

INTERNATIONAL ARBITRATION IN JAPAN

Japan is one of the major investor country in India and the commercial relationship between India and Japan are fast increasing, hence it is important to understand the fundamentals of Arbitration in Japan. In Japan, arbitration is not a preferred method of dispute resolution and companies from Japan prefer court proceedings than going for an Arbitration. One of the main reasons for this mind set is that the Courts in Japan are very fast in disposing the cases. An average time taken by Japanese courts for passing a final order in a commercial court is about 9 months and hence court proceedings may take lesser time than an arbitration proceedings. More over Court litigation in Japan is cheaper than the arbitration proceedings and hence parties prefer court proceedings. But, Japanese Companies incorporate Arbitration clauses in their contract with Foreign Companies. The most popular international arbitral institutions are Singapore international Arbitration Centre (SIAC) and International Chamber of Commerce (ICC). Japan also has a well-established International Arbitration Centre, “**The Japan Arbitration Association**” (JCAA) which has its own offices in Tokyo and Osaka.

The Procedural law of Japan is Arbitration Act (Act.No.138 of August 1,2003. The Act empowers the District Court having Jurisdiction over the seat of Arbitration, with supervising powers. The said law is a complete arbitration law, based on the main provisions of UNCITRAL Model law. The said Act provides the same grounds which are provided in UNCITRAL Model law, as the grounds for challenging an Arbitration award in Japan. Interestingly the said Act also provides for penal provisions, providing criminal punishments extending to a maximum of 5 years. The said punishment is for the offenses of corruption by Arbitrators or parties in an arbitration proceedings. Jurisdiction related questions are first decided by the Arbitration tribunal and if parties are aggrieved by the decision of the arbitration tribunal, they have an option to approach the court for final decision. Such an approach to a court of law by the parties in Japan, never delays the arbitration process since court do not grant any stay of the arbitral process.

Japan is a signatory to New York Convention on Enforcement of International Arbitration awards and hence an arbitration award passed in India are enforceable in Japan. The International Arbitration awards passed in Japan are also enforceable in India and in many New York Convention Countries. It is important to note that the foreign lawyers practicing in foreign countries can represent parties in an International Arbitration case conducted in Japan. Japan provides for full confidentiality to arbitration proceedings and hence no unconnected person will be allowed in the proceedings. More over the disclosure of arbitration case related information by the Arbitrators, staff and JCAA officers are totally prohibited. The Limitation period for commercial matters, which are covered under commercial code are 5 years and civil matters covered under Civil Code are 10 years. Since most of the arbitration disputes come under commercial code, the limitation is 5 years. The appeals to arbitration awards can be filed in Japan only if the arbitration was seated in Japan.

The Japan Arbitration Association is a very old Arbitral Institution having a standing of about 53 years. The latest JCAA Commercial Arbitration Rules, came into force on 10th December 2015. The said Rules are Globally competitive giving a lot of importance to party autonomy. For example, many Arbitration Institutions provide for a default language of Arbitration in case, parties fail to choose the language of Arbitration at the time of signing of the contract. JCAA rules empowers the Arbitration tribunal to determine the language of Arbitration, keeping the language of the contract in mind while determining the language of arbitration. The said Rules, have incorporated all global modern requirements including Emergency Arbitrator, Expedited procedure etc., The arbitration cases with value of 20 Million Japanese Yen or less, are tried through expedited arbitration process. The said Rules also provides for a party appointed Expert witness, if required, in addition to the liberty to parties to examine party appointed experts to prove their case. It is very interesting to know that JCAA Rules also provides for Administration of International Arbitration cases under UNCITRAL Arbitration Rules.

It is very important to note that unlike India, parties from Japan show a lot of interest in amicable settlement of the matter and hence many litigations and arbitrations get aborted in half way due to settlement between parties. In the last 5 years, out of the 97 requests received for Arbitration under JCAA Rules 32 cases were withdrawn by the parties before reaching the final stage. Hence parties signing contracts with business houses in Japan can evaluate all the above said options available to them and incorporate an appropriate dispute resolution clause.