PANORAMIC

MEDIATION

Japan

LEXOLOGY

Mediation

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Lux Mediation

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LAW AND POLICY

Definitions
Is there any legal definition in your jurisdiction of the terms ‘ADR’, ‘conciliation’ and ‘mediation’?

The term 'alternative dispute resolution' is defined as 'procedures for resolution of a civil dispute between parties who seek, with the involvement of a fair third party, a resolution without using litigation' under the Act on Promotion of Use of Alternative Dispute Resolution (ADR Act). For the purpose of the ADR Act, the 'alternative dispute resolution' includes both adjudicative (such as arbitration) and non-adjudicative procedures (such as mediation), and 'civil dispute' includes both civil disputes and commercial disputes.

The Act for Implementation of United Nations Convention on International Settlement Agreements Resulting from Mediation (Implementation Act) defines the term 'mediation' as:

> a process, irrespective of its name or grounds for commencement, for parties who seek to resolve a civil or commercial dispute in respect of a certain legal relationship (irrespective of whether contractual or not), whereby a third person lacking the authority to impose a solution upon the parties mediates a settlement and attempts to resolve the dispute.

This definition is only applicable within the context of the Implementation Act.

While the term 'mediation' is also used in the Civil Mediation Act, it is not used as a defined term.

In Japan, the terms 'mediation' and 'conciliation' are often used interchangeably.

Law stated - 27 9 2024

Mediation models
What is the history of commercial mediation in your jurisdiction? Which mediation models are practised?

History

The first civil mediation system in Japan was introduced in 1922 by the Act on Mediation for Land and Building Leases, which dealt with disputes relating to land and building leases and led and administrated by courts. Later, various types of mediation related laws were introduced, including the Commercial Mediation Act established in 1926. These laws offered mediation services provided by courts. The Commercial Mediation Act was abolished in 1951 when the Civil Mediation Act was enacted. The Civil Mediation Act now covers seven types of civil mediation, including commercial mediation, and also includes one special conciliation process introduced as an exception to the Civil Mediation Act through the Act on Special Conciliation for Expediting Arrangement of Specified Debts. As such, mediation in Japan has historically developed as a form of civil mediation led and administrated by the courts (this form of mediation is hereinafter referred to as civil mediation). In addition

to court-led mediation under the Civil Mediation Act private mediation procedures are also available for commercial mediation, which we will discuss in further detail below. However, private mediation did not have a legal basis until the ADR Act was promulgated in 2004 and came into effect in 2007. The history of private mediations, or ADRs, is relatively recent.

Mediation models

In the civil mediation, the process is overseen by a mediation committee made up of a chief mediator (who is a judge or a qualified lawyer) and two commissioners (who are not lawyers but experts in various fields). The committee members typically hold private meetings with each of the parties to discuss the facts of the case and develop 'reasonable' assessments and solutions. During mediation sessions, the mediators share their impressions and proposed resolutions to persuade and guide the parties toward an agreement. If the parties fail to reach an agreement, the committee may propose a resolution. This resolution is not automatically binding; however, if neither party raises any objections within two weeks, it becomes binding. Consequently, civil mediation traditionally adopts an evaluative approach.

In private mediation, each mediation provider or mediator may have each style of mediation. However, due to the significant presence of civil mediation in Japan, many private mediations are heavily influenced by how civil mediation is conducted. As a result, most private mediations also follow an evaluative style.

Some mediation providers or mediators adopt facilitative mediation style where the mediator manages the process and facilitate the parties' discussions and dialogues and aims to uncover the parties' underlying issues and interests and find out the reality of the situation of the disputes, however, it is relatively rare and unfamiliar in Japan.

Law stated - 27 9 2024

Domestic mediation law

Are there any domestic laws specifically governing mediation and its practice?

Mediation in Japan can be classified into three categories: court-led mediation (civil mediation), government-led mediation and private mediation. The Civil Mediation Act specifically governs civil mediations. With respect to the civil mediation, there are the other specific laws, such as the Act on Special Conciliation for Expediting Arrangement of Specified Debts, which is introduced as an exception to the Civil Mediation Act to deal with the arrangement of interests pertaining to monetary debts of the debtors, and the Domestic Relations Case Procedure Act, which governs the mediation procedures regarding the domestic relations.

Government-led mediation is regulated by individual administrative laws (eg, article 19 of the Act on National Consumer Affairs Center of Japan, article 18 of the Act on Equal Opportunity and Treatment between Men and Women in Employment).

Private mediation is available in Japan. There is no specific law governing its practice and each mediation provider may establish their own rules, however, the ADR Act establishes the basic principles of ADR procedures by mediation administrated by accredited mediation

providers. It also introduces an accreditation system by the Minister of Justice for private dispute resolution providers, and in conjunction with this, sets out provision related to postponement of expiration of prescription under certain circumstances.

Law stated - 27 9 2024

Singapore Convention

Has your state signed and ratified the UN Convention on International Settlement Agreements Resulting from Mediation or is it expected to do so?

Japan deposited its instrument of accession to the Singapore Convention with the UN on 1 October 2023, becoming the 12th party to the Singapore Convention. The Singapore Convention entered into force for Japan on 1 April 2024.

For the implementation of the Singapore Convention in Japan, the Act for Implementation of United Nations Convention on International Settlement Agreements Resulting from Mediation (Implementation Act) also came into effect on 1 April 2024. The key takeaway from the Implementation Act is that a party can file a petition with the court to obtain an enforceability order allowing civil enforcement based on an international settlement agreement (article 5(1) of the Implementation Act).

Additionally, the ADR Act has been amended, at the same time, to allow a party to file a petition with the court for an enforceability order based on a Specified Settlement (article 27-2(1) of the amended ADR Act). (The 'Specified Settlement' shall mean a settlement reached among the parties to the dispute in certified dispute resolution procedures where an agreement is reached to the effect that the settlement could be enforced through civil enforcement.)

Law stated - 27 9 2024

Incentives to mediate

To what extent, and how, is mediation encouraged in your jurisdiction?

It is common understanding that, in general, mediation offers several advantages over litigation: for instance, the proceedings are conducted in private without privacy or trade secrets being open to the public; the proceedings are simple, flexible and cost-effective; resolution can be tailor-made with assistance of mediator(s) who have various backgrounds; and since the parties can reach mutually agreeable compromise, the parties is likely to maintain business relationships in future. Considering these advantages, for example, for cases involving requests for rent increases or decreases in land and building leases, a lawsuit cannot be filed without first conducting mediation (article 24-2 of the Civil Mediation Act, article 27 of the ADR Act).

Even when litigation is pending before a court, mediation can still be utilised. A court may, by its own initiative, refer the case to Civil Mediation and handle the case itself or have the case handled by a court with jurisdiction until the proceedings for identifying issues in dispute and evidence are completed (article 20(1) of the Civil Mediation Act). Provided that, if the

arrangement of the issues and evidence of the case has been completed, the court cannot refer the case to Civil Mediation without the parties' agreement.

In terms of private mediation, the ADR Act has introduced accreditation system for private mediation providers (article 5 of the ADR Act). The purpose of this accreditation system is to secure and enhance users' trust in private mediation and to improve usability of private mediation by granting certain legal effect to private mediation (eg, postponement of expiration of prescription, stay of litigation proceedings, potential enforceability of a Specified Settlement).

Law stated - 27 9 2024

Sanctions for failure to mediate

Are there any sanctions if a party to a dispute proposes mediation and the other ignores the proposal, refuses to mediate or frustrates the mediation process?

There are no explicit sanctions, such as cost sanction, for ignoring the proposals, refusing to mediate or frustrating the mediation process.

On a separate note, in the case of civil mediation, a person who fails to appear after being summoned by the court or the mediation committee fails to appear without legitimate grounds may be fined (article 34 of the Civil Mediation Act).

Law stated - 27 9 2024

Prevalence of mediation

How common is commercial mediation compared with litigation?

In 2023 Japanese courts (including both district courts and summary courts) newly received 29,559 civil mediation cases, compared to 521,228 litigation cases, indicating that litigation is more commonly used than the mediation in Japan. In 2005, Japanese courts newly received 322,982 mediation cases. The number of the newly received cases has substantially declined, this is partly because the number of cases for adjustment of debts declined due to the number of overpayment claims to consumer finance entities sharply dropped.

In terms of commercial mediation, of the 29,559 mediation cases newly received by Japanese courts, 3,067 were commercial mediation cases in summary courts, and 510 were commercial mediation cases in district courts.

For private mediation, for instance, the Japan Commercial Arbitration Association, which deals with commercial disputes, received 82 mediation cases between 2003 and 2023.

Law stated - 27 9 2024

MEDIATORS

Accreditation

> Is there a professional body for mediators, and is it necessary to be accredited to describe oneself as a 'mediator'? What are the key requirements to gain accreditation? Is continuing professional development compulsory, and what requirements are laid down?

Civil mediation

In the context of civil mediation, the process is overseen by a mediation committee. This committee is made up of a chief mediator, who may be a judge or a civil mediator (known as *Minji-choteikan*), and at least two civil mediation commissioners (articles 6 and 7 of the Civil Mediation Act). Civil mediators are required to be qualified lawyers with a minimum of five years of post-qualification experience, and they are appointed by the Supreme Court. The commissioners, on the other hand, are also appointed by the Supreme Court, but they come from a broader range of professional backgrounds, such as lawyers, experts in various fields such as medicine, architecture or real property valuation, as well as individuals who have significant experience in community activities. Commissioners typically range in age from 40 to 70 years.

While there are no formal legal requirements for specific training or qualifications for commissioners, courts generally offer training at the time of their appointment, along with annual training sessions. Commissioners are often members of the Japan Federation of Judicial Conciliation Associations, a public association that also provides training opportunities. However, participation in the Federation's training programmes is not mandatory.

Private mediations

In private alternative dispute resolution (ADR) in Japan, accreditation under the Act on Promotion of Use of Alternative Dispute Resolution (the ADR Act) is not provided to individual mediators but rather to the ADR service providers themselves. Under the the ADR Act, entities or persons who regularly provide private dispute resolution services in a specific area can apply for accreditation from the Minister of Justice (article 5 of the ADR Act). The Minister of Justice may grant accreditation based on certain requirements, including adherence to procedural rules and confirmation that the entities or persons have the requisite knowledge, skills and financial stability to effectively provide these services. While accreditation is not a legal requirement to offer mediation services, in practice, it is often challenging for an unaccredited entity to establish a successful ADR practice.

Each ADR body appoints 'dispute resolution providers' for its service. For an ADR body to be accredited, it is necessary that their dispute resolution providers possess relevant abilities, such as legal expertise, specialised knowledge in the area of the subject of the dispute (eg, medical care, construction), or skills in dispute resolution, such as communication or counselling.

There is no legal mandate for training or accrediting individual mediators for an ADR body to be accredited. Consequently, the responsibility for training and qualifying mediators is left to the discretion of each ADR body. For example, the Japan Commercial Arbitration Association (JCCA), one of the ADR bodies, does not require any formal accreditation for someone to be listed as a mediator.

Law stated - 27 9 2024

Liability

What immunities or potential liabilities does a mediator have? Is professional liability insurance available or required?

In Japan, there are no specific provisions under the Civil Mediation Act, the ADR Act, or other laws that address immunities, potential liabilities or professional liability insurance for 'mediation commissioners' or ADR bodies. This lack of statutory guidance means that these aspects are not regulated by national legislation, leaving room for ADR bodies to manage these issues independently.

Each ADR body may include provisions within its own rules of mediation to address the exclusion of liability for the body and/or the mediators involved (see article 11 of the JCAA Commercial Mediation Rules (2024)).

For private ad hoc mediations, the parties and mediators are free to agree, in a mediation agreement, on appropriate immunities and limitations of liability for the mediators.

Law stated - 27 9 2024

Mediation agreements

Is it required, or customary, for a written mediation agreement to be entered into by the parties and the mediator? What would be the main terms?

Civil mediation: In civil mediation under the Japanese legal system, a mediation agreement is not required or customary to be entered into prior to filing with the court. When an application for a mediation is filed, the court issues a summons to the other party, requiring them to appear. If the respondent fails to appear without a reasonable excuse, they may face a fine of less than ¥50,000 (article 34 of the Civil Mediation Act). However, this penalty is rarely imposed in practice. Even if the respondent appears, a formal mediation agreement is not executed between the parties.

Private mediation: In private mediation, the requirements for commencement of a mediation can vary depending on the rules of each body. Typically, a written mediation agreement prior to filing is not required. If there is no existing mediation agreement between the parties, the claimant may initiate the process by submitting a written request for mediation to the ADR body.

The ADR body then forwards this request to the respondent and asks whether they accept the mediation request according to the body's mediation rules. If the respondent provides a written acceptance, the mediation agreement is considered to be concluded between the parties (see article 13.5 of the JCAA Commercial Mediation Rules (2024)).

Law stated - 27 9 2024

Appointment

How are mediators appointed?

The appointment of mediators at civil mediation and private mediations differs significantly, which often highlights one of the key differences between the twos.

Civil mediation

In the context of civil mediation in Japan, mediators – including both civil mediators and civil mediation commissioners – are appointed directly by the court. The court selects mediation commissioners based on the nature of the case, considering factors such as the subject matter and the expertise required. Parties involved in the mediation do not have the right to request specific mediators or participate in the appointment process.

Private mediations

In contrast, private mediation processes often provide more flexibility regarding the appointment of mediators. While specific rules vary by body, with or without the recommendation by ADR body, mediators can be appointed by the agreement of both parties, as outlined in the mediation rules of the respective ADR body (eg, article 16 of the JCAA Commercial Mediation Rules (2024)). The parties can select mediators who they believe are best suited to handle their dispute. In Japan, direct referral to a mediator without the assistance of an ADR body is very rare.

Law stated - 27 9 2024

Conflicts of interest

Must mediators disclose possible conflicts of interest? What would be considered a conflict of interest? What are the consequences of failure to disclose a conflict?

Civil mediation

A party involved in a civil mediation may file a petition to disqualify or challenge a civil mediator or a civil mediation commissioner (collectively referred to as civil mediators) if they believe there are specific grounds for disqualification (articles 11 to 15 of the Non-Contentious Cases Procedures Act applied mutatis mutandis under article 22 of the Civil Mediation Act), which include:

- where a civil mediator or his or her spouse or ex-spouse is a party to the case;
- where a civil mediator is or was a relative by blood within the fourth degree of kinship, or by marriage within the third degree of kinship, or a cohabiting relative of a party;
- where a civil mediator is a guardian, curator, guardian's supervisor, curator's supervisor, assistant or assistant's supervisor of a party;
- where a civil mediator has acted as a witness or expert witness or is required to attend a hearing in relation to the case;

- where a civil mediator is or has been an agent or assistant of a party to the case; and
- where there are other reasons why the party believes that a civil mediator may compromise the impartiality.

However, there is no legal requirement for civil mediators in Japan to proactively disclose potential conflicts of interest.

Private mediations

Under the ADR Act in Japan, accredited ADR bodies are required to establish procedures for excluding mediators who may have conflicts of interest or any other reasons that could compromise the fair conduct of the proceedings. This requirement is a condition for obtaining accreditation from the Minister of Justice.

The specific rules and procedures for excluding mediators can vary among ADR bodies. For instance, the JCAA includes provisions in its Rules of Mediation that require mediators to be impartial and independent, and the mediators must disclose any potential conflicts of interest that could affect their ability to conduct the mediation fairly (article 15). However, despite the requirement for disclosure, the JCAA Commercial Mediation Rules (2024) do not specify sanctions for mediators who fail to disclose potential conflicts of interest.

Law stated - 27 9 2024

Fees

Are mediators' fees regulated, or are they negotiable? What is the usual range of fees?

In Japan, the cost structures for civil mediation and private mediation differ significantly:

Civil mediation: The mediation fee is fixed based on the claimed amount plus courier costs. The fee is inexpensive, for example, ¥6,500 for the case claiming ¥1.5 million. There is no additional fee for mediators required.

Private mediation: In private mediation, there are no explicit statutory requirements governing fees, allowing each ADR body to establish its own fee structures as a condition for accreditation under the ADR Act. This results in a wide variety of fee systems across different bodies:

- the JCAA: JCAA typically charges mediators' fees based on the hourly rate of ¥50,000 unless otherwise agreed by the parties and a mediator. This fee structure allows for flexibility and reflects the time spent by mediators on the case.
- Japan International Mediation Center (JIMC): JIMC, which provides mediation services for cross-border disputes involving foreign and Japanese parties, does not involve in the process of charging mediator fees. Regarding the payment of mediator fees, necessary expenses, calculation thereof and payment methods, all such matters would be decided between the parties and the mediator.
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Other ADR bodies: Many other ADR bodies in Japan do not require mediators' fees but instead impose a hearing charge for each hearing date. Additionally, some bodies may charge a fixed contingent fee if a settlement agreement is reached.

Due to the diverse fee structures of ADR bodies in Japan, predicting the usual range of fees can be challenging. However, the Dai-ni Tokyo Bar Association Arbitration Center, which is recognised as one of the most successful mediation centre in Japan, offers a potential scenario for understanding the costs associated with a private mediation in a hypothetical case. For a case where the settled amount is reached at ¥1 million and there are three mediation days, the total amount payable to the mediation centre might be approximately ¥105,000, which breaks down as ¥10,000 of a filing fee, ¥15,000 mediation day fee for three mediation days and ¥80,000 of a settlement fee.

Law stated - 27 9 2024

PROCEDURE

Counsel and witnesses

Are the parties typically represented by lawyers in commercial mediation? Are fact and expert witnesses commonly used?

In both civil mediation and private mediations in Japan, there is no requirement for parties to be represented by lawyers. Courts often advertise that, in civil mediation, parties can handle these proceedings on their own without legal representation. However, in the context of commercial mediation, where disputes often involve complex facts, legal issues and significant amounts of evidence, many parties choose to retain legal counsel to represent them.

Although specific statistics for commercial mediation are not available, data for civil mediation shows that (1) in the mediations at district courts, out of 4,362 cases in total in 2023, lawyers were involved in 1,744 cases on the claimant's side and 1,659 cases on the respondents' side; and (2) in the mediations at summary courts, out of 25,794 cases in total in 2023, lawyers were involved in 8,176 cases on the claimant's side and 5,691 cases on the respondents' side. In civil mediation in Japan, the general rule is that cases are brought before the summary court, while more complex cases may be initiated in the district court on the consent basis. The difference in the ratio of retaining lawyers for cases in mediations at district courts compared to those at summary courts can be interpreted as a reflection of the complexity of the cases.

Data for private mediations administered by local bar associations in 2023 (which covers both private mediations and arbitration from April 2022 to March 2023) show that lawyers were involved in 33.3 per cent of cases on the claimant's side and 36 per cent on the respondent's side. In general, the larger the case, the more likely the parties are to retain lawyers – the data also shows that out of 19 private mediation cases administered by local bar associations with a claimed amount exceeding ¥10 million, lawyers were involved in 18 cases.

The use of fact and expert witnesses in mediation is relatively uncommon in both civil mediation and private mediations. This is partly because the purpose of mediation is not fact-finding but to facilitate settlement through discussions between the parties. Additionally,

as previously mentioned, experts with specialised knowledge relevant to the subject matter of the dispute often serve as mediators, and mediators can also seek input from other experts as needed. Consequently, it is often unnecessary to call witnesses, as the mediators' expertise and their ability to consult with other experts provide sufficient support for guiding the process.

Law stated - 27 9 2024

Procedural rules

Are there rules governing the mediation procedure? If not, what is the typical procedure before and during the hearing?

Civil mediation

The Civil Mediation Act, by referencing the Non-Contentious Proceedings Act, provides rules governing mediation procedures in Japan. The claimant must submit the application for a mediation in writing along with supporting evidence. While parties are typically encouraged to submit their responses in writing, it is not mandatory.

Before the mediation day, members of the civil committee of the case hold meetings to reach a common understanding of the main issues of the case, determine what needs to be heard from the parties, and identify what evidence should be requested. The mediation day is typically initiated with a caucus, which is a private meeting between the civil committee (ie, the mediators) and one of the parties involved, without the other party being present, rather than with a joint meeting. During the mediation day, the civil commissioners primarily listen to the parties to gain a clearer understanding of their positions, concerns, and interests including factual background of the case. After the first mediation day, the civil commissioners and the chief mediator meet to discuss and establish a reasonable assessment of the case based on their respective experiences and common sense, and work to formulate a rational and well-balanced proposal for resolving the dispute. In subsequent mediation days, the civil mediators, while considering potential resolutions, may appropriately disclose their impressions and, if necessary, present a proposed resolution to persuade and guide the parties toward an agreement. Thus, users should be aware that typical civil mediation is conducted in an evaluative style.

It is worth noting that the number of mediation sessions to be held is not settled before the mediation starts and mediation sessions are not scheduled on consecutive days. Instead, each subsequent session typically takes place about a month after the previous one. This interval allows the parties to prepare additional explanations or evidence and to take time to consider the proposed resolution suggested by the mediation committee; however, the interval may cause the parties to lose momentum in settling the case.

Private mediations

The procedures for mediation days differ depending on the ADR body, each of which has its own procedural rules. Under Japan Commercial Arbitration Association (JCAA) rules, mediators typically discuss the mediation process with the parties, covering aspects such as the language of the mediation, the schedule and the manner of exchanging written

statements and documents. They also decide on the date and location of the mediation session, whether the mediator will suggest settlement proposals to the parties and, if so, when these suggestions will be made, as well as the time limit for concluding the mediation. During the mediation day, mediators may also hold private meetings and joint meetings. Some ADR bodies attempt to schedule multiple mediation sessions within a shorter time frame, though not necessarily on consecutive days. This approach enables parties to reach a resolution more quickly compared to the traditional civil mediation process.

Law stated - 27 9 2024

Tolling effect on limitation periods

Does commencement of mediation interrupt the limitation period for a court or arbitration claim?

Civil mediation

When a civil mediation is initiated, the statute of limitations is suspended for the duration of the mediation process (as per article 147(1(iii) of the Civil Code). If the parties reach an agreement, the settlement agreement, once recorded in the official mediation record, carries the same legal effect as a final and binding court judgment. Consequently, the statute of limitations begins to run anew from the conclusion of the mediation procedure (according to article 147(2) of the Civil Code). However, if the parties do not reach an agreement, the statute of limitations remains suspended for up to six months from the date the mediation concludes.

Private mediation at an accredited ADR body

If an ADR procedure at an accredited ADR body is unsuccessful and terminated, and a party files a lawsuit within one month from the date of notification of the ADR procedure's termination, the expiration of the prescription period is postponed as if the lawsuit had been filed on the original date of the ADR application. This ensures that the statute of limitations is effectively suspended from the time of the ADR application, preventing it from expiring during the ADR process and the subsequent lawsuit.

Private mediation at an unaccredited ADR body

For ADR petitions filed with non-accredited bodies, there are no specific legal provisions governing their effect on the statute of limitations. However, these situations are regarded as cases where an 'agreement to negotiate on rights has been made in writing'. Under such agreements, the statute of limitations is suspended for the agreed negotiation period, which must be less than one year. The negotiation period can be renewed but may not exceed five years in total from the time when original prescription period expires (151(1) and (2) of the Civil Code). If a negotiation period is not agreed, the statute of limitations is suspended for less than one year. If the mediation process is unsuccessful and one party provides written notice to the other party refusing to continue negotiations, the deferral effect on the statute

of limitations ends six months from the date of the notice, regardless of the initially agreed negotiation period, and the statute of limitations then resumes.

Law stated - 27 9 2024

Enforceability of mediation clauses

Is a dispute resolution clause providing for mediation enforceable? What is the legal basis for enforceability?

There are no comprehensive legal provisions and there are only a few court precedents addressing whether a dispute resolution clause mandating mediation is enforceable.

A notable judgement was held by Tokyo High Court in 2011 where a plaintiff filed the lawsuit without engaging in private mediation despite that the parties agreed to take mediation procedures before initiating any litigation (ADR Clause).

The Tokyo District Court held that the lawsuit was unlawful because the plaintiff did not follow any of the mediation procedures stipulated in the ADR Clause, which included tiered dispute resolution procedures and was agreed based on the negotiation between sophisticated parties represented by lawyers.

However, the Tokyo High Court overturned this decision, stating that the absence of mediation did not constitute a legal requirement for filing a lawsuit. The Tokyo High Court's reasoning included the following points:

- The right to a trial under article 32 of the Constitution of Japan must be respected. An ADR agreement does not extinguish the need for a court's decision like as arbitration agreement or agreement not to sue because mediation does not guarantee final dispute resolution.
- Article 26 of the Act on Promotion of Use of Alternative Dispute Resolution suggests that even if ADR is not pursued, a lawsuit is not automatically dismissed, as the court may only decide to suspend the litigation temporarily. Dismissing a lawsuit due to non-compliance with a mediation clause would be inconsistent with such law.
- Recognising the enforcement effect of dismissing a lawsuit without substantive law basis could result in harsh consequences for the plaintiff, such as the statute of limitations not being suspended by the dismissed lawsuit.

As no case law contradicts this decision, it is currently assumed that dispute resolution clauses mandating mediation are not enforceable in a way that would prevent a lawsuit from proceeding if mediation is not pursued.

Law stated - 27 9 2024

Confidentiality and without prejudice privilege of proceedings

Are mediation proceedings strictly private and confidential and subject to without prejudice privilege? To what extent does confidentiality apply within the mediation itself?

Civil mediation

Civil mediation is conducted privately and confidentially, restricting access to court files to those with a specific interest in the case. However, there is no formal 'without prejudice' rule in civil mediation. As a result, parties often submit documents and evidence from the mediation process in subsequent litigation, allowing this information to be used in later legal proceedings.

Private mediations

Most ADR bodies include clauses in their mediation rules that ensure privacy and confidentiality. However, regarding the 'without prejudice' rule, Japanese practitioners are not very familiar with this concept and many ADR bodies do not have explicit provisions on this matter. Only a few ADR bodies, such as the JCAA with its Commercial Mediation Rules, explicitly prohibits the submission of information from mediation, such as facts that the other party suggested the filing of a mediation application and settlement proposals, in subsequent legal proceedings.

Law stated - 27 9 2024

Success rate

What is the likelihood of a commercial mediation being successful?

Civil mediation

In 2023, out of 524 commercial mediations at the district court, 284 reached a settlement. At the summary courts, 6,804 out of 25,794 mediations of all types resulted in settlement, while in 7,578 cases, the mediation committee issued a 'decision in lieu of mediation', which is not automatically biding but may become binding in the case where neither party raises an objection within two weeks.

Private mediations

There is no comprehensive data on the overall success rates of private mediation, but for example, at the Dai-ni Tokyo Bar Association ADR Center, which handled 257 cases in 2022, the success rate for all filed cases was 24.5 per cent. However, among the cases where the respondent agreed to participate in mediation, the success rate significantly increased to 63.4 per cent.

Law stated - 27 9 2024

SETTLEMENT AGREEMENTS

Formalities

Must a settlement agreement be in writing to be enforceable? Are there other formalities?

Civil mediation

A settlement agreement reached through civil mediation must be recorded and filed in an official mediation record. This recorded agreement has the same legal effect as a court judgment, making it enforceable in the same manner as a judicial decision.

Private mediations

Starting from 1 April 2024, settlement agreements reached through accredited ADR bodies, in which the parties have agreed that enforcement can be pursued based on the settlement agreement, can be enforceable, except for those settlement agreements related to contracts between consumers and businesses or to individual labour disputes. Other settlement agreements reached through private mediations are treated as general agreements under the Civil Code. To make such agreements enforceable, parties must take additional steps, such as (1) obtaining a court judgment for payment based on the settlement agreement, or (2) having the agreement notarised at a notary office with a clause allowing for compulsory enforcement. No other specific formalities are required.

Law stated - 27 9 2024

Challenging settlements

In what circumstances can the mediation settlement agreement be challenged in court? Can the mediator be called to give evidence regarding the mediation or the alleged settlement?

There are no specific rules for challenging settlement agreements. The settlement agreement can be challenged under the general rules of the Civil Code. A settlement agreement may be deemed null and void in specific circumstances, such as when a party entered into the agreement based on a material mistake, considering the purpose of the juridical act and the common sense in the transaction.

Law stated - 27 9 2024

Enforceability of settlements

Are there rules regarding enforcement of mediation settlement agreements? On what basis is the mediation settlement agreement enforceable?

Civil mediation

A settlement agreement reached through civil mediation must be recorded and filed in an official mediation record. This recorded agreement has the same legal effect as a court judgment, making it enforceable in the same manner as a judicial decision.

Private mediations

Starting from 1 April 2024, settlement agreements reached through accredited ADR bodies, in which the parties have agreed that enforcement can be pursued based on the settlement agreement, can be enforceable, except for those settlement agreements related to contracts between consumers and businesses or to individual labour disputes. Other settlement agreements reached through private mediation are treated as general agreements under the Civil Code. To make such agreements enforceable, parties must take additional steps, such as (1) obtaining a court judgment for payment based on the settlement agreement, or (2) having the agreement notarised at a notary office with a clause allowing for compulsory enforcement.

Law stated - 27 9 2024

STAYS IN FAVOUR OF MEDIATION

Duty to stay proceedings

Must courts and tribunals stay their proceedings in favour of mediation? Are arbitrators under a similar duty?

When litigation is pending concerning a case for which a petition for civil mediation is filed or a case is referred to civil mediation, the court in charge may stay litigation proceedings until the civil mediation case is closed (article 20-3 of the Civil Mediation Act and article 275(1) of the Domestic Relations Case Procedure Act). As it may be preferable for the parties to resolve the case through discussion rather than a court judgment, depending on contents or nature of the individual dispute. In this sense, whether to stay litigation is ultimately at the discretion of the court in charge, and the parties do not have the right to make application for stay of litigation.

However, once the arrangement of the issues and evidence in a case has been completed during litigation, the court cannot refer the case to civil mediation without the parties' consent (article 20(1) of the Civil Mediation Act). This is because, after the arrangement of the issues and evidence of the case is completed, the examination of witnesses and the parties themselves shall be conducted as intensively as possible (article 182 of the Code of Civil Procedure), and a stay of litigation should only be permitted when the civil mediation is likely to lead to a resolution (ie, when the parties agree to the stay). That said, the court in charge of litigation may attempt to arrange and facilitate a judicial settlement where necessary (article 89 of the Code of Civil Procedure).

With respect to the private mediation, if litigation is pending between parties to a civil dispute, the court in charge may, upon the joint request of the parties, make a decision that the litigation proceedings may be stayed for a period of not more than four months (article 26(1) of the Act on Promotion of Use of Alternative Dispute Resolution (ADR Act)). The stay is allowed if a dispute resolution procedure is being carried out by an accredited dispute provider or the parties agree to resolve the civil dispute through dispute resolution

procedure by an accredited dispute provider (article 26(1) of the ADR Act). This provision is designed to save or reduce cost, time and burden on parties pursuing both litigation and private mediation simultaneously, thereby the policymaker aims to promote the use of ADR (including the mediation).

Regarding arbitration, the Arbitration Act in Japan does not explicitly require a stay of arbitration in favour of mediation. However, a combined arbitration-mediation approach, such as Med-Arb or Arb-Med-Arb, is becoming more popular for cross-border disputes. The Commercial Arbitration Rules 2021 stipulated by the Japan Commercial Arbitration Association (JCAA) sets out that the arbitral tribunal, at the request of either party, shall stay the arbitral proceedings if the parties enter into an agreement in writing to refer the dispute to mediation proceedings under the Commercial Mediation Rules of the JCAA (article 58(1) and (2) of the Commercial Arbitration Rules (2021)). If the mediation proceedings are terminated, the arbitral tribunal, at the request of either party, shall resume the arbitral proceedings (article 58(4) of the Commercial Arbitration Rules (2021)).

Law stated - 27 9 2024

MISCELLANEOUS

Other distinctive features

Are there any distinctive features of commercial mediation in your jurisdiction not covered above?

In Japan, mediation has been actively used domestically, and is generally recognised as one of the alternative methods for dispute resolution alongside litigation. However, international mediation for cross-border commercial disputes has rarely been used in Japan, even after the Japan International Mediation Center was established in Kyoto on 20 November 2018. This seems to be partly because there are very few experienced and well-trained mediators (as there is currently no accredited training available for mediators in Japan), and the benefits of international mediation are not sufficiently known to potential users.

Law stated - 27 9 2024

UPDATE AND TRENDS

Opportunities and challenges

What are the key opportunities, challenges and developments that you anticipate relating to mediation in your jurisdiction?

The Singapore Convention and the Act for Implementation of United Nations Convention on International Settlement Agreements Resulting from Mediation entered into force for Japan on 1 April 2024, allowing international settlement agreements to become enforceable under certain conditions. This development addresses one of the main challenges of using mediation for cross-border commercial disputes (ie, difficulty of enforcing settlement agreements). It is hoped a new practice of cross-border commercial mediation will become more entrenched in Japan in the near future.

In addition, starting from 1 April 2024, settlement agreements reached through accredited ADR bodies, in which the parties have agreed that enforcement can be pursued based on the settlement agreement, can be enforceable, except for those settlement agreements related to contracts between consumers and businesses or to individual labour disputes. Other settlement agreements reached through private mediation are treated as general agreements under the Civil Code.

Law stated - 27 9 2024