and other documents proving that the international settlement agreement arose from mediation. The court must enforce the agreement unless it is satisfied that one of a limited number of grounds for declining enforcement is made out. These include the incapacity of a party to the settlement agreement; the invalidity of the agreement under the applicable law; the mediator's serious breach of applicable standards; and bias-related issues.

### BUILDING ON RECENT REFORMS

These developments build on a series of reforms that the Japanese government has undertaken to facilitate the use of alternative dispute resolution and to promote Japan as an Asia-Pacific disputes hub.

- In 2017, the Japanese government published its Basic Policy on Economic and Fiscal Management and Reform, in which it declared the Japanese government's aim of laying the foundation to promote international arbitration.
- In 2020, Japan eased restrictions on the provision of legal services by foreign lawyers. Amendments to the Act on Special Measures Concerning the Handling of Legal Services by Foreign Lawyers (Act No. 33 of 2020) have enabled foreign lawyers to act in arbitration proceedings for Japanese subsidiaries that are majority-owned by foreign entities. Prior to this, foreign lawyers could only act if at least one of the parties was foreign (irrespective of their ultimate ownership). These amendments

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have also enabled foreign lawyers to act in arbitration proceedings where the substantive law of the dispute is not Japanese law. They also made it less onerous to qualify in Japan as a registered foreign lawyer. In addition, they introduced a new category of legal practice known as a Joint Corporation, which comprises both Japanese lawyers and registered foreign lawyers.

- In 2021, the new rules of the Japan Commercial Arbitration Association (JCAA) came into force (see our previous update [here](#)). These included amendments to the rules for expedited arbitration, a procedure aimed at reducing time and costs in proceedings, often by dispensing with hearings, such that disputes are decided on a documents-only basis.

## CONCLUSION

Japan's modernization of its arbitration regime and its adoption of the Singapore Convention will be seen as a welcome development for parties involved in Japan-related disputes. In passing this legislation, the government has demonstrated its continued commitment to strengthening Japan's alternative dispute resolution framework.

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Please do not hesitate to contact us with any questions.

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