Legal 500
Country Comparative Guides 2025

Japan

Investment Treaty Arbitration

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This country-specific Q&A provides an overview of investment treaty arbitration laws and regulations applicable in Japan.

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Japan: Investment Treaty Arbitration

1. Has your home state signed and / or ratified the ICSID Convention? If so, has the state made any notifications and / or designations on signing or ratifying the treaty?

Japan signed the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the ICSID Convention) on September 23, 1965, and ratified it on August 17, 1967.[1]

Pursuant to Article 54(2) of the ICSID Convention, Japan designated the competent courts for the recognition and enforcement of arbitral awards rendered under the Convention. If the arbitration agreement specifies a court, the designated court shall be either the summary court or the district court as identified in the agreement. In the absence of such a designation by the arbitration agreement, jurisdiction falls to the summary court or the district court where the defendant's domicile or residence is located, or, alternatively, where the subject matter of the claim, the security for the claim, or any attachable property of the defendant is situated.[2]

Footnote(s):

[1] ICSID website (https://icsid.worldbank.org/about/member-states/database-of-member-states).

[2] ICSID website (https://icsid.worldbank.org/about/member-states/database-of-member-states/member-state-details?state=ST70).

2. Has your home state signed and / or ratified the New York Convention? If so, has it made any declarations and / or reservations on signing or ratifying the treaty?

Japan ratified the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) on June 20, 1961.

Pursuant to Article 1(3) of the New York Convention, Japan made a reciprocity reservation, limiting the application of the Convention to the recognition and enforcement of arbitral awards rendered in the territory of another Contracting State.[3] Japan did not make a commercial reservation under Article 1(3) of the Convention, meaning that it does not restrict the application of the Convention solely to disputes considered "commercial" under its national law.

Footnote(s):

[3] United Nations website (https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=xxii-1&chapter=22&clang=_en#EndDec).

3. Does your home state have a Model BIT? If yes, does the Model BIT adopt or omit any language which restricts or broadens the investor's rights?

Japan has not published its Model BIT. Instead, Japan negotiates each BIT or investment chapter in Economic Partnership Agreements (EPAs) on a case-by-case basis, tailoring provisions to specific circumstances and partner countries.

Notably, since its execution of the Japan-South Korea BIT (2002), Japan has generally pursued a pre-establishment model in its investment treaties, granting foreign investors national treatment and most-favored nation treatment at the stage of entry and establishment of the investment. Of Japan's 54 investment treaties currently in effect—comprising 36 BITs, one trilateral investment treaty, and 17 EPAs with investment chapters—33 follow the pre-establishment model, while 21 adopt the admission model, which does not provide pre-establishment protection. Recent examples of BITs incorporating pre-establishment protection include the Japan-Angola BIT (2023) and the Japan-Georgia BIT (2021).

Pre-establishment protection extends national treatment and most-favored-nation treatment to foreign investors not only after an investment has been established but also at the actual entry stage. This framework enhances predictability in the decision- making process and facilitates the smooth establishment of foreign investment.

4. Please list all treaties facilitating investments

(e.g. BITs, FTAs, MITs) currently in force that your home state has signed and / or ratified. To what extent do such treaties adopt or omit any of the language in your state's Model BIT or otherwise restrict or broaden the investor's rights? In particular: a) Has your state exercised termination rights or indicated any intention to do so? If so, on what basis (e.g. impact of the Achmea decisions, political opposition to the Energy Charter Treaty, or other changes in policy)? b) Do any of the treaties reflect (i) changes in environmental and energy policies, (ii) the advent of emergent technology, (iii) the regulation of investment procured by corruption, and (iv) transparency of investor state proceedings (whether due to the operation of the Mauritius Convention or otherwise). c) Does your jurisdiction publish any official guidelines, notes verbales or diplomatic notes concerning the interpretation of treaty provisions and other issues arising under the treaties?

Japan has entered into 36 bilateral investment treaties (BITs) and one trilateral investment treaty, in addition to 17 economic partnership agreements (EPAs) that include investment chapters, all of which are currently in force.[4] Japan is also a party to the Energy Charter Treaty (ECT).

The following is a complete list of treaties currently in force that facilitate foreign investment:

Bilateral/Trilateral Investment Treaties	Date of Signature	Date of Entry into Force
Japan – Angola BIT (2023)	09/08/2023	21/07/2024
Japan – Bahrain BIT (2022)	23/06/2022	06/09/2023
Japan – Georgia BIT (2021)	29/01/2021	23/07/2021
Japan – Côte d'Ivoire BIT (2020)	13/01/2020	26/03/2021
Japan – Morocco BIT (2020)	08/01/2020	23/04/2022
Japan – Jordan BIT (2018)	27/11/2018	01/08/2020
Japan – United Arab Emirates BIT (2018)	30/04/2018	26/08/2020
Japan – Armenia BIT (2018)	14/02/2018	15/05/2019
Japan – Israel BIT (2017)	01/02/2017	05/10/2017
Japan – Kenya BIT (2016)	28/08/2016	14/09/2017
Japan – Iran BIT (2016)	05/02/2016	26/04/2017
Japan – Oman BIT (2015)	19/06/2015	21/07/2017
Japan – Ukraine BIT (2015)	05/02/2015	26/11/2015
Japan – Uruguay BIT (2015)	26/01/2015	14/04/2017
Japan – Kazakhstan BIT (2014)	23/10/2014	25/10/2015
Japan – Myanmar BIT (2013)	15/12/2013	07/08/2014
Japan – Mozambique BIT (2013)	01/06/2013	29/08/2014
Japan – Saudi Arabia BIT (2013)	30/04/2013	07/04/2017
Japan – Iraq BIT (2012)	07/06/2012	25/02/2014
Japan – China – Korea Trilateral Investment Agreement (2012)	13/05/2012	17/05/2014
Japan – Kuwait BIT (2012)	22/03/2012	24/01/2014
Japan – Colombia BIT (2011)	12/09/2011	11/09/2015
Japan – Papua New Guinea BIT (2011)	26/04/2011	17/01/2014
Japan – Peru BIT (2008)	21/11/2008	10/12/2009
Japan – Uzbekistan BIT (2008)	15/08/2008	24/09/2009
Japan – Laos BIT (2008)	16/01/2008	03/08/2008
Japan – Cambodia BIT (2007)	14/06/2007	31/07/2008
Japan – Viet Nam BIT (2003)	14/11/2003	19/12/2004
Japan – South Korea BIT (2002)	22/03/2002	01/01/2003
Japan – Russia BIT (1998)	13/11/1998	27/05/2000
Japan – Bangladesh BIT (1998)	10/11/1998	25/08/1999
Japan – Pakistan BIT (1998)	10/03/1998	29/05/2002
Japan – Hong Kong SAR BIT (1997)	15/05/1997	18/06/1997
Japan – Turkey BIT (1992)	12/02/1992	12/03/1993
Japan – China BIT (1988)	27/08/1988	14/05/1989
Japan – Sri Lanka BIT (1982)	01/03/1982	07/08/1982
Japan – Egypt BIT (1977)	28/01/1977	14/01/1978
EPAs with an Investment Chapter	**Date of signature**	**Date of entry into force**
RCEP (2020)	15/11/2020	01/01/2022
Japan – United Kingdom CEPA (2020)	23/10/2020	01/01/2021
Japan – EU EPA (2018)	17/07/2018	01/02/2019
Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) (2018)	08/03/2018	30/12/2018
Japan – Mongolia EPA (2015)	10/02/2015	07/06/2016
Japan – Australia EPA (2014)	08/07/2014	15/01/2015
Japan – India EPA (2011)	16/02/2011	01/08/2011
Japan – Switzerland EPA (2009)	19/02/2009	01/09/2009
Japan – ASEAN EPA (2008)	28/03/2008	01/12/2008
Japan – Indonesia EPA (2007)	20/08/2007	01/07/2008
Japan – Brunei EPA (2007)	18/06/2007	31/07/2008
Japan – Thailand EPA (2007)	03/04/2007	01/11/2007
Japan – Chile EPA (2007)	27/03/2007	03/09/2007
Japan – Philippines EPA (2006)	09/09/2006	11/12/2008
Japan – Malaysia EPA (2005)	13/12/2005	13/07/2006
Japan – Mexico EPA (2004)	17/09/2004	01/04/2005
Japan – Singapore EPA (2002)	13/01/2002	30/11/2002
Multilateral Investment Treaty	**Date of Signature**	**Date of Entry into Force**
Energy Charter Treaty (1994)	17/12/1994	16/04/1998

a) Has your state exercised termination rights or indicated any intention to do so? If so, on what basis (e.g. impact of the Achmea decisions, political opposition to the Energy Charter Treaty, or other changes in policy)?

Japan has not withdrawn from any existing investment treaties. Technically, with an exception for the replacement of the Japan-Mongolia BIT (2001) by the Japan-Mongolia Economic Partnership Agreement (EPA) in 2016, Japan has maintained its investment treaty commitments.[5]

Japan also remains a party to the Energy Charter Treaty, despite the recent wave of withdrawals by EU and European countries due to criticism against the existing ISDS mechanism and its misalignment with their decarbonization policy.

b) Do any of the treaties reflect (i) changes in environmental and energy policies, (ii) the advent of emergent technology, (iii) the regulation of investment procured by corruption, and (iv) transparency of investor state proceedings (whether due to the operation of the Mauritius Convention or otherwise).

(i) Changes in Environmental and Energy Policies

Japan's investment treaties incorporate provisions that seek to strike a balance between protecting foreign investment and safeguarding environmental and sustainability objectives.

- **Confirmation of the Host State's Regulatory Power:** Article 9.16 of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) (2018) affirms that the protection of foreign investment does not prevent a host state from adopting regulatory measures in pursuit of environmental, health, and other regulatory objectives. This provision underscores the principle that investment protection should not impede legitimate regulatory actions taken in the public interest.
- **Non-Derogation Clause:** The Japan-Angola BIT (2023) includes a "non-derogation" clause in Article 21, which explicitly prohibits the host state from encouraging foreign investment by relaxing environmental, health, or safety regulations or by lowering labor standards. Such provisions aim to prevent regulatory competition that could undermine public interests and sustainable development.

(ii) The Advent of Emergent Technology

In response to the rapid development of the digital economy, several of Japan's EPAs—such as the CPTPP (2018), the Japan-EU Economic Partnership Agreement (EPA) (2018), the Japan-UK Comprehensive Economic Partnership Agreement (CEPA) (2020), and the Regional Comprehensive Economic Partnership (RCEP) (2020)—contain dedicated chapters on electronic commerce.

For example, the CPTPP's electronic commerce chapter includes:

- **Cross-Border Transfer of Information by Electronic Means** (Article 14.11), which promotes free data flow across borders;
- **Prohibition of Data Localization Requirements** (Article 14.13), preventing host states from mandating that data be stored within their jurisdiction; and
- **Prohibition on the Mandatory Transfer of Source Code** (Article 14.17), protecting the confidentiality of source code by restricting requirements for technology transfer.

When a foreign investor engages in system or software development in the host country, it is crucial to ensure an environment where business-acquired data can be transferred to an overseas development hub for centralized processing, while also protecting the confidentiality of source code. These provisions reflect a broader trend in modern international framework aimed at facilitating cross-border digital economy while balancing regulatory interests.

(iii) Regulation of Investment Procured by Corruption

Several of Japan's investment treaties contain a compliance with domestic law requirement, stipulating that investments must be made in accordance with the host state's laws and regulations. This requirement is explicitly set out in treaties such as the Japan-Israel BIT (2017) in Article 1(a) and the Japan-Ukraine BIT (2015) in Article 1(1). However, not all of Japan's investment treaties expressly impose such a requirement (e.g., Japan-Angola BIT (2023)).

(iv) Transparency of Investor-State Proceedings

Investment treaty arbitration frequently involves issues of public interest, including government policy and human rights. Consequently, there has been an increasing demand for greater transparency in investor-state dispute settlement (ISDS) proceedings.

Notably, Article 9.24 of the CPTPP mandates that the host state must publicly disclose all relevant information regarding investment arbitration, ensuring transparency in disputes that may have significant public implications.

However, the vast majority of Japan's investment treaties grant the host state discretion in determining whether to make such information publicly available. For instance, Article 16.15 of the Japan-Bahrain BIT and Article 23.17 of the Japan-Angola BIT (2023) allow, but does not require, the host state to disclose information concerning investor-state arbitration.

Japan has not signed the Mauritius Convention on Transparency. The UNCITRAL Rules on Transparency in Treaty-Based Investor-State Arbitration (UNCITRAL Transparency Rules) will apply to UNCITRAL arbitral proceedings initiated under Japan's investment treaties concluded after April 1, 2014, as the Japan's investment treaties do not opt out the application of the UNCITRAL Transparency Rules.

c) Does your jurisdiction publish any official guidelines, notes verbales or diplomatic notes concerning the interpretation of treaty provisions and other issues arising under the treaties?

No, Japan has not issued official guidelines, notes verbales, or diplomatic notes regarding the interpretation of investment treaty provisions or related issues.

Footnote(s):

[4] The website of the Ministry of Foreign Affairs of Japan, "Current Status of Investment-Related Agreements" (Japanese Only), February 2025 (https://www.mofa.go.jp/mofaj/files/100062901.pdf). Also, refer to the UNCTAD website (https://investmentpolicy.unctad.org/international-investment-agreements/countries/105/japan).

[5] Article 10.19.1 of the Japan-Mongolia EPA (2015); the text is available on the UNCTAD website (https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/3372/download).

5. Does your home state have any legislation / instrument facilitating direct foreign investment. If so: a) Please list out any formal criteria imposed by such legislation / instrument (if any) concerning the admission and divestment of foreign investment; b) Please list out what substantive right(s) and protection(s) foreign investors enjoy under such legislation / instrument; c) Please list out what recourse (if any) a foreign investor has against the home state in respect of its rights under such legislation / instrument; and d) Does this legislation regulate the use of third-party funding and other non-conventional means of financing.

Japan does not have a domestic unified legal framework specifically dedicated to facilitating direct foreign investment. However, investment treaties, once ratified by the legislature, take precedence over domestic laws and provide foreign investors with certain protections regarding their investment assets.

a) Please list out any formal criteria imposed by such legislation / instrument (if any) concerning the admission and divestment of foreign investment;

While Japan lacks a single legislative instrument governing the admission and divestment of foreign investment, it is worth noting that the Foreign Exchange and Foreign Trade Act (Act No. 228 of 1949) (the FEFTA) establishes notification requirements for foreign investors engaging in direct investment in Japan. Under the FEFTA, a foreign investor conducting certain foreign investments classified as "inward direct investment" is required to file a notification to the Ministry of Finance via the Bank of Japan. Further, prior notification and approval are required if the investment involves certain industries involving such as those related to national security, advanced technologies, public infrastructure and other sensitive sectors.

Beyond the FEFTA, various sector-specific laws impose restrictions on foreign investors in areas of strategic national importance such as business involving national security, critical infrastructure, financial stability, and essential resources. These laws include, but are not limited to:

- the Broadcast Act (Act No. 132 of 1950),
- the Civil Aeronautics Act (Act No. 231 of 1952),
- the Consigned Freight Forwarding Business Act (Act. No. 82 of 1989),
- the Deposit Insurance Act (Act. No. 34 of 1971),
- the Mining Act (Act No. 289 of 1950), and
- the Plant Variety Protection and Seed Act (Act No. 83 of 1998).

Foreign investors may find it beneficial to review the annexed list of non-conforming measures provided as exceptions to national treatment, most-favored-nation treatment, and/or prohibition for performance requirements, in the relevant applicable investment treaties. This list provides for the summary of information regarding the affected industry sectors and specific laws

and regulations imposing restrictions on foreign investors (e.g., Annex I (Existing Non-Conforming Measures referred to in subparagraph 1(a) of Article 7) of the Japan-Angola BIT (2023)).

b) Please list out what substantive right(s) and protection(s) foreign investors enjoy under such legislation / instrument;

Although the Japanese government and municipalities offer a variety of support programs and financial incentives to attract foreign investment, Japan does not have a domestic legal instrument that explicitly grants substantive rights and protections to foreign investors.

Investment treaties ratified by Japan serve as the primary source of protection for foreign investors. These treaties typically contain provisions guaranteeing national treatment, most-favored-nations treatment, fair and equitable treatment, protection against expropriation without compensation, and access to dispute resolution mechanisms such as investor-state arbitration.

c) Please list out what recourse (if any) a foreign investor has against the home state in respect of its rights under such legislation / instrument; and

As Japan does not have a unified legal framework conferring substantive rights to foreign investors, recourse against the state primarily depends on investment treaties. These treaties typically provide mechanisms for resolving disputes, such as investor-state dispute settlement (ISDS) procedures through international arbitration.

Foreign investors may also challenge administrative decisions through Japan's domestic legal system, including seeking judicial review where applicable.

d) Does this legislation regulate the use of third-party funding and other non-conventional means of financing.

Japan does not have specific legislation governing third-party funding or other non-conventional financing mechanisms, while the use of third-party funding in international arbitration and litigation is gaining recognition in Japan. Currently, there is no statutory framework regulating its utilization in investment-related disputes.

6. Has your home state appeared as a respondent in any investment treaty arbitrations? If so, please outline any notable practices adopted by your state in such proceedings (e.g. participation in proceedings, jurisdictional challenges, preliminary applications / objections, approach to awards rendered against it, etc.)

Yes. Based on publicly available information, Japan had never been a respondent in an investor-state arbitration until recently. The only known case in which Japan appeared as a respondent is Shift Energy v. Japan, an UNCITRAL arbitration initiated in 2020 under the Japan-Hong Kong BIT (1997) by a Hong Kong-based investor, alleging damages related to Japan's renewable energy subsidy regime.[6]

Reportedly, the tribunal issued an award on February 1, 2023, ruling in favor of Japan and rejecting the investor's claims. However, procedural details, including the content of the award, remain undisclosed, as both parties reportedly entered into a joint non-disclosure arrangement, preventing any public disclosure of the dispute.[7]

Footnote(s):

[6] Investment Arbitration Reporter, "Japan faces its first known investment treaty arbitration, as UNCITRAL tribunal is quietly put in place to hear Asian energy investors' claims," February 3, 2021 (https://www.iareporter.com/articles/japan-faces-its-first-known-investment-treaty-arbitration-as-uncitral-tribunal-is-quietly-put-in-place-to-hear-asian-energy-investors-claims/).

[7] Global Arbitration Review, "Japan faces first treaty claim," March 3, 2021 (https://globalarbitrationreview.com/article/japan-faces-first-treaty-claim).

7. Has jurisdiction been used to seat non-ICSID investment treaty proceedings? If so, please provide details.

Based on publicly available information, there is no known non-ICSID investment treaty arbitration case seated in Japan.

8. Please set out (i) the interim and / or preliminary measures available in your jurisdiction in support of investment treaty proceedings, and (ii) the court practice in granting such measures.

(i) Interim and/or Preliminary Measures Available in Support of Investment Treaty Proceedings

Japan's Arbitration Act (Act No. 138 of 2003), which generally governs arbitration proceedings seated in Japan, was amended on April 1, 2024 and currently in force, bringing greater clarity and alignment with the 2006 UNCITRAL Model Law on International Commercial Arbitration, particularly concerning interim measures.

Under the amended Arbitration Act, arbitral tribunals seated in Japan have clearly defined powers to grant a wide range of interim measures, including, asset preservation (Article 24(1)(i) and (ii)), orders to maintain the status quo (Article 24(1)(iii)), anti-suit injunctions (Article 24(1)(iv)) and evidence preservation (Article 24(1)(v)).

While the original Arbitration Act recognized a tribunal's power to grant interim relief, the amendment had clarified the scope, requirements, and enforceability of such measures, strengthening parties' ability to protect their interests pending arbitration.

(ii) Court Practice in Granting and Enforcing Interim Measures

A key reform in the 2024 amendment is the enforceability of arbitral interim measures in Japan. A party obtaining an interim order from the tribunal can now file a petition with a competent Japanese court to enforce the measure. The court must grant enforcement unless statutory grounds for refusal exist, which mirror the grounds for refusing recognition of arbitral awards under the UNCITRAL Model Law.

Once enforcement is granted, the execution procedure depends on the type of measure:

1. **Preventive or restitutionary interim measures**: orders to maintain the status quo (Article 24(1)(iii)))

– The enforcing party may proceed directly to execution (Article 47(1)(i)).

2. **Prohibitory interim measures**: asset preservation (Article 24(1)(i) and (ii)), anti-suit injunctions (Article 24(1)(iv)) and evidence preservation (Article 24(1)(v)))

– The enforcing party may seek a penalty payment order, which can be executed upon non-compliance (Article 47(1)(ii)).

Notably, the amendment extends the jurisdiction of Japanese courts to enforce arbitral interim measures even where the seat of arbitration is outside Japan (Article 47(1)).

9. Please set out any default procedures applicable to appointment of arbitrators and also the Court's practice of invoking such procedures particularly in the context of investment treaty arbitrations seated in your home state.

Under Japan's Arbitration Act, which applies to investor-state arbitration seated in Japan, a court shall appoint an arbitrator in the following circumstances:

1. Panel of Three-Member Tribunal:

If one party fails to appoint a party-appointed arbitrator within 30 days from receiving a demand to do so arbitrator from the other party, or if the two party-appointed arbitrators fail to appoint a presiding arbitrator within 30 days, the court shall appoint an arbitrator upon the request of either party (Article 17(2)).

2. Sole Arbitrator Tribunal:

If the parties fail to reach an agreement on the appointment of a sole arbitrator, either party shall request the court to make the appointment (Article 17(3)).

3. Multi-Party Arbitration:

If there are three or more parties and they fail to agree on the appointment of an arbitrator, the court shall appoint the arbitrator upon the request of either party (Article 17(4)).

4. Failure to Follow an Agreed Appointment Procedure:

If the parties have agreed on a specific procedure for appointing an arbitrator, but one party fails to comply with that procedure, or if an appointment cannot otherwise be made under it, a party may petition the court to make the appointment (Article 17(5)).

Upon the court's appointment of an arbitrator, under Article 17(6) of the Arbitration Act, the court must consider (i) the qualifications agreed upon by the parties; (ii) the impartiality and independence of the appointee; and (iii) whether, in the case of a sole arbitrator or presiding arbitrator (where the two party-appointed arbitrators fails to select one), it is appropriate to appoint a person of a nationality different from both parties. The court's decision regarding appointment of arbitrator is not appealable (Article 7).

Since the enactment of the Arbitration Act, there have been no publicly available court decisions in Japan

regarding the appointment of arbitrators by courts.

10. In the context of awards issued in non-ICSID investment treaty arbitrations seated in your jurisdiction, please set out (i) the grounds available in your jurisdiction on which such awards can be annulled or set aside, and (ii) the court practice in applying these grounds.

The Arbitration Act sets out specific grounds for setting aside an arbitral award rendered by a tribunal seated in Japan, and these provisions apply to non-ICSID investment treaty arbitrations seated in Japan. The grounds for setting aside under the Arbitration Act are substantially the same as those provided in Article 34(2) of the UNCITRAL Model Law on International Commercial Arbitration (2006). Under Article 44(1) of the Arbitration Act, a court may set aside an arbitral award if any of the following grounds exist:

i. the arbitration agreement is invalid due to the limited capacity of a party;
ii. the arbitration agreement is otherwise invalid under the laws and regulations designated by the parties as applicable to the arbitration agreement (or, in the absence of such a designation, under Japanese law);
iii. the petitioner did not receive the required notice under Japanese law (or, where applicable, under an agreed procedural framework) in the appointment of arbitrators or in the arbitration proceedings;
iv. the petitioner was unable to present its case in the arbitration proceedings;
v. the arbitral award contains decisions on matters beyond the scope of the arbitration agreement or the claims submitted in the arbitration;
vi. the composition of the arbitral tribunal or the arbitration proceedings violated Japanese law (or, where applicable, an agreed procedural framework);
vii. the dispute concerns a matter that cannot be subject to arbitration under Japanese law; or
viii. the content of the arbitral award is contrary to public policy in Japan.

Japan is generally recognized as an arbitration-friendly jurisdiction, with a legal framework closely aligned with international standards. The Arbitration Act, modeled on the UNCITRAL Model Law, ensures limited judicial intervention in arbitral proceedings while providing well-defined grounds for setting aside awards. Japanese courts have consistently demonstrated a pro-arbitration stance, enforcing agreements and awards in a predictable manner.

Since the enactment of the current Arbitration Act in 2003, there has been only one final court decision setting aside an arbitral award: Tokyo District Court Decision, June 13, 2011, Hanrei-jiho, Issue. 2128, page 58. In this case, the arbitral award was set aside by the court on the grounds that it violated Japan's procedural public policy under Article 44(1)(viii) of the Arbitration Act, as the arbitral tribunal erroneously recognized a fact disputed by the parties as an undisputed fact. Given that this fact was a crucial element affecting the dispositive portion of the arbitral award, the court found it to constitute valid grounds for setting aside the award.

11. In the context of ICSID awards, please set out: (i) the grounds available in your jurisdiction on which such awards can be challenged and (ii) the court practice in applying these grounds.

Japan is a member state of the ICSID Convention but does not have specific legislation implementing it. The ICSID Convention excludes any intervention by national courts in its arbitration proceedings and post-award remedies, including interpretation, revision, and annulment procedures under Article 49(2), 50, 51 and 52 of the Convention. As such, ICSID arbitration operates as a self-contained system, Japanese courts will not assert jurisdiction over challenges to ICSID awards.

There are no known court decisions in Japan concerning the challenge of an ICSID award.

12. To what extent can sovereign immunity (from suit and/or execution) be invoked in your jurisdiction in the context of enforcement of investment treaty awards.

Japan adopts a restrictive approach to the scope of sovereign immunity for both adjudication and execution.

The Supreme Court of Japan has ruled that, with respect to the sovereign immunity from adjudication, while sovereign acts (i.e., acts performed in the exercise of governmental authority) shall be subject to immunity, a foreign state shall not be immune from the civil jurisdiction of Japanese courts for non-sovereign acts, such as those conducted under private law or in the course of business administration, unless there are special circumstances where the exercise of civil jurisdiction by Japanese courts is likely to infringe upon the state's sovereignty. (Tokyo Sanyo Trading K.K. v. Islamic Republic of Pakistan, Supreme Court Judgement, July 21, 2006, Minshu Vol. 60, No. 6, page 2542).[8]

Following this ruling, Japan signed the United Nations Convention on Jurisdictional Immunities of States and Their Property in 2007 (which remains not yet in force as of February 28, 2025). In line with the Convention, Japan enacted the Act on the Civil Jurisdiction of Japan with respect to Foreign States (Act No. 24 of 2009), which came into effect on April 1, 2010. This legislation substantially incorporated the Convention's legal framework into domestic law, governing sovereign immunity for both adjudication and execution.

Under the Act on the Civil Jurisdiction of Japan with respect to Foreign States, a foreign state is not immune from jurisdiction in Japanese court proceedings concerning the existence or validity of a written arbitration agreement related to commercial transactions, or arbitration proceedings based on such an agreement, unless otherwise agreed (Article 16(1) of the Act).

Footnote(s):

[8] The English translation of the text is available on the website of the Supreme Court of Japan (https://www.courts.go.jp/app/hanrei_en/detail?id=848).

13. Please outline the grounds on which recognition and enforcement of ICSID awards can be resisted under any relevant legislation or case law. Please also set out any notable examples of how such grounds have been applied in practice.

Japan is a member state of the ICSID Convention but has not enacted specific legislation to facilitate the recognition and enforcement of ICSID arbitral awards. However, as the ICSID Convention imposes an obligation to recognize and enforce ICSID awards, a Japanese competent court, when presented with a copy of the ICSID Award and the necessary documents required under Article 46(2) of the Arbitration Act, will recognize and enforce an ICSID award ordering pecuniary relief in accordance with Article 54(1) of the ICSID Convention. This obligation applies unless the award is subject to a stay of enforcement under Article 50(2), 51(4), or 52(5) of the ICSID Convention.

Currently, there are no known court decisions in Japan concerning the enforcement of an ICSID award.

14. Please outline the practice in your jurisdiction, as requested in the above question, but in relation to non-ICSID investment treaty awards.

The legal framework for the recognition and enforcement of non-ICSID arbitral awards, both at the seat of arbitration and outside it, generally follows the same principles as those governing commercial arbitration. Namely, at the seat of arbitration, the applicable arbitration laws of that jurisdiction apply, while outside the seat, recognition and enforcement are governed by the New York Convention (or its domestic implementation under arbitration laws).

Under Article 45(2) of the Arbitration Act, which aligns with the New York Convention, a Japanese court shall refuse to recognize or enforce an arbitral award if any of the following grounds exist:

i. the arbitration agreement is invalid due to the limited capacity of a party;
ii. the arbitration agreement is otherwise invalid under the laws and regulations designated by the parties as applicable to the arbitration agreement (or, in the absence of such a designation, under the laws of the seat of arbitration;
iii. the petitioner did not receive the required notice under the laws of seat of arbitration (or, where applicable, under an agreed procedural framework) in the appointment of arbitrators or in the arbitration proceedings;
iv. the petitioner was unable to present its case in the arbitration proceedings;
v. the arbitral award contains decisions on matters beyond the scope of the arbitration agreement or the claims submitted in the arbitration;
vi. the composition of the arbitral tribunal or the arbitration proceedings violated the laws of seat of arbitration (or, where applicable, an agreed procedural framework);
vii. the arbitral award is not final and binding, or it has been set aside or suspended by a judicial body of the jurisdiction where it was issued;
viii. the dispute concerns a matter that cannot be subject to arbitration under Japanese law; or
ix. the content of the arbitral award is contrary to public policy in Japan.

Since the enactment of the current Arbitration Act in 2003, there have been no known court decisions rejecting the recognition or enforcement of a foreign arbitral award. Given the generally pro-arbitration stance of Japanese courts, as noted above, one may assume that Japanese courts would take a restrictive approach in applying the grounds for refusing recognition and enforcement of non-ICSID investment treaty arbitral awards.

15. To what extent does your jurisdiction permit awards against states to be enforced against state-owned assets or the assets of state-owned or state-linked entities?

As explained in Section (12) above, execution proceedings before Japanese courts against state-linked entities and state-owned assets are governed by the Act on the Civil Jurisdiction of Japan with respect to Foreign States, which aligns with the legal framework of the United Nations Convention on Jurisdictional Immunities of States and Their Property.

Under this Act, a foreign state is not immune from jurisdiction in Japanese court proceedings concerning provisional measures or execution if it has expressly consented to such measures or execution with respect to its own assets through an arbitration agreement, treaty, or other international commitment (Article 17(1)).

16. Please highlight any recent trends, legal, political or otherwise, that might affect your jurisdiction's use of arbitration generally or ISDS specifically.

Consistent pro-arbitration stance of Japanese courts

As mentioned in Section (10), Japanese courts have consistently demonstrated a pro-arbitration approach in line with global practice, including the New York Convention standards. This trend has remained unchanged in recent years: In a judgement dated June 1, 2022, the Tokyo District Court, applying the laws of England and Wales as a governing law of the arbitration agreement, held that the arbitration agreement could extend to a company director who was not a signatory of the agreement.[9]

Further enhancement of arbitration framework through legal reforms

Japan has actively pursued updates to its arbitration framework, culminating in amendments to the Arbitration Act that took effect in April 2024. These amendments introduced greater clarity regarding interim measures and established an enforcement mechanism, as discussed in Section (8). In parallel with these changes, Japan signed the Singapore Mediation Convention, which also came into effect in April 2024. Japan did not make a reservation under Article 8(1)(a) of the Convention to exclude its application to settlement agreements involving state entities, thereby opening the door for the Convention's potential use in mediation within the context of investor-state dispute settlement.

Footnote(s):

[9] Tokyo District Court judgment of 1 June 2022, (wa) No. 33456, LEX/DB database (Literature No. 25606253).

17. Please highlight any other investment treaty related developments in your jurisdiction to the extent not covered above (for e.g., impact of the Achmea decisions, decisions concerning treaty interpretation, appointment of and challenges to arbitrators, immunity of arbitrators, third-party funding and other non-conventional means of financing such proceedings).

Japanese investment treaty framework moving forward

The Japanese government has been actively working to expand its investment treaty network and is currently engaged in ongoing negotiations with the EU, Nigeria, and Qatar, among others. These efforts aim to secure a robust and stable investment climate for foreign investments.

Effects of tbe Achmea decision

Regarding the implication of the Achmea decision, it is notable that the EU-Japan Economic Partnership Agreement (2018) deliberately excluded any investor-state dispute settlement (ISDS) mechanism, leaving the matter open for future negotiation under Article 8.5. This exclusion was a pragmatic response to European sensitivities in the post-Achmea landscape. To date, the EU and Japan have not reached an agreement on a replacement dispute resolution mechanism, partly due to Japan's cautious stance on the EU's proposed permanent court system. Similarly, the UK-Japan Comprehensive Economic Partnership Agreement (2020) followed the EU-Japan EPA template by omitting investor-state arbitration.

UNCITRAL Working Group III

Japan has been actively engaged in UNCITRAL Working Group III's ISDS reform discussions. Japan advocates addressing specific concerns—such as arbitrator conflicts of interest, costs, and transparency within the existing arbitration framework. It emphasizes a flexible, case-by-case approach rather than a wholesale replacement of the current system, reflecting its cautious stance on adopting a permanent investment court or an appellate mechanism.[10]

Footnote(s):

[10] Submission from the Governments of Chile, Israel and Japan, dated March 15, 2019 (A/CN.9/WG.III/WP.163), United Nations Commission on International Trade Law Working Group III (https://docs.un.org/en/A/CN.9/WG.III/WP.163).

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