

Alert | International Arbitration & Litigation



December 2018

The Japan Commercial Arbitration Association Amends Its Commercial Arbitration Rules and Adopts New Rules for ‘Interactive Arbitration’

On Dec. 7, 2018, the Japan Commercial Arbitration Association (JCAA) amended its Commercial Arbitration Rules and enacted new “Interactive Arbitration Rules.” The new rules come into force on Jan. 1, 2019.

The following is a summary of the key changes to the Commercial Arbitration Rules from the previous version of the Rules:

- Article 3 of the Amended Commercial Arbitration Rules provides that where the parties state that the JCAA Rules will apply, but fail to make a designation between the United Nations Commission on International Trade Law (UNCITRAL) Rules, the Interactive Arbitration Rules, or the Commercial Arbitration Rules, the Commercial Arbitration Rules will apply.
- Article 6 provides that where there is a conflict between the English and Japanese version of the Amended Commercial Arbitration Rules, the Japanese version will prevail.
- Article 9 makes clear that the parties may appoint arbitrators who are not listed on the JCAA list of arbitrators.

- Article 24 obligates potential arbitrators to decline an appointment where the arbitrator is not impartial or independent. In addition, Article 24 imposes an affirmative duty upon arbitrators to make a “reasonable investigation” into any circumstances that may give rise to justifiable doubts regarding impartiality. Article 24 also imposes a continuing obligation for arbitrators to make a reasonable investigation regarding conflicts during the course of the arbitration. Pursuant to this article, an advanced declaration stating that conflicts may arise in the future does not discharge this ongoing duty.
- Article 25 imposes further obligations upon arbitrators to provide certain information to the JCAA after they have been appointed by a party, including an acceptance of appointment and a declaration of impartiality and independence.
- Article 28 states that, absent consent of all parties, a party-appointed arbitrator may not communicate *ex parte* with its appointing party regarding the selection of the third arbitrator.
- Article 33 provides for the appointment of a Tribunal Secretary to assist a sole arbitrator or the presiding arbitrator but states that the secretary may not have duties that could substantially influence the tribunal’s decision. The sole or presiding arbitrator is required to obtain the consent of the parties for the appointment of a Tribunal Secretary.
- Article 43 sets a nine-month target from commencement of the arbitration to issuance of an award (the previous target was six months).
- Article 56 provides that where a third party joins an arbitration after the arbitrator or arbitrators have been appointed, the appointment will no longer be effective. The prior rules allowed the appointment to proceed in this situation.
- Article 63 provides that where the tribunal consists of three arbitrators, no dissenting opinion may be disclosed.
- Article 77 provides that emergency measures and the mandate of an emergency arbitrator will no longer be effective if no request for arbitration is filed within ten days of an application for emergency measures, provided no request has previously been filed.
- Article 84 raises the limit in cases determined by expedited procedures to less than 50 million JPY (the limit in the previous rules was 20 million). The parties may still consent to the use of expedited procedures where greater amounts are in dispute.
- Article 88 expressly provides that an expedited arbitration may be held exclusively on the basis of documents, with no oral hearing.

One of the most significant revisions to the Commercial Arbitration Rules deals with the selection of the presiding arbitrator. Having a meaningful say in who hears a dispute is one of the key advantages to arbitration. The prohibition on communicating *ex parte* with one’s party appointed arbitrator regarding the selection of the presiding arbitrator, absent consent of all parties, limits this advantage. Those who are selecting the JCAA Commercial Arbitration Rules in their contracts should consider whether to adopt this provision. Because the parties may generally modify the rules by agreement, a modification of this rule in the arbitration clause itself would be effective in allowing this important aspect of the arbitrator selection process to continue even if the proceeding is subject to the amended rules.

The Interactive Arbitration Rules are substantially similar to the Amended Commercial Arbitration Rules, except that the Interactive Arbitration Rules are designed to help expedite proceedings and give them more predictability by requiring the arbitrators, in their first communication to the parties, to present a document (1) summarizing the parties’ positions and the legal and factual grounds of the claims and

defenses and (2) identifying the issues of fact and law that the arbitral tribunal understands to be in dispute at this early phase in the proceedings (Article 48).

Article 56 of the Interactive Arbitration Rules provides that the tribunal, in its second communication, must provide a written assessment of (1) the factual issues the tribunal considers important and its preliminary views on those issues, (2) the legal issues the tribunal considers important and its preliminary views on those issues, and (3) any other matters the tribunal considers important. According to the JCAA, this preliminary analysis will help the arbitration progress more efficiently and narrow the parties' submissions of their arguments and evidence. The Interactive Arbitration Rules also attempt to move towards fixed compensation for arbitrators based on the amount in dispute, as opposed to hourly compensation. The purpose is to give the parties a predictable understanding of the costs associated with arbitrator remuneration.

About Greenberg Traurig's International Arbitration & Litigation Practice

Greenberg Traurig's [International Arbitration & Litigation Practice](#) assists clients in navigating international conflicts, whether conducting high-stakes litigation or transnational arbitration, enforcing foreign judgments and arbitral awards, or designing creative procedures and contract provisions to minimize disputes or resolve them as efficiently as possible.

Authors

This GT Alert was prepared by **Thomas G. Allen**, **Andrew Van Duzer**, and **Daniel E. Parga**. Questions about this information can be directed to:

- [Thomas G. Allen](#) | +1 202.331.3139 | allentg@gtlaw.com
- [Andrew Van Duzer](#) | +1 202.530.8510 | vanduzera@gtlaw.com
- [Daniel E. Parga](#) | +1 202.533.2355 | pargad@gtlaw.com
- Or your [Greenberg Traurig](#) attorney

Albany. Amsterdam. Atlanta. Austin. Boca Raton. Boston. Chicago. Dallas. Delaware. Denver. Fort Lauderdale. Germany.~ Houston. Las Vegas. London.* Los Angeles. Mexico City.+ Miami. New Jersey. New York. Northern Virginia. Orange County. Orlando. Philadelphia. Phoenix. Sacramento. San Francisco. Seoul.∞ Shanghai. Silicon Valley. Tallahassee. Tampa. Tel Aviv.^ Tokyo.* Warsaw.~ Washington, D.C.. West Palm Beach. Westchester County.

*This Greenberg Traurig Alert is issued for informational purposes only and is not intended to be construed or used as general legal advice nor as a solicitation of any type. Please contact the author(s) or your Greenberg Traurig contact if you have questions regarding the currency of this information. The hiring of a lawyer is an important decision. Before you decide, ask for written information about the lawyer's legal qualifications and experience. Greenberg Traurig is a service mark and trade name of Greenberg Traurig, LLP and Greenberg Traurig, P.A. ~Greenberg Traurig's Berlin office is operated by Greenberg Traurig Germany, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. *Operates as a separate UK registered legal entity. +Greenberg Traurig's Mexico City office is operated by Greenberg Traurig, S.C., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. ∞Operates as Greenberg Traurig LLP Foreign Legal Consultant Office. ^Greenberg Traurig's Tel Aviv office is a branch of Greenberg Traurig, P.A., Florida, USA. ¢Greenberg Traurig Tokyo Law Offices are operated by GT Tokyo Horitsu Jimusho, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. ~Greenberg Traurig's Warsaw office is operated by Greenberg Traurig Grzesiak sp.k., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. Certain partners in Greenberg Traurig Grzesiak sp.k. are also shareholders in Greenberg Traurig, P.A. Images in this advertisement do not depict Greenberg Traurig attorneys, clients, staff or facilities. No aspect of this advertisement has been approved by the Supreme Court of New Jersey. ©2018 Greenberg Traurig, LLP. All rights reserved.*