

# Arbitration Law

(Law No.138 of 2003)

Translated by The Arbitration Law Follow-up Research Group

## Preface

March 2004

Secretariat of the Office for Promotion of Justice System Reform

In order to assist in promoting the wide utilization of the Japanese Arbitration Law (Law No. 138 of 2003; enforced on 1 March 2004), an English translation of the Arbitration Law has been compiled by the Arbitration Law Follow-up Research Group below, which has been established within the Secretariat of the Office for Promotion of Justice System Reform.

This English translation may be cited, reproduced or reprinted as needed.

Although the translation was administrated with particular care to accuracy, we do not guarantee that there are no discrepancies in the delicate nuances between the Japanese and English or unforeseeable errors. As such, the English translation should only be used as a reference. For issues regarding the interpretation etc. of the Arbitration Law, please ensure to refer to the original Japanese text.

The Arbitration Law Follow-up Research Group  
(titles omitted; in order of Japanese syllabary)

|          |                   |  |
|----------|-------------------|--|
| Chair:   | Yoshimitsu Aoyama | Professor of Law, Seikei University  |
| Members: | Shuichi Kashiwagi | Attorney at Law, Kashiwagi Sogo Law Offices  |
|          | Shinji Kusakabe   | Attorney at Law, Anderson Mōri   |
|          | Tatsuya Nakamura  | Associate Professor of Law, Kokushikan University;<br>General Manager, The Japan Commercial<br>Arbitration Association |
|          | Toshio Matsumoto  | Executive Director, The Japan Shipping Exchange,<br>Inc.   |
|          | Koichi Miki       | Professor of Law, Keio University  |

(total of six members)

# Arbitration Law

(Law No.138 of 2003)

## Contents

Chapter I: General Provisions (Articles 1 through 12)

Chapter II: Arbitration Agreement (Articles 13 through 15)

Chapter III: Arbitrator (Articles 16 through 22)

Chapter IV: Special Jurisdiction of Arbitral Tribunal (Articles 23 and 24)

Chapter V: Commencement and Conduct of Arbitral Proceedings (Articles 25 through 35)

Chapter VI: Arbitral Award and Termination of Arbitral Proceedings (Articles 36 through 43)

Chapter VII: Setting Aside of Arbitral Award (Article 44)

Chapter VIII: Recognition and Enforcement Decision of Arbitral Award (Articles 45 and 46)

Chapter IX: Miscellaneous (Articles 47 through 49)

Chapter X: Penalties (Articles 50 through 55)

Supplementary Provisions

## Chapter I: General Provisions

### **Article 1. (Purpose)**

Arbitral proceedings where the place of arbitration is in the territory of Japan and court proceedings in connection with arbitral proceedings shall, in addition to the provisions of other laws, follow those of this Law.

### **Article 2. (Definitions)**

- (1) For the purposes of this Law, “arbitration agreement” shall mean an agreement by the parties to submit to one or more arbitrators the resolution of all or certain civil disputes which have arisen or which may arise in respect of a defined legal relationship (whether contractual or not) and to abide by their award (hereinafter referred to as “arbitral award”).
- (2) For the purposes of this Law, “arbitral tribunal” shall mean a sole arbitrator or a panel of two or more arbitrators, who, based on an arbitration agreement, conduct proceedings and make an arbitral award in respect of civil disputes subject thereto.
- (3) For the purposes of this Law, “written statement” shall mean a document that a party prepares and submits to an arbitral tribunal in arbitral proceedings and which states the case of that party.

### **Article 3. (Scope of Application)**

- (1) The provisions of Chapters II through VII and Chapters IX and X, except the provisions specified in the following paragraph and article 8, apply only if the place of arbitration is in the territory of Japan.
- (2) The provisions of article 14, paragraph (1) and article 15 apply when the place of arbitration is in or outside the territory of Japan, or when the place of arbitration is not designated.
- (3) The provisions of Chapter VIII apply when the place of arbitration is in or outside the territory of Japan.

#### **Article 4. (Court Intervention)**

With respect to arbitral proceedings, no court shall intervene except where so provided in this Law.

#### **Article 5. (Court Jurisdiction)**

- (1) Only the following courts have jurisdiction over cases concerning court proceedings based on the provisions of this Law:
  - (i) the district court designated by the agreement of the parties;
  - (ii) the district court having jurisdiction over the place of arbitration (only when the designated place of arbitration falls within the jurisdiction of a single district court);  
or
  - (iii) the district court having jurisdiction over the general forum of the counterparty in the relevant case.
- (2) In the event that two or more courts have jurisdiction based on the provisions of this Law, the court to which the request was first made shall have jurisdiction.
- (3) The court shall, upon determining that the whole or a part of a case concerning court proceedings based on the provisions of this Law does not fall under its jurisdiction, upon request or by its own authority, transfer such case to a court with jurisdiction.

#### **Article 6. (Voluntary Oral Hearing)**

Any decision concerning court proceedings based on the provisions of this Law may be made without an oral hearing.

#### **Article 7. (Appeal against Court Decision)**

Any party with an interest affected by the decision concerning court proceedings based on the provisions of this Law may, only if specifically provided for by this Law, file an immediate appeal against the decision within the peremptory term of two weeks from the day on which notice is given.

#### **Article 8. (Court Intervention in the Event that the Place of Arbitration Has Not Been Designated)**

- (1) Even if the place of arbitration has not been designated, each of the court applications cited in the following items may be made when there is a possibility that the place of arbitration will be in the territory of Japan and the applicant or counterparty's general forum (excluding designations based on the last address) is in the territory of Japan. In such case, according to the classifications cited in the respective items, the respective provisions shall apply:
  - (i) an article 16, paragraph (3) application: same article;
  - (ii) an article 17, paragraphs (2) through (5) application: same article;
  - (iii) an article 19, paragraph (4) application: articles 18 and 19; or
  - (iv) an article 20 application: same article.
- (2) Notwithstanding the provisions of article 5, paragraph (1), only the district courts having jurisdiction over the general forum described in the preceding paragraph have jurisdiction over the case relating to the applications cited in each of the items in the preceding paragraph.

**Article 9. (Reading of Case Records Relating to Court Proceedings)**

A party with an interest in any court proceedings based on the provisions of this Law may request any of the following from the court clerk:

- (i) a reading of or a copy of the case records;
- (ii) a copy of the records produced by electronic, magnetic or any other means unrecognizable by natural sensory function in the case records;
- (iii) the delivery of an authenticated copy, transcript or extract thereof; or
- (iv) the delivery of a certificate regarding matters relating to the case.

**Article 10. (Application of the Code of Civil Procedure to Court Proceedings)**

Except as otherwise provided, the provisions of the Code of Civil Procedure [Law No. 109 of 1996] shall apply to any court proceedings based on the provisions of this Law.

**Article 11. (Supreme Court Rules)**

In addition to those provided by this Law, particulars necessary in relation to court proceedings based on the provisions of this Law shall be as prescribed by the Rules of the Supreme Court.

**Article 12. (Written Notice)**

- (1) Unless otherwise agreed by the parties, when notice in arbitral proceedings is given in writing, it is deemed to have been given at the time it is delivered to the addressee personally, or, at the time it is delivered to the addressee's domicile, habitual residence, place of business, office or delivery address (which hereafter in this article means the place stipulated by the addressee as the place for delivery of documents from the sender).
- (2) With respect to a written notice in arbitral proceedings, where it is possible for the notice to be delivered to the addressee's domicile, habitual residence, place of business, office or delivery address, whereas it is difficult for the sender to obtain materials to certify that the delivery has been made, if the court considers it necessary, it may upon request of the sender decide to serve the notice itself. The provisions of article 104 and articles 110 through 113 of the Code of Civil Procedure shall not apply with respect to service in such an event.
- (3) The provisions of the preceding paragraph shall not apply in the event the parties have agreed that the service described in the same paragraph shall not be made.
- (4) The case concerning the request described in paragraph (2) shall be, notwithstanding the provisions of article 5, paragraph(1), subject only to the jurisdiction of the courts cited in items (i) and (ii) of the same paragraph and the district court with jurisdiction over the addressee's domicile, habitual residence, place of business, office or delivery address.
- (5) When notice in arbitral proceedings is given in writing, if none of the addressee's domicile, habitual residence, place of business, office or delivery address can be found after making a reasonable inquiry, unless otherwise agreed by the parties, it will suffice if the sender sends its notice to the addressee's last-known domicile, habitual residence, place of business, office or delivery address by registered letter or any other means by which the attempt to deliver it can be certified. In such case, a written notice is deemed to have been given at the normally expected time of its arrival.
- (6) The provisions of paragraph (1) and the preceding paragraph shall not apply to

notices in court proceedings based on the provisions of this Law.

## **Chapter II: Arbitration Agreement**

### **Article 13. (Effect of Arbitration Agreement)**

- (1) Unless otherwise provided by law, an arbitration agreement shall be valid only when its subject matter is a civil dispute that may be resolved by settlement between the parties (excluding that of divorce or separation).
- (2) The arbitration agreement shall be in the form of a document signed by all the parties, letters or telegrams exchanged between the parties (including those sent by facsimile device or other communication device for parties at a distance which provides the recipient with a written record of the transmitted content), or other written instrument.
- (3) When a written contract refers to a document that contains an arbitration clause and the reference is such as to make that clause part of the contract, the arbitration agreement shall be in writing.
- (4) When an arbitration agreement is made by way of electromagnetic record (records produced by electronic, magnetic or any other means unrecognizable by natural sensory function and used for data-processing by a computer) recording its content, the arbitration agreement shall be in writing.
- (5) When the parties to the arbitral proceedings exchange written statements in which the existence of an arbitration agreement is alleged by one party and not denied by another, the arbitration agreement shall be in writing.
- (6) Even if in a particular contract containing an arbitration agreement, any or all of the contractual provisions, excluding the arbitration agreement, are found to be null and void, cancelled or for other reasons invalid, the validity of the arbitration agreement shall not necessarily be affected.

### **Article 14. (Arbitration Agreement and Substantive Claim before Court)**

- (1) A court before which an action is brought in respect of a civil dispute which is the subject of an arbitration agreement shall, if the defendant so requests, dismiss the action. Provided, this shall not apply in the following instances:
  - (i) when the arbitration agreement is null and void, cancelled, or for other reasons invalid;
  - (ii) when arbitration proceedings are inoperative or incapable of being performed based on the arbitration agreement; or
  - (iii) when the request is made by the defendant subsequent to the presentation of its statement in the oral hearing or in the preparations for argument proceedings on the substance of the dispute.
- (2) An arbitral tribunal may commence or continue arbitral proceedings and make an arbitral award even while the action referred to in the preceding paragraph is pending before the court.

### **Article 15. (Arbitration Agreement and Interim Measures by Court)**

It is not incompatible with an arbitration agreement for a party to request, before or during arbitral proceedings, from a court an interim measure of protection and for a court to grant such measure in respect of any civil dispute which is the subject of the

arbitration agreement.

### **Chapter III: Arbitrator**

#### **Article 16. (Number of Arbitrators)**

- (1) The parties are free to determine the number of arbitrators.
- (2) Failing such determination as provided for in the preceding paragraph, when there are two parties in an arbitration, the number of arbitrators shall be three.
- (3) Failing such determination as provided for in paragraph (1), when there are three or more parties in an arbitration, the court shall determine the number of arbitrators upon request of a party.

#### **Article 17. (Appointment of Arbitrators)**

- (1) The parties are free to agree on a procedure of appointing the arbitrators. Provided, this shall not apply to the provisions of paragraphs (5) and (6).
- (2) Failing such agreement as provided for in the preceding paragraph, when there are two parties in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator. In such case, if a party fails to appoint an arbitrator within thirty days of a request to do so by the other party who has appointed an arbitrator, the appointment shall be made by the court upon the request of that party, or if the two arbitrators appointed by the parties fail to agree on the third arbitrator within thirty days of their appointment, upon the request of a party.
- (3) Failing such agreement as provided in paragraph (1) or any agreement on the appointment of arbitrators between the parties, when there are two parties in an arbitration with a sole arbitrator, the court shall appoint an arbitrator upon the request of a party.
- (4) Failing such agreement as provided for in paragraph (1) when there are three or more parties, the court shall appoint arbitrators upon the request of a party.
- (5) Where, under an appointment procedure for arbitrators agreed upon by the parties as provided for in paragraph (1), arbitrators cannot be appointed due to a failure to act as requested under such procedure or for any other reason, a party may request of the court the appointment of arbitrators.
- (6) The court, in appointing arbitrators based on the provisions contained in paragraphs (2) through (5), shall have due regard to the following items:
  - (i) the qualifications required of the arbitrators by the agreement of the parties;
  - (ii) the impartiality and independence of the appointees; and
  - (iii) in the case of a sole arbitrator or in the case where the two arbitrators appointed by the parties are to appoint the third arbitrator, whether or not it would be appropriate to appoint an arbitrator of a nationality other than those of the parties.

#### **Article 18. (Grounds for Challenge)**

- (1) A party may challenge an arbitrator:
  - (i) if it does not possess the qualifications agreed to by the parties; or
  - (ii) if circumstances exist that give rise to justifiable doubts as to its impartiality or independence.
- (2) A party who appointed an arbitrator, or made recommendations with respect to the

appointment of an arbitrator, or participated in any similar acts, may challenge that arbitrator only for reasons of which it becomes aware after the appointment has been made.

- (3) When a person is approached in connection with its possible appointment as an arbitrator, it shall fully disclose any circumstances likely to give rise to justifiable doubts as to its impartiality or independence.
- (4) An arbitrator, during the course of arbitral proceedings, shall without delay disclose any circumstances likely to give rise to justifiable doubts as to its impartiality or independence (unless the parties have already been informed of them by the arbitrator).

#### **Article 19. (Challenge Procedure)**

- (1) The parties are free to agree on a procedure for challenging an arbitrator. Provided, this shall not apply to the provisions of paragraph (4).
- (2) Failing an agreement as provided for in the preceding paragraph, upon request of a party, the arbitral tribunal shall decide on the challenge.
- (3) A party who intends to make a request as provided for in the preceding paragraph shall, within fifteen days of the later of either the day on which it became aware of the constitution of the arbitral tribunal or the day on which it became aware of any circumstance referred to in any item of paragraph (1) of the preceding article, send a written request describing the reasons for the challenge to the arbitral tribunal. In such case, the arbitral tribunal shall decide that grounds for challenge exist when it finds that grounds for challenge exist with respect to the arbitrator.
- (4) If a challenge of the arbitrator under the procedure for challenge prescribed in the preceding three paragraphs is not successful, the challenging party may request within thirty days after having received notice of the decision rejecting the challenge, the court to decide on the challenge. In such case, the court shall decide that grounds for challenge exist when it finds that grounds for challenge exist with respect to the arbitrator.
- (5) While a case relating to a challenge as prescribed in paragraph (4) is pending before the court, the arbitral tribunal may commence or continue the arbitral proceedings and make an arbitral award.

#### **Article 20. (Request for Removal)**

Any party may request the court to decide on the removal of an arbitrator if any of the following grounds exist. In such case, if the court finds that the grounds for the request exist, it shall decide to remove the said arbitrator:

- (i) if the arbitrator becomes de jure or de facto unable to perform its functions; or
- (ii) for reasons other than those in the preceding item, if the arbitrator fails to act without undue delay.

#### **Article 21. (Termination of an Arbitrator's Mandate)**

- (1) An arbitrator's mandate shall terminate upon the occurrence of any of the following:
  - (i) the death of an arbitrator;
  - (ii) the resignation of an arbitrator;
  - (iii) the removal of an arbitrator upon the agreement of the parties;
  - (iv) a decision that grounds for challenge exist under the procedure for challenge

- described in the provisions of article 19, paragraphs (1) through (4); or
- (v) a decision to remove an arbitrator based on the provisions of the preceding article.
- (2) If, during the course of procedure for challenge under the provisions of article 19, paragraphs (1) through (4), or removal proceedings under the provisions of the preceding article, an arbitrator withdraws from its office or is removed upon the agreement of the parties, this alone does not imply the existence of any ground referred to in the items in article 18, paragraph (1) or the items in the preceding article with respect to the arbitrator.

**Article 22. (Appointment of Substitute Arbitrator)**

Unless otherwise agreed by the parties, where the mandate of an arbitrator terminates under any of the grounds described in each item of paragraph (1) of the preceding article, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

**Chapter IV: Special Jurisdiction of Arbitral Tribunal**

**Article 23. (Competence of Arbitral Tribunal to Rule on its Jurisdiction)**

- (1) The arbitral tribunal may rule on assertions made in respect of the existence or validity of an arbitration agreement or its own jurisdiction (which hereafter in this article means its authority to conduct arbitral proceedings and to make arbitral awards).
- (2) A plea that the arbitral tribunal does not have jurisdiction shall be raised promptly in the case where the grounds for the assertion arise during the course of arbitral proceedings, or in other cases before the time at which the first written statement on the substance of the dispute is submitted to the arbitral tribunal (including the time at which initial assertions on the substance of the dispute are presented orally at an oral hearing). Provided, the arbitral tribunal may admit a later plea if it considers the delay justified.
- (3) A party may raise the plea prescribed in the preceding paragraph even if it has appointed an arbitrator, or made recommendations with respect to the appointment of an arbitrator, or participated in any similar acts.
- (4) The arbitral tribunal shall give the following ruling or arbitral award, as the case may be, on a plea raised in accordance with paragraph (2):
- (i) a preliminary independent ruling or an arbitral award, when it considers it has jurisdiction; or
  - (ii) a ruling to terminate arbitral proceedings, when it considers it has no jurisdiction.
- (5) If the arbitral tribunal gives a preliminary independent ruling that it has jurisdiction, any party may, within thirty days of receipt of notice of such ruling, request the court to decide the matter. In such an event, while such a request is pending before the court, the arbitral tribunal may continue the arbitral proceedings and make an arbitral award.

**Article 24. (Interim Measures of Protection)**

- (1) Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order any party to take such interim measure of protection as the arbitral tribunal may consider necessary in respect of the subject matter of the dispute.

- (2) The arbitral tribunal may order any party to provide appropriate security in connection with such measure as prescribed in the preceding paragraph.

## **Chapter V: Commencement and Conduct of Arbitral Proceedings**

### **Article 25. (Equal Treatment of Parties)**

- (1) The parties shall be treated with equality in the arbitral proceedings.
- (2) Each party shall be given a full opportunity of presenting its case in the arbitral proceedings.

### **Article 26. (Rules of Procedure)**

- (1) The parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the arbitral proceedings. Provided, it shall not violate the provisions of this Law relating to public policy.
- (2) Failing such agreement as prescribed in the preceding paragraph, the arbitral tribunal may, subject to the provisions of this Law, conduct the arbitral proceedings in such manner as it considers appropriate.
- (3) Failing such agreement as prescribed in paragraph (1), the power conferred upon the arbitral tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

### **Article 27. (Waiver of Right to Object)**

Unless otherwise agreed by the parties, as to arbitral proceedings, a party who knows that any provision of this Law or any arbitral proceedings rules agreed upon by the parties (to the extent that none of these relate to public policy) has not been complied with and yet fails to state its objection to such non-compliance without delay (if a time limit by which objections should be made is provided for, within such period of time), shall be deemed to have waived its right to object.

### **Article 28. (Place of Arbitration)**

- (1) The parties are free to agree on the place of arbitration.
- (2) Failing such agreement as prescribed in the preceding paragraph, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.
- (3) Notwithstanding the place of arbitration determined in accordance with the provisions of the preceding two paragraphs, the arbitral tribunal may, unless otherwise agreed by the parties, carry out the following procedures at any place it considers appropriate:
  - (i) consultation among the members of the arbitral tribunal;
  - (ii) hearing of parties, experts or witnesses; and
  - (iii) inspection of goods, other property or documents.

### **Article 29. (Commencement of Arbitral Proceedings and Interruption of Limitation)**

- (1) Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular civil dispute commence on the date on which one party gave the other party notice to refer that dispute to the arbitral proceedings.
- (2) A claim made in arbitral proceedings shall give rise to an interruption of limitation.

Provided, this shall not apply where the arbitral proceedings have been terminated for a reason other than the issuance of an arbitral award.

**Article 30. (Language)**

- (1) The parties are free to agree on the language or languages to be used in the arbitral proceedings and the proceedings to be conducted using that language or those languages.
- (2) Failing such agreement as prescribed in the preceding paragraph, the arbitral tribunal shall determine the language or languages to be used in the arbitral proceedings and the proceedings to be conducted using that language or those languages.
- (3) Failing any designation of proceedings to be conducted using the designated language or languages in the agreement prescribed in paragraph (1) or the determination prescribed in the preceding paragraph, the proceedings to be conducted using such language or languages are as follows:
  - (i) any oral proceedings;
  - (ii) any statement or notice in writing by a party; or
  - (iii) any ruling (including an arbitral award) or notice in writing by the arbitral tribunal.
- (4) The arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the language or languages designated in the agreement as prescribed in paragraph (1) or the determination prescribed in paragraph (2) (where designation has been made as to the language or languages to be used for translation, such language or languages).

**Article 31. (Time Restrictions on Parties' Statements)**

- (1) Within the period of time determined by the arbitral tribunal, the claimant (which hereinafter means the party that carried out the act to commence the arbitral proceedings) shall state the relief or remedy sought, the facts supporting its claim and the points at issue. In such case, the claimant may submit all documentary evidence it considers to be relevant or may add a reference to the documentary evidence or other evidence it will submit.
- (2) Within the period of time determined by the arbitral tribunal, the respondent (which hereinafter means any party to the arbitral proceedings other than the claimant) shall state its defense in respect of the particulars stated according to the provisions of the preceding paragraph. In such case, the provisions of the latter part of the same paragraph shall apply.
- (3) Any party may amend or supplement its statement during the course of the arbitral proceedings. Provided, the arbitral tribunal may refuse to allow such amendment or supplementation if made in delay.
- (4) The preceding three paragraphs shall not apply when otherwise agreed by the parties.

**Article 32. (Procedure of the Hearing)**

- (1) The arbitral tribunal may hold oral hearings for the presentation of evidence or for oral argument by the parties. Provided, where a party makes an application for holding oral hearings, including the request in article 34, paragraph (3), the arbitral

tribunal shall hold such oral hearings at an appropriate stage of the arbitral proceedings.

- (2) The preceding paragraph shall not apply when otherwise agreed by the parties.
- (3) When holding oral hearings for the purposes of oral argument or inspection of goods, other property or documents, the arbitral tribunal shall give sufficient advance notice to the parties of the time and place for such hearings.
- (4) A party who supplied written statements, documentary evidence or any other records to the arbitral tribunal shall take necessary measures to ensure that the other party will be aware of their contents.
- (5) The arbitral tribunal shall take necessary measures to ensure that all parties will be aware of the contents of any expert report or other evidence on which the arbitral tribunal may rely in making an arbitral award or other rulings.

### **Article 33. (Default of a Party)**

- (1) If the claimant violates the provisions of article 31, paragraph (1), the arbitral tribunal shall make a ruling to terminate the arbitral proceedings. Provided, this shall not apply in the case where there is sufficient cause for the violation.
- (2) If the respondent violates the provisions of article 31, paragraph (2), the arbitral tribunal shall continue the arbitral proceedings without treating such violation in itself as an admission of the claimant's allegations.
- (3) If any party fails to appear at an oral hearing or to produce documentary evidence, the arbitral tribunal may make the arbitral award on the evidence before it that has been collected up until such time. Provided, this shall not apply in the case where there is sufficient cause with respect to the failure to appear at an oral hearing or to produce documentary evidence.
- (4) The preceding three paragraphs shall not apply when otherwise agreed by the parties.

### **Article 34. (Expert Appointed by Arbitral Tribunal)**

- (1) The arbitral tribunal may appoint one or more experts to appraise any necessary issues and to report their findings in writing or orally.
- (2) In the case of the preceding paragraph, the arbitral tribunal may require a party to do the following acts:
  - (i) give the expert any relevant information; or
  - (ii) produce, or provide access to, any relevant documents, goods or other property to the expert for inspection.
- (3) If a party so requests or if the arbitral tribunal considers it necessary, the expert shall, after delivery of its report described in paragraph (1), participate in an oral hearing.
- (4) A party may carry out the following acts in the oral hearing described in the preceding paragraph:
  - (i) put questions to the expert; or
  - (ii) have experts whom it has personally appointed to testify on the points at issue.
- (5) Each of the preceding paragraphs shall not apply when otherwise agreed by the parties.

### **Article 35. (Court Assistance in Taking Evidence)**

- (1) The arbitral tribunal or a party may apply to a court for assistance in taking evidence

by any means that the arbitral tribunal considers necessary as entrustment of investigation, examination of witnesses, expert testimony, investigation of documentary evidence (excluding documents that the parties may produce in person) or inspection (excluding that of objects the parties may produce in person) prescribed in the Code of Civil Procedure. Provided, this shall not apply in the case where the parties have agreed not to apply for all or some of these means.

- (2) In making the application described in the preceding paragraph, the party shall obtain the approval of the arbitral tribunal.
- (3) Notwithstanding the provisions of article 5, paragraph (1), only the following courts have jurisdiction over cases relating to the application described in paragraph (1):
  - (i) the court described in article 5, paragraph (1), item (ii);
  - (ii) the district court having jurisdiction over the domicile or place of residence of the person to be examined or the person holding the relevant documents, or the location of the object for inspection; or
  - (iii) the district court having jurisdiction over the general forum of the applicant or the counterparty (only if there is no court described in the preceding two items).
- (4) An immediate appeal may be made against the decision regarding the application in paragraph (1).
- (5) When the court carries out the examination of evidence based on the application in paragraph (1), the arbitrators may peruse the documents, inspect the objects and, with the approval of the presiding judge, put questions to the witness or expert (as prescribed in article 213 of the Code of Civil Procedure).
- (6) The court clerk shall enter in the record the matters concerning the examination of evidence carried out by the court following the application prescribed in paragraph (1).

## **Chapter VI: Arbitral Award and Termination of Arbitral Proceedings**

### **Article 36 (Substantive Law to be Applied in Arbitral Award)**

- (1) The arbitral tribunal shall decide the dispute in accordance with such rules of law as are agreed by the parties as applicable to the substance of the dispute. In such case, any designation of the law or legal system of a given State shall be construed, unless otherwise expressed, as directly referring to the substantive law of that State and not to its conflict of laws rules.
- (2) Failing agreement as provided in the preceding paragraph, the arbitral tribunal shall apply the substantive law of the State with which the civil dispute subject to the arbitral proceedings is most closely connected.
- (3) Notwithstanding the provisions prescribed in the preceding two paragraphs, the arbitral tribunal shall decide *ex aequo et bono* only if the parties have expressly authorized it to do so.
- (4) Where there is a contract relating to the civil dispute subject to the arbitral proceedings, the arbitral tribunal shall decide in accordance with the terms of such contract and shall take into account the usages, if any, that may apply to the civil dispute.

### **Article 37. (Proceedings by Panel of Arbitrators)**

- (1) An arbitral tribunal with more than one arbitrator shall elect a presiding arbitrator from among all its members.

- (2) Any decision of the arbitral tribunal shall be made by a majority of all its members.
- (3) Notwithstanding the provisions prescribed in the preceding paragraph, procedural matters in arbitral proceedings may be decided by the presiding arbitrator, if so authorized by the parties or all other members of the arbitral tribunal.
- (4) The provisions of the preceding three paragraphs shall not apply when otherwise agreed by the parties.

**Article 38. (Settlement)**

- (1) If, during arbitral proceedings, the parties settle the civil dispute subject to the arbitral proceedings and the parties so request, the arbitral tribunal may make a ruling on agreed terms.
- (2) The ruling as provided for in the preceding paragraph shall have the same effect as an arbitral award.
- (3) The ruling as provided for in paragraph (1) shall be made in writing in accordance with paragraphs (1) and (3) of the following article and shall state that it is an arbitral award.
- (4) An arbitral tribunal or one or more arbitrators designated by it may attempt to settle the civil dispute subject to the arbitral proceedings, if consented to by the parties.
- (5) Unless otherwise agreed by the parties, the consent provided for in the preceding paragraph or its withdrawal shall be made in writing.

**Article 39. (Arbitral Award)**

- (1) The arbitral award shall be made in writing and shall be signed by the arbitrators who made it. Provided, in arbitral proceedings with more than one arbitrator, the signatures of the majority of all members of the arbitral tribunal shall suffice, if the reason for any omitted signature is stated.
- (2) The arbitral award shall state the reasons upon which it is based. Provided, this shall not apply when otherwise agreed by the parties.
- (3) The arbitral award shall state its date and place of arbitration.
- (4) The arbitral award shall be deemed to have been made at the place of arbitration.
- (5) After the arbitral award is made, the arbitral tribunal shall notify each party of the arbitral award by sending a copy of the arbitral award signed by the arbitrators.
- (6) The proviso of paragraph (1) shall apply to the copy of the arbitral award described in the preceding paragraph.

**Article 40. (Termination of Arbitral Proceedings)**

- (1) The arbitral proceedings are terminated by the arbitral award or by a ruling to terminate the arbitral proceedings.
- (2) Other than rulings based on the provisions of article 23, paragraph (4), item (ii) or article 33, paragraph (1), the arbitral tribunal shall issue a ruling to terminate arbitral proceedings in the case where any of the following grounds exists:
  - (i) the claimant withdraws its claim. Provided, this shall not apply in the event that the respondent objects thereto and the arbitral tribunal recognizes a legitimate interest on its part in obtaining a settlement of the civil dispute subject to the arbitral proceedings;
  - (ii) the parties agree to on termination of the arbitral proceedings;
  - (iii) the parties settle the civil dispute subject to the arbitral proceedings (excluding the

- case where a ruling under article 38, paragraph (1) is issued); or
- (iv) other than the instances in the preceding three items, the arbitral tribunal finds that the continuation of the arbitral proceedings has become unnecessary or impossible.
- (3) The mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings. Provided, the acts prescribed in the provisions of articles 41 through 43 may be made.

**Article 41. (Correction of Arbitral Award)**

- (1) The arbitral tribunal may upon request of a party or by its own authority correct any errors in computation, any clerical or typographical errors or any errors of similar nature in the arbitral award.
- (2) Unless otherwise agreed by the parties, the request described in the preceding paragraph shall be made within thirty days of the receipt of the notice of the arbitral award.
- (3) When making the request described in paragraph (1), a party shall issue advance or simultaneous notice to the other party stating the content of the request.
- (4) The arbitral tribunal shall make a ruling with respect to the request described in paragraph (1) within thirty days of such request.
- (5) The arbitral tribunal may extend, if it considers it necessary, the period of time provided for in the preceding paragraph.
- (6) The provisions of article 39 shall apply to any ruling to correct the arbitral award or any ruling to dismiss the request in paragraph (1).

**Article 42. (Interpretation of Arbitral Award by Arbitral Tribunal)**

- (1) A party may request the arbitral tribunal to give an interpretation of a specific part of the arbitral award.
- (2) The request described in the preceding paragraph may be made only if so agreed by the parties.
- (3) The provisions of paragraphs (2) and (3) of the preceding article shall apply to the request described in paragraph (1) and the provisions of article 39 and paragraphs (4) and (5) of the preceding article shall apply to any rulings made with respect to the request described in paragraph (1).

**Article 43. (Additional Arbitral Award)**

- (1) Unless otherwise agreed by the parties, a party may request the arbitral tribunal to make an arbitral award as to claims presented in the arbitral proceedings but omitted from the arbitral award. In such case, the provisions of article 41, paragraphs (2) and (3) shall apply.
- (2) The arbitral tribunal shall make a ruling with respect to the request described in the preceding paragraph within sixty days of such request. In such case, the provisions of article 41, paragraph (5) shall apply.
- (3) The provisions of article 39 shall apply to the ruling described in the preceding paragraph.

**Chapter VII: Setting Aside of Arbitral Award**

**Article 44.**

- (1) A party may apply to a court to set aside the arbitral award when any of the following grounds are present:
  - (i) the arbitration agreement is not valid due to limits to a party's capacity;
  - (ii) the arbitration agreement is not valid for a reason other than limits to a party's capacity under the law to which the parties have agreed to subject it (or failing any indication thereon, under the law of Japan);
  - (iii) the party making the application was not given notice as required by the provisions of the laws of Japan (or where the parties have otherwise reached an agreement on matters concerning the provisions of the law that do not relate to the public policy, such agreement) in the proceedings to appoint arbitrators or in the arbitral proceedings;
  - (iv) the party making the application was unable to present its case in the arbitral proceedings;
  - (v) the arbitral award contains decisions on matters beyond the scope of the arbitration agreement or the claims in the arbitral proceedings;
  - (vi) the composition of the arbitral tribunal or the arbitral proceedings were not in accordance with the provisions of the laws of Japan (or where the parties have otherwise reached an agreement on matters concerning the provisions of the law that do not relate to the public policy, such agreement);
  - (vii) the claims in the arbitral proceedings relate to a dispute that cannot constitute the subject of an arbitration agreement under the laws of Japan; or
  - (viii) the content of the arbitral award is in conflict with the public policy or good morals of Japan.
- (2) The application described in the preceding paragraph may not be made after three months have elapsed from the date on which the party making the application had received the notice by the sending of a copy of the arbitral award (including the document constituting the ruling of the arbitral tribunal described in the provisions of articles 41 through 43), or after an enforcement decision under article 46 has become final and conclusive.
- (3) Even where the case for application described in paragraph (1) falls within its jurisdiction, a court may, upon request or by its own authority, if it finds it appropriate, transfer all or a part of said case to another competent court.
- (4) An immediate appeal may be filed against a decision made under the provisions of article 5, paragraph (3) or the preceding paragraph regarding the case for application described in paragraph (1).
- (5) A court may not make a decision with respect to the application described in paragraph (1), unless and until an oral hearing or oral proceeding at which the parties can attend was held.
- (6) Where an application is made under paragraph (1), an arbitral award may be set aside by the court in the event that it finds any of the grounds described in each of the items under the same paragraph to be present (with respect to the grounds described in items (i) through (vi) of the same paragraph, this shall be limited to where the party making the application has proved the existence of such grounds).
- (7) Where the ground described in paragraph (1), item (v) is present, and where the part relating to matters prescribed in the same item can be separated from the arbitral award, only that part of the arbitral award may be set aside by the court.

- (8) An immediate appeal may be filed against the decision regarding the application in paragraph (1).

### **Chapter VIII: Recognition and Enforcement Decision of Arbitral Award**

#### **Article 45. (Recognition of Arbitral Award)**

- (1) An arbitral award (irrespective of whether or not the place of arbitration is in the territory of Japan; this shall apply throughout this chapter) shall have the same effect as a final and conclusive judgment. Provided, an enforcement based on the arbitral award shall be subject to an enforcement decision pursuant to the provisions of the following article.
- (2) The provisions of the preceding paragraph do not apply in the case where any of the following grounds are present (with respect to the grounds described in items (i) through (vii), this shall be limited to where either of the parties has proven the existence of the ground in question):
- (i) the arbitration agreement is not valid due to limits to a party's capacity;
  - (ii) the arbitration agreement is not valid for a reason other than limits to a party's capacity under the law to which the parties have agreed to subject it (or failing any indication thereon, the law of the country under which the place of arbitration falls);
  - (iii) a party was not given notice as required by the provisions of the law of the country under which the place of arbitration falls (or where the parties have otherwise reached an agreement on matters concerning the provisions of the law that do not relate to public policy, such agreement) in the proceedings to appoint arbitrators or in the arbitral proceedings;
  - (iv) a party was unable to present its case in the arbitral proceedings;
  - (v) the arbitral award contains decisions on matters beyond the scope of the arbitration agreement or the claims in the arbitral proceedings;
  - (vi) the composition of an arbitral tribunal or the arbitral proceedings were not in accordance with the provisions of the law of the country under which the place of arbitration falls (or where the parties have otherwise reached an agreement on matters concerning the provisions of the law that do not relate to public policy, such agreement);
  - (vii) according to the law of the country under which the place of arbitration falls (or where the law of a country other than the country under which the place of arbitration falls was applied to the arbitral proceedings, such country), the arbitral award has not yet become binding, or the arbitral award has been set aside or suspended by a court of such country;
  - (viii) the claims in the arbitral proceedings relate to a dispute that cannot constitute the subject of an arbitration agreement under the laws of Japan; or
  - (ix) the content of the arbitral award would be contrary to the public policy or good morals of Japan.
- (3) Where the ground described in item (v) of the preceding paragraph is present, and where the part relating to matters described in the same item can be separated from the arbitral award, said part and any other parts in the arbitral award shall be deemed separate independent arbitral awards and the provisions of the preceding paragraph shall apply accordingly.

#### **Article 46. (Enforcement Decision of Arbitral Award)**

- (1) A party seeking enforcement based on the arbitral award may apply to a court for an enforcement decision (which hereinafter means a decision authorizing enforcement based on an arbitral award) against the debtor as counterparty.
- (2) The party making the application described in the preceding paragraph shall supply a copy of the arbitral award, a document certifying that the content of said copy is identical to the arbitral award, and a Japanese translation of the arbitral award (except where made in Japanese).
- (3) If an application for setting aside or suspension of an arbitral award has been made to the court as described in paragraph (2), item (vii) of the preceding article, the court where the application described in paragraph (1) has been made may, if it considers it necessary, suspend proceedings relating to the application described in paragraph (1). In such case, the court may, upon request of the party who made the application described in the same paragraph, order the other party to provide security.
- (4) The case for application described in paragraph (1) shall be, notwithstanding the provisions of article 5, paragraph (1), subject only to the jurisdiction of the courts cited in each of the items of the same paragraph and a district court with jurisdiction over the location of the object of the claim or the debtor's seizable assets.
- (5) Even where the case for application described in paragraph (1) falls within its jurisdiction, a court may, upon request or by its own authority, if it finds it appropriate, transfer all or a part of said case to another competent court.
- (6) An immediate appeal may be filed against a decision made under the provisions of article 5, paragraph (3) or the preceding paragraph regarding the case for application described in paragraph (1).
- (7) The court shall, except where it dismisses the application described in paragraph (1) pursuant to the provisions of the following paragraph or paragraph (9), issue an enforcement decision.
- (8) The court may dismiss the application described in paragraph (1) only when it finds any of the grounds described in each of the items under paragraph (2) of the preceding article present (with respect to the grounds described in items (i) through (vii) of the same paragraph, this shall be limited to where the counterparty has proved the existence of the ground in question).
- (9) The provisions of paragraph (3) of the preceding article shall apply with respect to the application of the provisions of the preceding paragraph in the event that the ground described in paragraph (2), item (v) of the same article is present.
- (10) The provisions of article 44, paragraphs (5) and (8) shall apply with respect to decisions regarding the application described in paragraph (1).

#### **Chapter IX: Miscellaneous**

##### **Article 47. (Remuneration of Arbitrators)**

- (1) The arbitrators may receive remuneration in accordance with the agreement of the parties.
- (2) Failing an agreement as described in the preceding paragraph, the arbitral tribunal shall determine the remuneration of the arbitrators. In such case, the remuneration shall be for an appropriate amount.

**Article 48. (Deposit for the Costs of the Arbitral Proceedings)**

- (1) Unless otherwise agreed by the parties, the arbitral tribunal may order that the parties deposit an amount determined by the arbitral tribunal as the roughly estimated amount for costs of the arbitral proceedings within the appropriate period of time determined by the arbitral tribunal.
- (2) Where such deposits, as ordered under the provisions of the preceding paragraph, have not been made, unless otherwise agreed by the parties, the arbitral tribunal may suspend or terminate the arbitral proceedings.

**Article 49. (Apportionment of the Costs of the Arbitral Proceedings)**

- (1) The costs disbursed by the parties with respect to the arbitral proceedings shall be apportioned between the parties in accordance with the agreement of the parties.
- (2) Failing an agreement as described in the preceding paragraph, each party shall bear the costs it has disbursed with respect to the arbitral proceedings.
- (3) In accordance with the agreement of the parties, if any, the arbitral tribunal may, in an arbitral award or in an independent ruling, determine the apportionment between the parties of the costs disbursed by the parties with respect to the arbitral proceedings and the amount that one party should reimburse to the other party based thereon.
- (4) If the matters described in the preceding paragraph have been determined in an independent ruling, such ruling shall have the same effect as an arbitral award.
- (5) The provisions of article 39 shall apply to the ruling described in the preceding paragraph.

**Chapter X: Penalties**

**Article 50. (Acceptance of Bribe; Acceptance with Request; Acceptance in Advance of Assumption of Office)**

- (1) An arbitrator who accepts, demands or promises to accept a bribe in relation to its duty shall be punished by imprisonment with labor for not more than five years. In such case, when the arbitrator agrees to do an act in response to a request, imprisonment with labor for not more than seven years shall be imposed.
- (2) When a person to be appointed an arbitrator accepts, demands or promises to accept a bribe in relation to the duty to assume with agreement to do an act in response to a request, imprisonment with labor for not more than five years shall be imposed in the event of appointment.

**Article 51. (Bribe to Third Person)**

When an arbitrator with agreement to do an act in response to a request, causes a bribe in relation to its duty to be given to a third person or demands or promises such bribe to be given to a third person, imprisonment with labor for not more than five years shall be imposed.

**Article 52. (Aggravated Acceptance; Acceptance after Resignation of Office)**

- (1) When an arbitrator commits a crime described in the preceding two articles and consequently acts illegally or refrains from acting in the exercise of its duty, imprisonment labor for a definite term of not less than one year shall be imposed.
- (2) The provisions of the preceding paragraph shall apply when an arbitrator accepts,

demands or promises to accept a bribe, or cause a bribe to be given to a third person or demands or promises a bribe to be given to a third person, in relation to having acted illegally or refrained from acting in the exercise of its duty.

- (3) When a person who was an arbitrator accepts, demands or promises to accept a bribe in relation to having acted illegally or refrained from acting in the exercise of its duty during its tenure as an arbitrator with agreement thereof in response to a request, imprisonment with labor for not more than five years shall be imposed.

**Article 53. (Confiscation and Collection of Equivalent Value)**

A bribe accepted by an offender or by a third person with such knowledge shall be confiscated. When the whole or a part of the bribe cannot be confiscated, a sum of money equivalent thereto shall be collected.

**Article 54. (Giving a Bribe)**

A person who gives, offers or promises to give a bribe as provided for in articles 50 through 52 shall be punished by imprisonment with labor for not more than three years or a fine of not more than two million five hundred thousand yen.

**Article 55. (Crimes Committed outside Japan)**

- (1) The provisions of articles 50 through 53 shall apply to an offender who commits any of the crimes described in articles 50 through 52 outside Japan.
- (2) The crime described in the preceding article shall be treated in the same manner as provided in article 2 of the Criminal Code [Law No. 45 of 1907].

**Supplementary Provisions**

**Article 1. (Date of Enforcement)**

This Law shall come into force from the date which shall be fixed by a Cabinet Order no later than nine months from the date of the promulgation of this Law.

**Article 2. (Transitory Measures Relating to Form of Arbitration Agreement)**

The existing Law shall apply to the form for arbitration agreements which have been made prior to the enforcement of this Law.

**Article 3. (Exception Relating to Arbitration Agreements Concluded between Consumers and Businesses)**

- (1) For the time being until otherwise enacted, any arbitration agreements (excluding arbitration agreements described in the following article; hereafter in this article referred to as the “consumer arbitration agreement”) concluded between consumers (which hereafter in this article shall mean consumers as described in article 2, paragraph (1) of the Consumer Contract Act [Law No. 61 of 2000]) and businesses (which hereafter in this article shall mean businesses as described in article 2, paragraph (2) of the same law) subsequent to the enforcement of this Law, the subject of which constitutes civil disputes that may arise between them in the future, shall follow the provisions described in paragraphs (2) through (7).
- (2) A consumer may cancel a consumer arbitration agreement. Provided, this shall not apply in the event that the consumer is a claimant in arbitral proceedings based on the

consumer arbitration agreement.

- (3) In the case where a business is the claimant in arbitral proceedings based on a consumer arbitration agreement, following the constitution of an arbitral tribunal the business shall request without delay that an oral hearing be conducted under the provisions of article 32, paragraph (1). In such case the arbitral tribunal shall make a ruling to carry out the oral hearing and notify the parties of the date, time and place therefor.
- (4) The arbitral tribunal shall carry out the oral hearing described in the preceding paragraph prior to any other proceedings in the arbitral proceedings.
- (5) Notice to the party who is a consumer based on the provisions of paragraph (3) shall be made by the sending of a document stating the following matters. In such case, the arbitral tribunal shall make every effort to use as simple an expression as possible with respect to matters described in items (ii) through (v):
  - (i) date, time and place of the oral hearing;
  - (ii) that in the case where an arbitration agreement exists, the arbitral award with respect to the civil dispute constituting its subject shall have the same effect as a final and conclusive judgment of the court;
  - (iii) that in the case where an arbitration agreement exists, any suit filed with the court in respect of the civil dispute constituting its subject will be dismissed irrespective of the timing when the suit is filed before or after the arbitral award;
  - (iv) that the consumer may cancel the consumer arbitration agreement; and
  - (v) that in the event that the party who is the consumer fails to appear on the date of the oral hearing described in item (i), said party shall be deemed to have cancelled the consumer arbitration agreement.
- (6) On the day of the oral hearing described in paragraph (3), the arbitral tribunal shall explain the matters described in items (ii) through (iv) of the preceding paragraph orally to the party who is a consumer. In such case, where the party does not express an intent to waive its right of cancellation described in paragraph (2), said party shall be deemed to have cancelled the consumer arbitration agreement.
- (7) In the event that the party who is a consumer fails to appear on the date of the oral hearing described in paragraph (3), said party shall be deemed to have cancelled the consumer arbitration agreement.

#### **Article 4. (Exception Relating to Arbitration Agreements Concerning Individual Labor-related Disputes)**

For the time being until otherwise enacted, any arbitration agreements concluded following the enforcement of this Law, the subject of which constitutes individual labor-related disputes (which means individual labor-related disputes as described in article 1 of the Law on Promoting the Resolution of Individual Labor Disputes [Law No.112 of 2001]) that may arise in the future, shall be null and void.

#### **Article 5. (Transitional Measures Relating to Arbitral Proceedings)**

Arbitral proceedings commenced prior to the enforcement of this Law and proceedings conducted by a court relating to such arbitral proceedings (excluding proceedings commenced after the issuance of an arbitral award) shall follow the existing Law.

#### **Article 6. (Transitional Measures Relating to Lawsuits for the Challenge against**

**Arbitrators)**

In addition to the provisions in the preceding article, the existing Law shall apply to suits for challenges against arbitrators brought prior to the enforcement of this Law.

**Article 7. (Transitional Measures Relating to the Request for the Challenge against Arbitrators to the Arbitral Tribunal)**

In addition to the provisions of the preceding two articles, with respect to the request of the provisions of article 19, paragraph (3) in the case where the parties, prior to the enforcement of this Law, were aware of the fact that an arbitral tribunal had been formed and of the existence of any of the grounds referred to in any of the items of article 18, paragraph (1) for any arbitrator, the words “the later of either the day on which it became aware of the constitution of the arbitral tribunal or the day on which it became aware of any circumstance referred to in any item of paragraph (1) of the preceding article” in article 19, paragraph (3) shall be read as “the date on which this Law came into force”.

**Article 8. (Transitional Measures Relating to the Force and Effect of Arbitral Awards)**

In the case where an arbitral award had been issued prior to the enforcement of this Law, its deposit to a court, its force and effect, suits to set it aside, and enforcement based thereon, shall follow the existing Law.

**Articles 9 through 22 [Omitted]**