Global Arbitration Review

The Guide to Challenging and Enforcing Arbitration Awards

General Editor
J William Rowley QC

Editors
Emmanuel Gaillard, Gordon E Kaiser and Benjamin Siino

Second Edition

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This article was first published in May 2021
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Published in the United Kingdom
by Law Business Research Ltd, London
Meridian House, 34-35 Farringdon Street, London, EC4A 4HL, UK

www.globalarbitrationreview.com

ISBN 978-1-83862-575-7

Printed in Great Britain by
Encompass Print Solutions, Derbyshire
Tel: 0844 2480 112

Acknowledgements

The publisher acknowledges and thanks the following for their learned assistance throughout the preparation of this book:

ADVOKATFIRMAN VINGE KB

ALSTON & BIRD LLP

BGP LITIGATION

CARMIGNIANI PÉREZ ABOGADOS

CECIL ABRAHAM & PARTNERS

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Publisher's Note

Global Arbitration Review is delighted to publish this new edition of *The Guide to Challenging and Enforcing Arbitration Awards*.

For those new to Global Arbitration Review, we are the online home for international arbitration specialists, telling them everything they need to know about all the developments that matter. We provide daily news and analysis, and more in-depth books and reviews. We also organise conferences and build work-flow tools. Visit us at www.globalarbitrationreview.com.

As the unofficial 'official journal' of international arbitration, sometimes we spot gaps in the literature earlier than others. Recently, as J William Rowley QC observes in his excellent preface, it became obvious that the time spent on post-award matters had increased vastly compared with, say, 10 years ago, and it was high time someone published a reference work focused on this phase.

The Guide to Challenging and Enforcing Arbitration Awards is that book. It is a practical know-how text covering both sides of the coin – challenging and enforcing – first at thematic level, and then country by country. We are delighted to have worked with so many leading firms and individuals to produce it.

If you find it useful, you may also like the other books in the GAR Guides series. They cover energy, construction, M&A and mining disputes – and soon evidence and investor-state disputes – in the same unique, practical way. We also have books on advocacy in international arbitration and the assessment of damages.

My thanks to the original group of editors for their vision and energy in pursuing this project and to our authors and my colleagues in production for achieving such a polished work.

Alas, as we were about to go to press, we were stunned by the unexpected demise of one of those editors, Emmanuel Gaillard. This news was as big a shock as I can recall. Emmanuel was one of three or four names who define international arbitration in the modern era. It was a delight to know him, and a source of huge satisfaction that he respected GAR, and it is hard to imagine professional life without him. Our sympathies go to his family and beloved colleagues, who I have no doubt will keep at least some of the magic alive.

David Samuels

London
April 2021

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Preface

During the past two decades, the explosive and continuous growth in cross-border trade and investments that began after World War II has jet-propelled the growth of international arbitration. Today, arbitration (whether *ad hoc* or institutional) is the universal first choice over transnational litigation for the resolution of cross-border business disputes.

Why parties choose arbitration for international disputes

During the same period, forests have been destroyed to print the thousands of papers, pamphlets, scholarly treatises and texts that have analysed every aspect of arbitration as a dispute resolution tool. The eight or 10 reasons usually given for why arbitration is the best way to resolve cross-border disputes have remained pretty constant, but their comparative rankings have changed somewhat. At present, two reasons probably outweigh all others.

The first must be the widespread disinclination of those doing business internationally to entrust the resolution of prospective disputes to the national court systems of their foreign counterparties. This unwillingness to trust foreign courts (whether based on knowledge or simply uncertainty as to whether the counterparty's court system is worthy – in other words, efficient, experienced and impartial – leaves international arbitration as the only realistic alternative, assuming the parties have equal bargaining power.

The second is that, unlike court judgments, arbitral awards benefit from a series of international treaties that provide robust and effective means of enforcement. Unquestionably, the most important of these is the 1958 New York Convention, which enables the straightforward enforcement of arbitral awards in 166 countries (at the time of writing). When enforcement against a sovereign state is at issue, the Convention on the Settlement of Investment Disputes between States and Nationals of Other States of 1966 requires that ICSID awards are to be treated as final judgments of the courts of the relevant contracting state, of which there are currently 163.

Awards used to be honoured

International corporate counsel who responded to the 2008 Queen Mary/PricewaterhouseCoopers Survey on Corporate Attitudes and Practices in Relation to Investment Arbitration (the 2008 Queen Mary Survey) reported positive outcomes on the use of international arbitration to resolve disputes. A very high percentage (84 per cent) indicated that, in more than 76 per cent of arbitration proceedings, the non-prevailing party voluntarily complied with the arbitral award. Where enforcement was required, 57 per cent said that it took less than a year for awards to be recognised and enforced, 44 per cent received the full value of the award and 84 per cent received more than three-quarters of the award. Of those who experienced problems in enforcement, most described them as complications rather than insurmountable difficulties. The survey results amounted to a stunning endorsement of international arbitration for the resolution of cross-border disputes.

Is the situation changing?

As an arbitrator, my job is done with the delivery of a timely and enforceable award. When the award is issued, my attention invariably turns to other cases, rather than to whether the award produces results. The question of enforcing the award (or challenging it) is for others. This has meant that, until relatively recently, I have not given much thought to whether the recipient of an award would be as sanguine today about its enforceability and payment as those who responded to the 2008 Queen Mary Survey.

My interest in the question of whether international business disputes are still being resolved effectively by the delivery of an award perked up a few years ago. This was a result of the frequency of media reports – pretty well daily – of awards being challenged (either on appeal or by applications to vacate) and of prevailing parties being required to bring enforcement proceedings (often in multiple jurisdictions).

Increasing press reports of awards under attack

During 2020, *Global Arbitration Review*'s daily news reports contained hundreds of headlines that suggest that a repeat of the 2008 Queen Mary Survey today could well lead to a significantly different view as to the state of voluntary compliance with awards or the need to seek enforcement. Indeed, in the first three months of 2021, there has not been a day when the news reports have not headlined the attack on, survival of, or a successful or failed attempt to enforce an arbitral award.

A sprinkling of recent headlines on the subject are illustrative:

- Uganda fails to knock out rail-claim award
- Iranian state entity fails to overturn billion-euro award
- US Supreme Court rejects Petrobras bribery appeal
- Spanish court sets high bar for award scrutiny
- Swiss award against Glencore upheld on third attempt
- Tajik state airline escapes Lithuanian award
- Dutch court refuses to stay Yukos awards
- Undisclosed expert ties prove fatal to ICSID award
- Brazilian airline's award enforced in Cayman Islands
- ICC arbitrators targeted in Kenyan mobile dispute

Regrettably, no source of reliable data is available as yet to test the question of whether challenges to awards are on the increase or the ease of enforcement has changed materially since 2008. However, given the importance of the subject (without effective enforcement, there really is no effective resolution) and my anecdote-based perception of increasing concerns, in summer 2017, I raised the possibility of doing a book on the subject with David Samuels (Global Arbitration Review's publisher). Ultimately, we became convinced that a practical, 'know-how' text that covered both sides of the coin – challenges and enforcement – would be a useful addition to the bookshelves of those who more frequently than in the past may have to deal with challenges to, and enforcement of, international arbitration awards. Being well equipped (and up to date) on how to deal with a client's post-award options is essential for counsel in today's increasingly disputatious environment.

David and I were obviously delighted when Emmanuel Gaillard and Gordon Kaiser agreed to become partners in the project. It was a dreadful shock to learn of Emmanuel's sudden death in early April. Emmanuel was an arbitration visionary. He was one of the first to recognise the revolutionary changes that were taking place in the world of international arbitration in the 1990s and the early years of the new century. From a tiny group defined principally by academic antiquity, we had become a thriving, multicultural global community, drawn from the youngest associate to the foremost practitioner. Emmanuel will be remembered for the enormous contribution he made to that remarkable evolution.

Editorial approach

As editors, we have not approached our work with a particular view on whether parties are currently making inappropriate use of mechanisms to challenge or resist the enforcement of awards. Any consideration of that question should be made against an understanding that not every tribunal delivers a flawless award. As Pierre Lalive said almost 40 years ago:

> *an arbitral award is not always worthy of being respected and enforced; in consequence, appeals against awards [where permitted] or the refusal of enforcement can, in certain cases, be justified both in the general interest and in that of a better quality of arbitration.*

Nevertheless, the 2008 Queen Mary Survey, and the statistics kept by a number of the leading arbitral institutions, suggest that the great majority of awards come to conclusions that should normally be upheld and enforced.

Structure of the guide

This guide begins with a particularly welcome and inciteful foreword by Alan Redfern, recognised worldwide as one of the most thoughtful and experienced practitioners in our field. The guide is then structured to include, in Part I, coverage of general issues that will always need to be considered by parties, wherever situate, when faced with the need to enforce or to challenge an award. In this second edition, the 14 chapters in Part I deal with subjects that include initial strategic considerations in relation to prospective proceedings; how best to achieve an enforceable award; challenges generally and a variety of specific types of challenges; enforcement generally and enforcement against sovereigns; enforcement of interim measures; how to prevent asset stripping; grounds to refuse enforcement; and the special case of ICSID awards.

Part II of the guide is designed to provide answers to more specific questions that practitioners will need to consider when reaching decisions concerning the use (or avoidance) of a particular national jurisdiction – whether this concerns the choice of that jurisdiction as a seat of an arbitration, as a physical venue for the hearing, as a place for enforcement, or as a place in which to challenge an award. This edition includes reports on 26 national jurisdictions. The author, or authors, of each chapter have been asked to address the same 51 questions. All relate to essential, practical information about the local approach and requirements relating to challenging or seeking to enforce awards. Obviously, the answers to a common set of questions will provide readers with a straightforward way in which to assess the comparative advantages and disadvantages of competing jurisdictions.

With this approach, we have tried to produce a coherent and comprehensive coverage of many of the most obvious, recurring or new issues that are now faced by parties who find that they will need to take steps to enforce these awards or, conversely, find themselves with an award that ought not to have been made and should not be enforced.

Quality control and future editions

Having taken on the task, my aim as general editor has been to achieve a substantive quality consistent with *The Guide to Challenging and Enforcing Arbitration Awards* being seen as an essential desktop reference work in our field. To ensure content of high quality, I agreed to go forward only if we could attract as contributors those colleagues who were some of the internationally recognised leaders in the field. Emmanuel, Gordon and I feel blessed to have been able to enlist the support of such an extraordinarily capable list of contributors.

In future editions, we hope to fill in important omissions. In Part I, these could include chapters on successful cross-border asset tracing, the new role played by funders at the enforcement stage, and the special skill sets required by successful enforcement counsel. In Part II, we plan to expand the geographical reach even further.

Without the tireless efforts of the Global Arbitration Review team at Law Business Research, this work never would have been completed within the very tight schedule we allowed ourselves; David Samuels and I are greatly indebted to them. Finally, I am enormously grateful to Doris Hutton Smith (my long-suffering PA), who has managed endless correspondence with our contributors with skill, grace and patience.

I hope that all my friends and colleagues who have helped with this project have saved us from error – but it is I alone who should be charged with the responsibility for such errors as may appear.

Although it should go without saying, this second edition of this publication will obviously benefit from the thoughts and suggestions of our readers on how we might be able to improve the next edition, for which we will be extremely grateful.

J William Rowley QC

London
April 2021

Part II

Challenging and Enforcing Arbitration Awards: Jurisdictional Know-How

29

Japan

Hiroki Aoki and Takashi Ohno[1]

Applicable requirements as to the form of arbitral awards

Applicable legislation as to the form of awards

1 Must an award take any particular form?

According to Article 39 of the Arbitration Act, an award must be prepared in a written form. Further, it must be prepared and signed by the arbitrator who has made the award. However, if the tribunal is a panel (i.e., not a single arbitrator), it will be sufficient that the written award is signed by the majority of the arbitrators constituting the tribunal and states the reasons for any omitted signatures. An award must be dated and state the place of arbitration. An award must also state the reasoning of the decision unless otherwise agreed by the parties. A signed copy of the award must be sent to each party by the tribunal.

Applicable procedural law for recourse against an award

Applicable legislation governing recourse against an award

2 Are there provisions governing modification, clarification or correction of an award? Are there provisions governing retractation or revision of an award? Under what circumstances may an award be retracted or revised (for fraud or other reasons)?

Modification, clarification or correction

According to Article 41 of the Arbitration Act, the tribunal may correct any miscalculation, clerical error or any other similar errors by its own authority.

1 Hiroki Aoki is a partner at Nagashima Ohno & Tsunematsu Singapore LLP and Takashi Ohno is an associate at Nagashima Ohno & Tsunematsu.

In addition, a party may file a petition to request correction of any errors within 30 days of the party receiving the award, unless otherwise agreed by the parties. The tribunal must make a decision on the petition within 30 days (extendable if the tribunal deems necessary) of the date of receipt of the petition.

Article 39 of the Arbitration Act (i.e., formal and procedural requirements for a written award) is applicable *mutatis mutandis* to the decision of the correction of the award or the dismissal of the petition.

Retractation or revision

There are no explicit provisions governing retractation or revision of an award. Some scholars argue that a tribunal has the authority to retract or revise an arbitral award in some circumstances, but once an arbitral award is sent to the parties, tribunals should no longer be able to retract or revise an arbitral award unless otherwise agreed by the parties.

In addition, in the event of fraud or other unusual circumstances, parties may challenge an arbitral award by filing a petition to the court to set aside the award pursuant to Article 44 of the Arbitration Act, which provides general grounds to challenge an award (e.g., when the composition of the tribunal or the arbitration procedure violates Japanese law or when the content of the arbitral award is contrary to the public policy of Japan).

Appeals from an award

3 May an award be appealed to or set aside by the courts? What are the differences between appeals and applications to set aside awards?

An award cannot be appealed to courts. Awards can be challenged by filing an application to the court to set aside an award pursuant to Article 44 of the Arbitration Act.

The grounds to set aside an arbitral award are as follows:

- invalidity of the arbitration agreement owing to limited capacity of a party;
- invalidity of the arbitration agreement owing to an applicable law other than limited capacity of a party;
- the petitioner did not receive the notice required under Japanese laws and regulations during the procedure of appointing arbitrators or during the arbitration procedure;
- the petitioner was unable to defend during the arbitration procedure;
- the award exceeds the scope of the arbitration agreement or the claims made by the parties during the arbitration procedure;
- the composition of the tribunal or the arbitration procedure violates Japanese law;
- the case was not allowed to be disputed through arbitration under Japanese law; and
- the content of the arbitral award is contrary to the public policy of Japan.

Applicable procedural law for setting aside of arbitral awards

Time limit

4 Is there a time limit for applying for the setting aside of an arbitral award?

Article 44 of the Arbitration Act sets two time limits for applying for the setting aside of an arbitral award.

First, an application to set aside an award cannot be filed once three months have elapsed from the date on which a copy of the written award has been sent to each of the parties.

Second, an application to set aside an award cannot be filed when the execution order of the award has become final and binding. The purpose of this limitation is that the party who wished to challenge the award had an opportunity to do so by opposing the execution pursuant to Article 45 of the Arbitration Act. The grounds to oppose to an execution are virtually identical to the grounds to set aside an arbitral award.

Award

5 What kind of arbitral decision can be set aside in your jurisdiction? Can courts set aside partial or interim awards?

Although it is not clearly stipulated under the Arbitration Act, the dominant theory is that only final awards and partial awards that finally resolve any dispute on the merits can be set aside. Interim awards are not subject to such a challenge.

Competent court

6 Which court has jurisdiction over an application for the setting aside of an arbitral award?

Pursuant to Article 5 of the Arbitration Act, the following courts have jurisdiction:

- the district court agreed by the parties;
- the district court with jurisdiction over the place of arbitration (only applicable when the place of arbitration is an area over which only one district court has jurisdiction); and
- the district court with jurisdiction over the location of the 'general venue' of the respondent of the case filed with the court.

Regarding the final point above, 'general venue' is defined in Article 4 of the Code of Civil Procedure. If a respondent is a natural person, the general venue would be determined based on the person's domicile (or residence, if the person is not domiciled in Japan or if the domicile is unknown). If the person does not have a residence in Japan or the residence is unknown, the last domicile in Japan will be used to determine the general venue.

If a respondent is a corporation or any other association or foundation, the general venue will be determined by the location of its principal place of business, or by the domicile of its representative or any other principal person in charge of its business if it has no business premises or other office.

Form of application and required documentation

7 What documentation is required when applying for the setting aside of an arbitral award?

According to the Rules for Cases relating to Arbitration Cases issued by the Supreme Court, a petition for setting aside an arbitral award must be submitted by a document containing the following details:

- names and address of the parties and their legal representatives;
- requested relief;
- concrete factual basis to set aside the arbitral award;
- a list of relevant evidence; and
- the petitioner's area code and phone number (including fax number).

Further, copies of relevant evidence are required to be attached to the petition.

Translation of required documentation

8 If the required documentation is drafted in a language other than the official language of your jurisdiction, is it necessary to submit a translation with the application for the setting aside of an arbitral award? If yes, in what form must the translation be?

According to Article 74 of the Court Act, documents submitted to the court must be in Japanese. Therefore, a petition must be drafted and submitted in Japanese. If any evidence, such as an arbitral award, is not drafted in Japanese, it must be accompanied by a Japanese translation of it. There are no specific requirements (e.g., notarisation or apostille) for the form of the translation. There are no provisions that allow the parties to provide an excerpt instead of a full translation.

Other practical requirements

9 What are the other practical requirements relating to the setting aside of an arbitral award? Are there any limitations on the language and length of the submissions and of the documentation filed by the parties?

Documents must be submitted in Japanese. There are no particular requirements or limitation for the submissions or of the documentation filed by the parties.

Form of the setting-aside proceedings

10 What are the different steps of the proceedings?

Courts are required to hold either a hearing or an interrogation, which both parties can attend. The Arbitration Act does not set out detailed rules regarding these proceedings. Procedures are not strictly split into written and oral phase, so the parties can submit written pleadings or evidence throughout the hearing or interrogation process. If the court believes it necessary to determine the fact, a hearing for witness examination may be held.

Suspensive effect

11 Do setting-aside proceedings have suspensive effect? May an arbitral award be recognised or enforced pending the setting-aside proceedings in your jurisdiction?

Setting-aside proceedings do not automatically suspend the proceeding of enforcement of the award. A party may file a petition with the court for an execution order based on an award even if a proceeding for setting aside the award is pending.

Nevertheless, pursuant to Article 46, Section 3 of the Arbitration Act, a court that receives a petition for execution has discretion to suspend the execution process if a petition for setting aside an award or petition for suspension of the effect of the award is filed. If the court decides to suspend the execution process, the court may order the judgment debtor to provide securities.

Grounds for setting aside an arbitral award

12 What are the grounds on which an arbitral award may be set aside?

According to Article 44 of the Arbitration Act, a court may set aside an arbitral award when the court finds one or more of the grounds set forth below:

- invalidity of the arbitration agreement owing to limited capacity of a party;
- invalidity of the arbitration agreement owing to applicable law other than the limited capacity of party;
- the petitioner did not receive the notice required under Japanese laws and regulations during the procedure of appointing arbitrators or during the arbitration procedure;
- the petitioner was unable to defend during the arbitration procedure;
- the award exceeds the scope of the arbitration agreement or the claims made by the parties during the arbitration procedure;
- the composition of the tribunal or the arbitration procedure violates Japanese law;
- the case was not allowed to be disputed through an arbitration under Japanese law; and
- the content of the arbitral award is contrary to the public policy of Japan.

It should be noted that courts have discretion on whether or not to set aside an arbitral award. For instance, if the grounds argued by the challenging party are not material (i.e., did not affect the outcome of the arbitration), the court may decide not to set aside an arbitral award even if the court finds that one or more factors stipulated in Article 44 are met.

Decision on the setting-aside application

13 What is the effect of the decision on the setting-aside application in your jurisdiction? What challenges are available?

The Arbitration Act does not clearly state the effect of a decision for setting aside an arbitration award, but according to the dominant theory and a Supreme Court case, a decision for setting aside an arbitration award has a retroactive effect to invalidate the award; in other words, the award will be treated as if it had not existed in the first place.

According to Article 44 of the Arbitration Act, parties can file an appeal against these decisions within two weeks of the day on which they received notice of the decision.

There is a debate about whether a decision on the setting-aside application has a *res judicata* effect. Scholars who argue that there should be a *res judicata* effect explain that once a decision is rendered and becomes final, courts will be bound by the decision. This means that if a decision rejects an application and that decision becomes final, the losing party of the application may not rechallenge the effect of the arbitration award in later proceedings.

Effects of decisions rendered in other jurisdictions

14 Will courts take into consideration decisions rendered in the same matter in other jurisdictions or give effect to them?

According to Article 45, Section 2, Paragraph 7 of the Arbitration Act, if an arbitral award has been set aside or its effect has been suspended by a judicial body of the country in which the seat of arbitration is located, the court will not recognise that award in Japan.

Applicable procedural law for recognition and enforcement of arbitral awards

Applicable legislation for recognition and enforcement

15 What is the applicable procedural law for recognition and enforcement of an arbitral award in your jurisdiction? Is your jurisdiction party to treaties facilitating recognition and enforcement of arbitral awards?

The Arbitration Act is the applicable law for recognition and approval for enforcement of arbitral awards. Once a party obtains a court order approving the enforcement, it may execute the award through the procedure stipulated in the Civil Execution Act, which provides measures for the execution of civil court decisions and arbitral awards.

Japan is a party to the New York Convention of 1958 and the ICSID Convention. Further, Japan is a party to various bilateral investment treaties with many states.

The New York Convention

16 Is the state a party to the 1958 New York Convention? If yes, what is the date of entry into force of the Convention? Was there any reservation made under Article I(3) of the Convention?

Japan is a party to the 1958 New York Convention, and the date of entry into force is 18 September 1961. Japan made only the reciprocity declaration.

Recognition proceedings

Time limit

17 Is there a time limit for applying for the recognition and enforcement of an arbitral award?

There are no time limits for applying for the recognition and enforcement of an arbitral award.

Competent court

18 Which court has jurisdiction over an application for recognition and enforcement of an arbitral award?

According to Article 45, Paragraph 1 of the Arbitration Act, both domestic and foreign awards are recognised without any court proceedings, but a court order approving the enforcement is required pursuant to Article 46 of the Arbitration Act to execute the award. Article 45, Paragraph 2 of the Arbitration Act provides grounds for refusal of recognition and enforcement that will be examined through the process of the application for enforcement of arbitral awards.

As regards applications for enforcement of domestic or foreign awards, district courts have jurisdiction.

Jurisdictional and admissibility issues

19 What are the requirements for the court to have jurisdiction over an application for recognition and enforcement and for the application to be admissible? Must the applicant identify assets within the jurisdiction of the court that will be the subject of enforcement for the purpose of recognition proceedings?

As regards applications for enforcement of both domestic and foreign arbitral awards, jurisdiction belongs exclusively to the following district courts (Arbitration Act, Article 46, Paragraph 4 and Article 5):

- the district court determined by an agreement by the parties;
- the district court with jurisdiction over the seat of arbitration (applicable only if the seat of arbitration is limited to an area over which only one court has jurisdiction);
- the district court that has jurisdiction where the respondent of the application is located (if it is a company, the location of the principal office or business premises); or
- the district court that has jurisdiction over the location of the subject matter of the claim or the seizable property of the obligor.

Any of the above provides jurisdiction to relevant courts, so applicants are not necessarily required to identify assets within the jurisdiction of the court for the purpose of enforcement.

In addition, an application must be filed by the named party (or its successor) of the arbitral award to make the application admissible.

Form of the recognition proceedings

20 Are the recognition proceedings in your jurisdiction adversarial or *ex parte*? What are the different steps of the proceedings?

The proceedings in an application for enforcement of an arbitral award are adversarial (Arbitration Act, Article 46, Paragraph 10 and Article 44, Paragraph 5).

Courts are required to hold either a hearing or an interrogation, which both parties can attend. The Arbitration Act does not set out detailed rules regarding these proceedings. Procedures are not strictly split into written and oral phases, so the parties can submit written pleadings or evidence throughout the hearing or interrogation process. If the court believes it necessary to determine the fact, a hearing for witness examination may be held.

Form of application and required documentation

21 What documentation is required to obtain recognition?

To file an application for enforcement, an applicant must submit the following documents (one of each) in addition to a written application (Arbitration Act, Article 46, Paragraph 2):

- a copy of the written arbitral award;
- a certification proving that the contents of the copy are the same as the original; and
- a Japanese translation of the written arbitral award (unless the award is written in Japanese).

Translation of required documentation

22 If the required documentation is drafted in a language other than the official language of your jurisdiction, is it necessary to submit a translation with an application to obtain recognition? If yes, in what form must the translation be?

If the document (award) is not written in Japanese, applicants are required to submit a translation of it.

The Arbitration Act or other procedural rules do not require any particular form for the translation. In addition, there are no provisions that allow the parties to provide an excerpt instead of a full translation.

Other practical requirements

23 What are the other practical requirements relating to recognition and enforcement? Are there any limitations on the language and length of the submissions and of the documentation filed by the parties?

The cost for filing an application for enforcement is ¥4,000 (Act on Costs of Civil Procedure, Article 3, Paragraph 1 and Attachment 1).

If the application is filed by a lawyer, a power of attorney is required.

Pleadings must be drafted in Japanese. If a party wishes to submit evidence written in a foreign language, it is required to be submitted with a Japanese translation. There are

few requirements in relation to the form of the translation, which does not have to be translated by a certified translator. It is also usually permissible to translate excerpts, unless otherwise instructed by the court. There are no limitations on the length of the submission or documentation.

Recognition of interim or partial awards

24 Do courts recognise and enforce partial or interim awards?

The dominant theory is that only final awards that have an effect to end the arbitration can be recognised and enforced. Therefore, interim awards are unlikely to be enforceable. However, if a partial award is made for a separable claim and has an effect to end the arbitration for the relevant part, it could be recognised and enforced by the courts.

Grounds for refusing recognition of an arbitral award

25 What are the grounds on which an arbitral award may be refused recognition? Are the grounds applied by the courts different from those provided under Article V of the New York Convention?

The grounds for refusing enforcement of the award stipulated in Article 45, Paragraph 2 of the Arbitration Act are as follows (and are in line with Article V of the New York Convention):

- the arbitration agreement is not valid owing to the limited capacity of a party;
- the arbitration is not valid on grounds other than the limited capacity of a party pursuant to the laws and regulations designated by the agreement of the parties as those that should be applied to the arbitration agreement (or, if no designation has been made, the laws and regulations of the country to which the place of arbitration belongs);
- the party did not receive the notice required under the laws and regulations of the country that is the seat of arbitration (or if the parties have reached an agreement on matters concerning provisions unrelated to public order in the laws and regulations, that other agreement) during the procedure for appointing arbitrators or during the arbitration procedure;
- the party was unable to present a defence during the arbitration procedure;
- the arbitral award contains a decision on matters beyond the scope of the arbitration agreement or of a petition during the arbitration procedure;
- the composition of the arbitral tribunal or the arbitration procedure is in violation of the laws and regulations of the country that is the seat of arbitration (or if the parties have reached an agreement in respect of provisions unrelated to public order in the laws and regulations, that other agreement);
- according to the laws and regulations of the country that is the seat of arbitration (or if the laws and regulations applied to the arbitration procedure are laws and regulations of a country other than the country that is the seat of arbitration, that other country) the arbitral award is not final and binding, or the arbitral award has been set aside or its effect has been suspended by a judicial body of that country;

- the petition filed in the arbitration procedure is concerned with a dispute that may not be subject to an arbitration agreement pursuant to the provisions of Japanese laws and regulations; and
- the content of the arbitral award is contrary to public policy in Japan.

Effect of a decision recognising an arbitral award

26 What is the effect of a decision recognising an arbitral award in your jurisdiction?

According to Article 45 of the Arbitration Act, both domestic and foreign awards are recognised without any court proceedings. Article 45 nevertheless provides grounds for refusal of recognition, but these grounds will be examined through the process of an application for enforcement of an arbitral award (Arbitration Act, Article 46).

Decisions refusing to recognise an arbitral award

27 What challenges are available against a decision refusing recognition in your jurisdiction?

Decisions of district courts concerning applications for enforcement of an award can be appealed to a high court within two weeks of the date of notification of the decision (Arbitration Act, Article 46, Paragraph 6 and Article 7).

A decision of the high court is further appealable to the Supreme Court with limited grounds such that the decision violates the Constitution of Japan or is contrary to earlier decisions of the Supreme Court (Code of Civil Procedure, Articles 336 and 337).

Recognition or enforcement proceedings pending annulment proceedings

28 What are the effects of annulment proceedings at the seat of the arbitration on recognition or enforcement proceedings in your jurisdiction?

If an application to set aside or suspend an arbitral award has been made by a judicial body at the seat of the arbitration, the court at which the application for enforcement is pending may suspend the enforcement proceedings if it considers it necessary (Arbitration Act, Article 46, Paragraph 3). There are no available precedents concerning the decision to suspend.

Security

29 If the courts adjourn the recognition or enforcement proceedings pending annulment proceedings, will the defendant to the recognition or enforcement proceedings be ordered to post security?

If the court decides to suspend enforcement proceedings, it may order the defendant of the enforcement proceedings to provide security upon request of the party who made the application for enforcement (Arbitration Act, Article 46, Paragraph 3).

The court has discretion on whether to order payment of security and the amount thereof. There are no available precedents regarding the form and amount of security.

Recognition or enforcement of an award set aside at the seat

30 Is it possible to obtain the recognition and enforcement of an award that has been fully or partly set aside at the seat of the arbitration? If an arbitral award is set aside after the decision recognising the award has been issued, what challenges are available?

Article 46, Paragraph 7 and Article 45 of the Arbitration Act provide that the court may dismiss an application for enforcement if an award has been set aside or its effect has been suspended by a judicial body at the seat of the arbitration.

Since the word 'may' suggests that the court has discretion, some scholars argue that it is possible for the court to issue an enforcement decision even if the award has been set aside. However, there are no publicly available court decisions directly ruling on this issue.

If an award is set aside after the court issues an enforcement order, the enforcement order may be challenged by the judgment debtor within two weeks of the date of its notification (Arbitration Act, Article 46, Paragraph 6 and Article 7).

If an award is set aside after this two-week period, the Act does not provide procedures for how to challenge the decision. Although it is unclear whether it would be granted, the judgment debtor may file an action to oppose execution (Civil Execution Act, Article 35, Paragraph 1).

Service

Service in your jurisdiction

31 What is the procedure for service of extrajudicial and judicial documents to a defendant in your jurisdiction? If the extrajudicial and judicial documents are drafted in a language other than the official language of your jurisdiction, is it necessary to serve these documents with a translation?

The Code of Civil Procedure provides the procedure for service of judicial documents as follows:

- in principle, service must be by delivery of the document directly to the person who is to be served by the court clerk through the mail or by a court execution officer at the domicile, residence, office or business premises of the person (Code of Civil Procedure, Articles 101 and 103);
- if the above is unsuccessful, documents may be served by registered mail. Documents are deemed to have been served at the time they are sent (Code of Civil Procedure, Article 107); and
- if the party's domicile and residence are unknown, and no other place where the party may be served is known, service can be by publication (Code of Civil Procedure, Article 110). Service by publication comes into effect two weeks after the date of publication.

There are no particular procedures for service of extrajudicial documents.

Service out of your jurisdiction

32 What is the procedure for service of extrajudicial and judicial documents to a defendant outside your jurisdiction? Is it necessary to serve these documents with a translation in the language of this jurisdiction?

Japan is a signatory of the Hague Convention on Civil Procedure (1954) (the Convention on Civil Procedure) and the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (1965) (the Hague Service Convention). In addition, Japan is a signatory to bilateral treaties concerning services with several countries, including the United States and the United Kingdom. Under these treaties, there are several methods to serve judicial documents to a person or entity not in the territory of Japan. The method used depends on the treaty entered between Japan and the state in which the recipient is located.

Service via Japanese consulate in the state where recipient is located

Within the signatory states of the Convention on Civil Procedure, the Hague Service Convention and other bilateral treaties such as those between the United States and United Kingdom, judicial documents may be served directly via the Japanese consulate in the recipient's state. If the basis of the service is the Convention on Civil Procedure or the Hague Service Convention, signatory states may refuse this method. In these circumstances, this method of service may be used only for Japanese recipients.

A document translated into the official language of the jurisdiction or into the language that the recipient can understand must be attached, unless it is obvious that the recipient can understand Japanese. Thus, if the recipient is Japanese, a translation is generally not attached.

Service via state's central authority

Within the signatory states of the Hague Service Convention, judicial documents can be served through the state's central authority designated by the state upon request by the Supreme Court of Japan. There are three options available for this method of service: (1) in accordance with the local law; (2) in a specialised way; and (3) voluntarily accepted by the recipient.

For options (1) and (2), above, a translation of the document into the official language of the jurisdiction is required even if the recipient is Japanese, unless the subject state does not require such a translation. Regarding option (3), a translation is not necessary.

Service via state's designated authority

Within the signatory states of the Hague Service Convention, judicial documents can be served through the state authority designated by the state upon request via the Japanese consulate located in that state. This method is available only when the signatory state is not a signatory of the the Hague Service Convention, since that Convention supersedes the Convention on Civil Procedure.

The options available for this method and the requirements for translation are the same as service via a state's central authority.

Identification of assets

Asset databases

33 Are there any databases or publicly available registers allowing the identification of an award debtor's assets within your jurisdiction?

Ownership of real estate and motor vehicles is registered under a system managed by the Ministry of Justice. However, the registration office does not provide a comprehensive searchable database to identify the assets of debtors. In principle, creditors are required to provide the address of the location of the asset to obtain information about registered real estate or vehicles from this registration system, which makes it difficult for creditors to identify the assets of a debtor by using this database.

An amendment of the Civil Execution Act, which was passed in 2003, allowed the parties to file a request to the court to order a disclosure of the assets of the debtor in a judgment. However, this process was not commonly used because of its light sanction. To make this process more effective, a further amendment to the Civil Execution Act was passed on 17 May 2019 and came into effect as of 1 April 2020. The main change made by this amendment was to increase the penalty for non-compliance with a court order concerning the disclosure of assets. Prior to this amendment, the sanction was a fine of up to ¥300,000. After the 2019 amendment, the penalty was amended to a fine of up to ¥500,000 or imprisonment for up to six months.

In addition, upon a lawyer's request, bar associations may request disclosure of information to entities holding information relevant to claims (Attorney Act, Article 23-2). Lawyers use this system against banks to request disclosure of whether the debtor holds an account at the bank, and if so, the remaining balance of the account. Although there are no penalties imposed on entities for not responding to such a request, many banks nevertheless disclose the information requested.

Information available through judicial proceedings

34 Are there any proceedings allowing for the disclosure of information about an award debtor within your jurisdiction?

Disclosure request to judgment debtor based on Civil Execution Act

2003 amendment

An amendment of the Civil Execution Act, which was passed in 2003, allowed parties to file a request to the court to order disclosure of the assets of a judgment debtor (property disclosure procedure (PDP)).

2019 amendment

However, PDP was not commonly used because of its light sanction. To make the process more effective, a further amendment to the Civil Execution Act was passed on 17 May 2019, which came into effect as of 1 April 2020. One of the main purposes of this amendment was to enhance the disclosure process regarding debtors' assets. Prior to this amendment, the sanction was a fine of up to ¥300,000. After the 2019 amendment, the penalty was amended to a fine of up to ¥500,000 or imprisonment for up to six months.

General requirements and process

An applicant for PDP may file a petition for disclosure once it obtains an enforceable title of obligation (in other words, for arbitration awards, an enforcement order for the awards). Applicants are required to show grounds for the need for this disclosure, which are either that the claim was not satisfied by the execution, or it is a *prima facie* case showing that the recognised assets are not sufficient to satisfy the claim.

If the court grants this application, the judgment debtor is required to provide information about the assets it owns, explain the status of those assets and answer any questions from the applicant party or the court.

If a judgment debtor refuses to appear before the court or to provide information, or provides false information, the judgment debtor may be punished with a fine of up to ¥500,000 or imprisonment for up to six months, as explained above.

Disclosure request to a third party based on Civil Execution Act

Bank deposits and shares

To execute on bank deposits, an enforcing party must specify particulars of the debtor's bank accounts. Although a specific bank account number is not necessary, the name of the relevant bank is insufficient for this purpose. The Supreme Court has ruled that a judgment creditor is required to specify, as a minimum, the branch name of the relevant bank account. In practice, however, a judgment creditor will face difficulty ascertaining the branch name of the bank in question without the debtor's cooperation. This difficulty is compounded by the fact that major banks in Japan typically operate more than 400 branches each.

Prior to an amendment in 2020, the Civil Execution Act provided a process to enable a disclosure request to banks to provide whether a judgment debtor's bank deposit existed in its bank and the amount thereof. However, the judgment debtor was required to identify the branch, which was a burden for the debtors, as explained above. The 2020 amendment to the Civil Execution Act enables a judgment creditor to seek a court order directing banks to disclose particulars of a debtor's bank accounts, including the branch name of a specific account. The types of banks that are subject to this procedure are listed in the new Article 207 of the Civil Execution Act, which covers a wide range of banks, including ordinary banks, credit unions and bank services provided by agricultural unions, among others.

A judgment creditor may also seek a court order directing security firms to disclose information about shares, corporate bonds or similar kinds of financial instruments held by the debtor.

As with PDP, an applicant for this procedure is required to obtain an enforceable title of obligation (in other words, for arbitration awards, an enforcement order for the awards) and are required to show grounds for the need for this disclosure, which are either that the claim was not satisfied by the execution or it is a *prima facie* case showing that the recognised assets are not sufficient to satisfy the claim.

A judgment creditor may request these orders on an *ex parte* basis without first filing a PDP application to avoid alerting the judgment debtor, which may pre-empt the court order by dissipating its assets. After an order of disclosure is obtained, the judgment debtor will be notified around one month after the disclosing entities (e.g., banks) provide the

information pursuant to the order, so the judgment debtor is not entitled to appeal to this order.

Real estate

The 2020 amendment to the Civil Execution Act allows a judgment creditor to request information about all real estate held in the name of the debtor from a public register office.

A judgment creditor must file a PDP application prior to any such request, and the request must be made within three years of the PDP. The judgment ordering disclosure to a public register office will be served to the judgment debtor, and the judgment debtor may file an appeal to this decision.

This amendment has not come into force, as it will take some time for public register offices to establish a new information management system. At the time of writing, it is expected to come into force by May 2021.

Salaries

The 2020 amendment established a new system by which a judgment creditor may seek a court order directing municipalities or organisations that manage an employee's pension (e.g., the Japan Pension Service) to disclose information about the debtor's place of employment, if any.

Given the sensitive nature of this information and the serious effect of attaching a debtor's salary, this request is allowed only in limited circumstances, when the underlying claim relates to child support or other family-related claims under Articles 151 and 152 of the Civil Execution Act, or arises out of a death or personal injury. In addition, as with a third-party disclosure request in respect of real estate, a PDP application is also a prerequisite to a request for information about a debtor's place of employment.

Disclosure request via bar associations

In addition, upon a lawyer's request, bar associations may request disclosure of information to entities holding information relevant to claims (Attorney Act, Article 23-2). Lawyers use this system against banks to request disclosure of whether the debtor holds an account at the bank, and if so, the remaining balance of the account. Although there are no penalties imposed on the entities for not responding to such a request, many banks nevertheless disclose the information requested.

Enforcement proceedings

Attachable property

35 What kinds of assets can be attached within your jurisdiction?

Movable assets (e.g., vehicles, machines, inventories) and immovable assets (e.g., land, buildings) are attachable. In addition, intangible assets such as receivables, copyrights and patent rights are attachable.

Availability of interim measures

36 Are interim measures against assets available in your jurisdiction?

Interim measures against assets are available as follows:

- if the right to be preserved is a monetary claim, upon the creditor's request, the court may issue provisional attachments against assets (real estate, receivables, etc.) of the debtor;
- if the right to be preserved is not a monetary claim (e.g., right of transfer of ownership), and there is a danger that any changes to the subject matter will cause difficulties to the creditor for future execution, upon the creditor's request, the court may issue an order for provisional disposition (e.g., prohibition of transferring the ownership to a third party); and
- if there is a right to be preserved (e.g., contractual relationship) and there is a necessity to provisionally grant that right to avoid causing danger or loss to the creditor, upon the creditor's request, the court may issue an order for provisional deposition granting provisional status of the disputed right.

Procedure for interim measures

37 What is the procedure to apply interim measures against assets in your jurisdiction?

Parties applying for interim measures against assets must file a petition to the court. This petition must specify the rights that the applicant desires to preserve and describe the necessity to preserve. In addition, applicants must identify and specify in the petition the asset of the debtor subjected to the provisional attachment.

In general, this procedure is *ex parte*. However, in some complicated cases, the court will hold a hearing for both parties.

If the court grants the request, the court will issue a provisional attachment order (or provisional deposition order, if the claim is not a monetary claim).

Interim measures against immovable property

38 What is the procedure for interim measures against immovable property within your jurisdiction?

If the right to be preserved is a monetary claim, the applicant may file a petition for provisional attachment. If the right to be preserved is not a monetary claim (such as transfer of certain assets), the applicant may file a petition for provisional disposition against the asset. A provisional attachment or provisional disposition is under the jurisdiction of the court with jurisdiction over the merits of the case, or the district court with jurisdiction over the location of the targeted asset (Civil Provisional Remedies Act, Article 12, Paragraph 1).

The procedure is *ex parte* in principle (Civil Provisional Remedies Act, Article 3, Paragraph 1). Nevertheless, if the court finds it necessary, it may call the debtor for examination (Civil Provisional Remedies Act, Article 7 and Code of Civil Procedure, Article 87, Paragraph 2).

To obtain an attachment order or preservation order, an applicant must establish a *prima facie* case for the existence of rights or relationship of rights that must be preserved

by the order and the necessity of preserving it (Civil Provisional Remedies Act, Article 13, Paragraph 2). In addition, concerning the necessity of issuing a provisional attachment, an applicant must show that an execution regarding a claim for payment of money will not be possible or will result in the occurrence of significant difficulties (Civil Provisional Remedies Act, Article 20, Paragraph 1) if a provisional attachment is not issued. As regards the necessity for provisional deposition of assets, an applicant must establish that there is a likelihood that the applicant's exercise of its right will be impossible or extremely difficult because ofchanges to the existing state of the subject matter (Civil Provisional Remedies Act, Article 23, Paragraph 1).

If the applicant successfully establishes a *prima facie* case, in general, the court will issue an order requesting the applicant to provide a security deposit to issue the provisional attachment or provisional deposition. The amount of security deposit is determined by various factors, such as the amount of the claim, the value of the assets and the probability of the applicant prevailing the merits.

If the court issues a provisional attachment order or a provisional deposition to immovable property (i.e., real estate), in general, this order will be registered under the real estate registration system managed by the Ministry of Justice (Civil Provisional Remedies Act, Article 47).

Interim measures against movable property

39 What is the procedure for interim measures against movable property within your jurisdiction?

If the right to be preserved is a monetary claim, the applicant may file a petition for provisional attachment. If the right to be preserved is not a monetary claim (such as transfer of certain assets), the applicant may file a petition for provisional disposition against the asset. A provisional attachment or provisional disposition is under the jurisdiction of the court with jurisdiction over the merits of the case, or the district court with jurisdiction over the location of the targeted asset (Civil Provisional Remedies Act, Article 12, Paragraph 1).

The procedure is *ex parte* in principle (Civil Provisional Remedies Act, Article 3, Paragraph 1). Nevertheless, if the court finds it necessary, it may call the debtor for examination (Civil Provisional Remedies Act, Article 7 and Code of Civil Procedure, Article 87, Paragraph 2).

To obtain an attachment order or preservation order, an applicant must establish a *prima facie* case for the existence of rights or relationship of rights that must be preserved by the order and the necessity of preserving it (Civil Provisional Remedies Act, Article 13, Paragraph 2). In addition, concerning the necessity of issuing a provisional attachment, an applicant must show that an execution regarding a claim for payment of money will not be possible or will result in the occurrence of significant difficulties (Civil Provisional Remedies Act, Article 20, Paragraph 1) if a provisional attachment is not issued. As regards the necessity of provisional deposition for assets, an applicant must establish that there is a likelihood that the applicant's exercise of its right will be impossible or extremely difficult because ofchanges to the existing state of the subject matter (Civil Provisional Remedies Act, Article 23, Paragraph 1).

If the applicant successfully establishes a *prima facie* case, in general, the court will issue an order requesting the applicant to provide a security deposit to issue the provisional attachment or provisional deposition. The amount of security deposit is determined by various factors, such as the amount of the claim, the value of the assets and the probability of the applicant prevailing the merits.

If the court issues a provisional attachment order or a provisional deposition to a movable property (i.e., inventories), a court execution officer will take possession of the movable assets as an execution of the attachment order.

Interim measures against intangible property

40 What is the procedure for interim measures against intangible property within your jurisdiction?

If the right to be preserved is a monetary claim, the applicant may file a petition for provisional attachment. If the right to be preserved is not a monetary claim (such as transfer of certain assets), the applicant may file a petition for provisional disposition against the asset. Provisional attachments or provisional disposition are under the jurisdiction of the court with jurisdiction over the merits of the case, or the district court with jurisdiction over the location of the targeted asset (Civil Provisional Remedies Act, Article 12, Paragraph 1).

The procedure is *ex parte* in principle (Civil Provisional Remedies Act, Article 3, Paragraph 1). Nevertheless, if the court finds it necessary, it may call the debtor for examination (Civil Provisional Remedies Act, Article 7 and Code of Civil Procedure, Article 87, Paragraph 2).

To obtain an attachment order or preservation order, an applicant must establish a *prima facie* case for the existence of rights or relationship of rights that must be preserved by the order and the necessity of preserving it (Civil Provisional Remedies Act, Article 13, Paragraph 2). In addition, concerning the necessity of issuing a provisional attachment, an applicant must show that an execution regarding a claim for payment of money will not be possible or will result in the occurrence of significant difficulties (Civil Provisional Remedies Act, Article 20, Paragraph 1) if a provisional attachment is not issued. As regards the necessity of provisional deposition for assets, an applicant must establish that there is a likelihood that the applicant's exercise of its right will be impossible or extremely difficult because of changes to the existing state of the subject matter (Civil Provisional Remedies Act, Article 23, Paragraph 1).

If the applicant successfully establishes a *prima facie* case, in general, the court will issue an order requesting the applicant to provide a security deposit to issue the provisional attachment or provisional deposition. The amount of security deposit is determined by various factors, such as the amount of the claim, the value of the assets and the probability of the applicant prevailing the merits.

If the court issues a provisional attachment order or a provisional deposition to an intangible property that a garnishee exists, such as bank receivables, a court order prohibiting payment of those receivables will be served to the judgment debtor and the garnishee. If the intangible property does not have a garnishee but has a registration system (e.g., patent), a court order will be executed by registering the order with the registration system.

Attachment proceedings

41 What is the procedure to attach assets in your jurisdiction?

A party must file a request for commencement of execution to the court with a certified copy of a final and binding order (e.g., final judgment) with a certificate of execution granted by a court clerk (Civil Execution Act, Article 25).

A certificate for execution can be requested from the court clerk. The court clerk will check whether the arbitral award has become final and binding.

Further, an applicant needs to obtain a certificate of service of the award. This certificate will assure that the arbitral award has been served on the judgment debtor (Civil Execution Act, Article 29).

The procedure of compulsory execution is *ex parte*, in principle. Judgment debtors may raise objections to attachments, and in these cases, hearings are required.

Attachment against immovable property

42 What is the procedure for enforcement measures against immovable property within your jurisdiction?

There are two procedures for enforcement measures against immovable property, and an applicant may use either or both of them (Civil Execution Act, Article 43, Paragraph 1):

- compulsory auction – a procedure to sell the property and recover the claim through an auction managed by the court; and
- compulsory administration – a procedure whereby an administrator appointed by the court will manage the relevant property and will generate profit by lease. The applicant may recover the claim through that profit.

Attachment against movable property

43 What is the procedure for enforcement measures against movable property within your jurisdiction?

An attachment against movable property possessed by the obligor shall be attached by way of a court execution officer taking possession of those movables (Civil Execution Act, Article 122, Paragraph 1 and Article 123, Paragraph 1). If the property is in the possession of a third party, a court execution officer cannot take possession of the movable property unless the third party agrees (Civil Execution Act, Article 124). As an alternative, an applicant may file a petition to the court for an order for attachment against the judgment debtor's right against the third party (e.g., right of transfer of the property) (Civil Execution Act, Article 163). The order will be executed by serving it to both the judgment debtor and the third party.

Attachment against intangible property

44 What is the procedure for enforcement measures against intangible property within your jurisdiction?

On receipt of a petition from an applicant, a court may issue an attachment order against the judgment debtor's receivables (Civil Execution Act, Article 143). An attachment order will be sent to both the debtor and the third party (garnishee) of the receivables. An attachment order will prohibit the debtor from collecting or disposing of its assets, and it will prohibit the third party of the receivables from paying the debt (Civil Execution Act, Article 145, Paragraph 1).

An applicant may file a petition to issue an assignment order against the receivables (Civil Execution Act, Article 159, Paragraph 1). If this order is issued and becomes final and binding, the claim and execution costs of the applicant shall be deemed to have been performed, at the face value of the receivables (Civil Execution Act, Article 160, Paragraph 1).

The same procedure shall be applicable with regard to other intangible property, such as patents (Civil Execution Act, Article 167, Paragraph 1). However, as regards patents, the way of execution is different from receivables since there is no specific third party (garnishee) to these assets. The court order will be executed by registering the attachment to a registration system for patents, and further, the patent will be either transferred to the judgment creditor or sold.

Attachments against bank accounts

45 Is it possible in your jurisdiction to attach bank accounts opened in a branch or subsidiary of a foreign bank located in your jurisdiction or abroad? Is it possible in your jurisdiction to attach the bank accounts opened in a branch or subsidiary of a domestic bank located abroad?

In principle, jurisdiction of attachment to a debtor's receivables is determined based on the debtor's address, not that of the garnishee, pursuant to Article 144 of the Civil Execution Act. Therefore, in an attachment against bank accounts, the jurisdiction will be decided by the debtor's address, not that of the bank (garnishee).

There is no legislation providing a clear rule on how to treat cases when the garnishee is located outside Japan. In addition, there are no Supreme Court cases that have ruled on this matter directly. However, an Osaka High Court ruled on a case in which the applicant filed for attachment against a debtor's receivable in which the garnishee was located outside Japan. The Court ruled that, in principle, jurisdiction will be determined by the debtor's address. The Court further ruled that if there is an extraordinary situation that makes it contradictory to fairness and due process to handle the attachment order in a Japanese court, the court should not have jurisdiction on the case. For instance, the Court explained that if the garnishee's connection to Japan is only that the judgment debtor is located in Japan, an extraordinary situation exists.

According to this ruling, if a judgment debtor's bank account is located in a foreign branch of a foreign bank, it is reasonably possible that the court in Japan will not have jurisdiction on an application for an attachment order to that account. If the bank account

is located in a foreign branch but is owned by a Japanese bank, or if the branch is in Japan, the possibility of the court in Japan admitting jurisdiction would be higher.

Enforcement against foreign states

Applicable law

46 Are there any rules in your jurisdiction that specifically govern recognition and enforcement of arbitral awards against foreign states?

There is no legislation that specifically governs recognition and enforcement of arbitral awards against foreign states, but the Act on the Civil Jurisdiction of Japan with respect to a Foreign State, etc. sets out general rules on the execution of judgments against foreign states.

According to this Act, sovereign states enjoy immunity from the civil jurisdiction of Japan (Article 4) including execution of judgments. However, immunity will not apply when:

- the state expressly consented the execution of a temporary restraining order or a civil execution against the property held by the state (Act on the Civil Jurisdiction of Japan with respect to a Foreign State, etc., Article 17), such as treaties or other international agreements and arbitration agreements; or
- the property held by the states is in use, or intended for use by the state exclusively, other than for non-commercial government purposes.

Availability of interim measures

47 May award creditors apply interim measures against assets owned by a sovereign state?

Sovereign states enjoy immunity from the civil jurisdiction of Japan (Act on the Civil Jurisdiction of Japan with respect to a Foreign State, etc., Article 4), which includes interim measures such as provisional attachments. However, immunity will not apply when:

- the state expressly consented the execution of a temporary restraining order or a civil execution against the property held by the state (Act on the Civil Jurisdiction of Japan with respect to a Foreign State, etc., Article 17), such as treaties or other international agreements and arbitration agreements; or
- the property held by the states is in use, or intended for use by the state exclusively, other than for non-commercial government purposes.

If one of the above requirements is met, creditors may apply for interim measures, such as provisional attachments, against assets owned by a sovereign state.

Service of documents to a foreign state

48 What is the procedure for service of extrajudicial and judicial documents to a foreign state? Is it necessary to serve extrajudicial and judicial documents with a translation in the language of the foreign state?

General procedure for services

Japan is a signatory of the Hague Convention on Civil Procedure (1954) (the Convention on Civil Procedure) and Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (1965) (the Hague Service Convention). In addition, Japan is a signatory to bilateral treaties concerning service with several countries, including the United States and the United Kingdom. Under these treaties, there are several methods to serve judicial documents to a person or entity outside the territory of Japan. The method used depends on the treaty entered between Japan and the state in which the recipient is located. An overview of the available options is set forth below, and these processes are applicable to cases when the state itself is the recipient.

Service via Japanese consulate in the state where recipient is located

Within the signatory states of the Convention on Civil Procedure, the Hague Service Convention and other bilateral treaties, such as those between the United States and the United Kingdom, judicial documents may be served directly via the Japanese consulate in the recipient's state. If the basis of the service is the Convention on Civil Procedure or the Hague Service Convention, signatory states may refuse this method. In these circumstances, this method of service may be used only to Japanese recipients.

A translation into the official language of the jurisdiction or into the language that the recipient can understand must be attached to the served documents, unless it is obvious that the recipient can understand Japanese. Therefore, if the recipient is Japanese, a translation is generally not attached.

Service via state's central authority

Within the signatory states of the Hague Service Convention, judicial documents can be served through the state's central authority designated by the state upon request by the Supreme Court of Japan. There are three options available for this method of service: (1) in accordance with the local law; (2) in a specialised way; and (3) voluntarily accepted by the recipient.

For options (1) and (2), above, a translation of the documents in the official language of the jurisdiction is required even if the recipient is Japanese, unless the subject state does not require a translation. Regarding option (3), a translation is not necessary.

Service via state's designated authority

Within the signatory states of the Hague Service Convention, judicial documents can be served through the state authority designated by the state upon request via the Japanese consulate located in that state. This method is available only when the signatory state is not a signatory of the Hague Service Convention, since that Convention supersedes the Convention on Civil Procedure.

The options available for this method and the requirements for translation are the same as service via the state's central authority.

Rules for service to foreign states

Article 20 of the Act on the Civil Jurisdiction of Japan stipulates that service of judicial documents to foreign states shall be carried out according to the methods prescribed by treaties or any other international agreements. Therefore, if the state is a signatory of a treaty mentioned in 'General procedure for services', above, the process of service described above, including the necessity of translation, is applicable.

In addition, pursuant to Article 20, if no treaty or agreement applies, the following methods should be implemented:

- through diplomatic channels: If this method is used, service shall be deemed to have been effected when the body of the state corresponding to the Ministry of Foreign Affairs has received the document; or
- any method that the state will accept as a method of service (limited to those methods provided for in the Code of Civil Procedure).

Since the methods above are *ad hoc*, requirements for translations will depend on whether the state makes such a request.

Service of extrajudicial documents

There are no specific procedures for service of extrajudicial documents.

Immunity from enforcement

49 Are assets belonging to a foreign state immune from enforcement in your jurisdiction? Are there exceptions to immunity?

In principle, sovereign states enjoy immunity from the civil jurisdiction of Japan (Act on the Civil Jurisdiction of Japan with respect to a Foreign State, etc., Article 4), which includes enforcement of judgments. However, immunity will not apply when:

- the state expressly consented to execution of a temporary restraining order or a civil execution against the property held by the state (Act on the Civil Jurisdiction of Japan with respect to a Foreign State, etc., Article 17), such as treaties or other international agreements and arbitration agreements; or
- the property held by the state is in use, or intended for use by the state exclusively, other than for non-commercial government purposes.

Waiver of immunity from enforcement

50 Is it possible for a foreign state to waive immunity from enforcement in your jurisdiction? What are the requirements of waiver?

States may waive immunity from enforcement in accordance with Article 17 of the Act on the Civil Jurisdiction of Japan with respect to a Foreign State, etc. A state must expressly consent to execution of a temporary restraining order or a civil execution against the

property held by the state. This consent may be given by treaties or other international agreements and arbitration agreements.

Piercing the corporate veil and alter ego

51 Is it possible for a creditor of an award rendered against a foreign state to attach the assets held by an alter ego of the foreign state within your jurisdiction?

The legal theory of piercing the corporate veil and alter ego is recognised in Japan. The Supreme Court has applied this theory to some types of cases. However, in one case (of 14 November 1978), the Court ruled that the theory cannot be used as a basis to expand the scope of execution procedure to a third party. Therefore, if an award is rendered against a foreign state, it is likely that the court will only allow the attachment of assets held under the name of the judgment debtor, the state, and it will not allow the attachment of assets held by another entity, even if the factual basis supports that the entity is an alter ego of the state.

Appendix 1

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ISBN 978-1-83862-575-7