

JCAA Rules Update: Expanded Scope for Expedited Procedure and New Appointing Authority Rules

In a welcome move, the Japan Commercial Arbitration Association (**JCAA**) has updated its rules relating to expedited procedure and published new Appointing Authority Rules with effect from 1 July 2021.¹ Among other things, the monetary threshold for applying the expedited procedure has increased from JPY50 million to JPY300m. These changes are expected to cement the JCAA's position as one of the key arbitral institutions for Japanese companies and foreign parties in Japan-related disputes.²

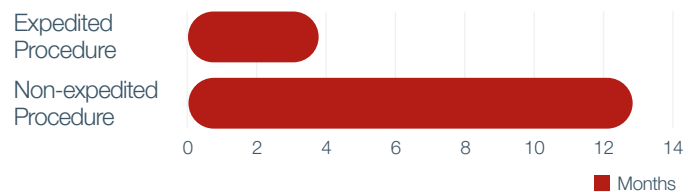
The JCAA currently administers arbitrations under three different sets of rules:³

- the UNCITRAL Arbitration Rules (last amended in 2010), which are the most commonly used *ad hoc* arbitration rules, together with the Administrative Rules for UNCITRAL Arbitration;⁴ and
- two sets of arbitral rules published by the JCAA (both last amended in 2019), namely:
 - Commercial Arbitration Rules, which largely reflect the current “*best practice*” in international arbitration and contain features such as expedited procedure, emergency arbitrator procedure, provisions for dealing with multi-party and multi-contract arbitrations and explicit rules regarding the appointment of tribunal secretaries; and
 - Interactive Arbitration Rules, which adopt a more civil law approach by encouraging tribunals to manage the proceedings actively, including by requiring tribunals to clarify the parties’ positions and identify key issues at an early stage of the proceedings and to communicate their preliminary views to the parties before any evidentiary hearing.

Amendments to expedited arbitration procedure

Expedited arbitration procedures are now commonplace in the arbitration rules of major arbitral institutions. Such procedures generally allow lower value and less complex disputes to be resolved within shorter timelines as compared to the usual arbitration timelines. On average, JCAA-administered arbitrations conducted in the last decade under the expedited arbitration procedure required three and a half months from the constitution of the tribunal to the rendering of the award, less than one-third of the 12.8 months required under non-expedited procedures.⁵

Average duration from constitution of tribunal to rendering of award



¹ <https://www.jcaa.or.jp/en/news/?mode=show&seq=202>

² https://www.jcaa.or.jp/files/news_attach/detail_attach00000202-31.pdf

³ <https://www.jcaa.or.jp/en/arbitration/rules.html>

⁴ https://www.jcaa.or.jp/en/common/pdf/arbitration/UNCITRAL_Arbitration_Rules2021.docx

⁵ JCAA Amendment to Arbitration Rules and Enactment of Appointing Authority Rules (effective on, 1 July 2021), page 1, available at: https://www.jcaa.or.jp/files/news_attach/detail_attach00000202-31.pdf

The main changes in relation to the JCAA's expedited arbitration procedure are as follows:

- The expedited arbitration procedure now applies to arbitrations where the amount in dispute (being the total amount of the claim, counterclaim and set-off defence) is JPY300m (approximately USD2.73m) or less. This is a substantial increase from the previous upper limit of JPY50m (approximately USD454,000). However, the revised upper limit is still slightly below the upper limits of other major arbitral institutions in the Asia-Pacific region. For example, the current upper limits under the ICC Rules and the SIAC Rules are USD3m and SGD6m (approximately USD4.43m), respectively.
- Parties may also agree to conduct an arbitration under the expedited arbitration procedures, irrespective of the amount in dispute.
- While the JCAA Rules previously excluded the application of the expedited arbitration procedure where the parties had agreed to three arbitrators in their arbitration agreement (even if the amount in dispute was within the specified upper limit), this exclusion has now been removed. This is consistent with the approach taken in, for example, the ICC Rules, the HKIAC Administered Arbitration Rules and the SIAC Rules.
- Arbitrations conducted under the expedited arbitration procedure shall be determined by a sole arbitrator, unless the parties agree to three arbitrators. The JCAA may nevertheless invite the parties to agree to a sole arbitrator, having regard to the amount in dispute, the complexity of the case, and other circumstances.
- The JCAA retains discretion not to apply the expedited arbitration procedure where it is clearly inappropriate to do so, such as where the parties' agreement contains provisions that are contrary to the expedited arbitration procedure.
- The time limit for the Respondent to submit any set-off counterclaims or set-off defences has been increased from two weeks to four weeks (from the Respondent's receipt of the notice of Request for Arbitration).
- The time limit for the arbitral tribunal to render an award under the expedited arbitration procedure has been increased from three months to six months (from the date the arbitral tribunal is constituted). However, where the amount in dispute is JPY50m (approximately USD454,000) or less, the arbitral tribunal is required to make reasonable efforts to render an arbitral award within three months (from the date when the arbitral tribunal is constituted).
- As with the previous expedited arbitration procedure, the arbitration will be conducted on a document-only basis, but the arbitral tribunal may conduct a hearing if it

considers that a hearing is necessary after consultation with the parties, and shall conduct a hearing if all the parties agree. There has been no change in substance to the previous expedited arbitration procedure in this regard.

Changes to administrative fees for small claims valued at under JPY5m

The JCAA has revised its administrative fees for claims valued at less than JPY5m (approximately USD45,000) from JPY500,000 (approximately USD4,500) to 10% of the claim amount or economic value of the claim, which has the effect of reducing the amount of fees payable. This amendment is intended to encourage the use of arbitration for small claims valued at under JPY5m.

Publication of Appointing Authority Rules

For the first time, the JCAA has also introduced a set of Appointing Authority Rules. The Appointing Authority Rules contain provisions relating to the appointment of arbitrators by the JCAA where the parties have agreed to: (i) designate the JCAA as appointing authority for one or more arbitrators; or (ii) apply the Appointing Authority Rules. The Appointing Authority Rules do not apply to JCAA administered arbitrations under the UNCITRAL Arbitration Rules, the Commercial Arbitration Rules or the Interactive Arbitration Rules (which contain separate provisions for the appointment of arbitrators).

Although the JCAA has long been prepared to act as an appointing authority on an *ad hoc* basis, the Appointing Authority Rules provide certainty and clarity as to the process and costs, and are likely to encourage more parties to designate the JCAA as appointing authority for non-JCAA administered arbitrations.

Conclusion

Together with the [recent amendments to the Act on Special Measures concerning the Handling of Legal Services by Foreign Lawyers](#), which (i) expanded the range of international arbitration cases in which foreign lawyers are permitted to act, (ii) relaxed the overseas post-qualification experience requirement for Registered Foreign Lawyers in Japan, and (iii) enabled lawyers to form Joint Corporations comprising both Japanese qualified Attorneys at Law and Registered Foreign Lawyers, the amendments to the JCAA Rules are welcome developments which will improve Japan's position as a key arbitral seat in Asia.

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