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The Asia-Pacific Arbitration Review

2026

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Japan: new policy initiatives and judicial rulings with global implications

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Summary

IN SUMMARY

In 2024, the Japanese government unveiled the 2024 policy statement to promote international arbitration, marking a strategic initiative involving collaborations among the government, legal professionals, business communities and arbitration-related organisations. The policy emphasises capacity building and raising public awareness, among others, to position the country as a competitive arbitration seat in East Asia. As a part of this effort, the inaugural Japan International Arbitration Week was held as a key collaboration among those stakeholders, signalling Japan's renewed commitment to advancing arbitration practice and capacity building. In the meantime, the Supreme Court issued a judgment that has potential implications on the enforceability of multi-tiered arbitration clauses. This article also introduces a Tokyo High Court judgment that deals with applicability of a provision in the Arbitration Act of Japan, which nullifies an arbitration agreement dealing with labour disputes to arbitration seated outside Japan.

DISCUSSION POINTS

- The Japanese government issues new policy statement on the invigoration of international arbitration through strategic public-private collaboration
- Japan's ongoing initiatives to promote international arbitration, including the first Japan International Arbitration Week and JAA's Arbitration Day 2024 involving UNCITRAL and ICSID
- The Supreme Court of Japan ruled on the enforceability of a non-litigation agreement, which may have a potentially significant implication to the interpretation of arbitration clauses with multi-tier dispute resolution mechanisms
- The Lower Courts of Japan upheld arbitration agreements by denying the application of the provision in the Arbitration Act, which deems arbitration agreements in labour contracts to be invalid

REFERENCED IN THIS ARTICLE

- Arbitration Act, article 4 of the Supplementary Provisions
- The 2024 Policy statement on Promotion of International Arbitration
- Japan International Arbitration Week 2024
- JAA Arbitration Day 2024
- *X v Family Federation for World Peace and Unification*
- *X v Saint Bitts Japan LLC* (also known as*Bitcoin.com*)
- *X v United Airlines, Inc*

JAPANESE GOVERNMENT ISSUES NEW POLICY STATEMENT ON THE INVIGORATION OF INTERNATIONAL ARBITRATION THROUGH STRATEGIC PUBLIC-PRIVATE COLLABORATION

The Japanese government, through the Inter-Ministerial Council for the Promotion of International Arbitration established under the Cabinet Secretariat, has issued a new policy statement titled the ***2024 Policy (Measures to Promote International Arbitration)***.[1] This Policy, based on the outcome of working-level discussions held by the Practical Research Group for the Steady Promotion of International Arbitration Utilization in Japan[2] – which comprised users, academics, arbitration institutions and arbitration practitioners, including the author, Yoshimi Ohara – outline the government's strategic direction to further promote international arbitration in Japan, particularly in light of the recent closure of the Japan International Dispute Resolution Center (JIDRC).

Key components of the 2024 Policy include Japan's aim to enhance its standing as an attractive seat for arbitration in East Asia, especially in regions where many Japanese companies have expanded their operations. The Policy also emphasises the importance of cultivating human resources capable of engaging in international arbitration in alignment with common law practices and international standards. Further, the key components highlight Japan's intention to contribute to the development of international rules in the field of commercial disputes – such as through UNCITRAL – and to uphold the rule of law. The plan includes raising awareness of the benefits of using international arbitration among Japanese companies, including small and medium-sized enterprises (SMEs), as well as engaging with foreign companies and practitioners through collaboration with overseas institutions to promote Japan as a seat for international arbitration.

The 2024 Policy reaffirms Japan's commitment to advancing the use of international arbitration in accordance with the rule of law, by engaging a wide range of stakeholders including government bodies, arbitration users, international organisations, arbitral institutions and practitioners.

JAPAN'S ONGOING INITIATIVES TO PROMOTE INTERNATIONAL ARBITRATION, INCLUDING THE FIRST JAPAN INTERNATIONAL ARBITRATION WEEK AND JAA'S ARBITRATION DAY 2024

As part of Japan's broader initiative to promote international arbitration, the first Japan International Arbitration Week was held in November 2024 at various venues across Tokyo.-[3] Organised by key institutions such as the Ministry of Justice, the Ministry of Economy, Trade and Industry, the Japan Association of Arbitrators (JAA) and the Japan Commercial Arbitration Association (JCAA), the event featured a series of panel discussions with government officials, international arbitration practitioners from all around the world and representatives from Japanese corporations. These discussions focused on the advantages of arbitration and mediation, and the strengths of Japan as a seat and venue for dispute resolution.

Further, in March 2024, JAA, the Japan Federation of Bar Associations, the Ministry of Justice and the JIDRC co-hosted the JAA Arbitration Day 2024. This event spotlighted recent trends and developments in the evolving landscape of arbitration and investor-state dispute settlement (ISDS). It featured delegates from ICSID and UNCITRAL, as well as prominent arbitration practitioners. Key topics included emerging practices under the 2022 ICSID Arbitration Rules, ongoing reform projects at UNCITRAL regarding ISDS, and the potential use of investor-state mediation. Details of this event were reported in separate GAR News.[4]

X V FAMILY FEDERATION FOR WORLD PEACE AND UNIFICATION

In the recent case of ***X v Family Federation for World Peace and Unification*** (the ***Unification*** case),[5] the Supreme Court analysed an agreement not to litigate and invalidated such an agreement on public policy grounds, setting out five factors to be considered. As an agreement not to litigate restricts a constitutional right to litigation, such agreements are generally binding and enforceable but subject to careful scrutiny on public policy grounds. Although the ***Unification*** case was about an agreement not to litigate in courts, it has potential implications on how multi-tiered dispute resolution clauses (whether ultimately leading to court proceedings or arbitration) may be enforced in the Japanese courts, depending on whether the Supreme Court considers multi-tiered dispute resolution clauses as agreements not to litigate unless certain conditions are met.

In the ***Unification*** case, an elderly believer (A) filed a tort claim in the Japanese courts seeking damages against a religious group, the Family Federation for World Peace and Unification (commonly known as the Unification Church) on the grounds that the monetary donations he had made was through unlawful solicitation. The Unification Church sought to rely on a notarised agreement that Ahad signed stating that he would not pursue any claims for return or damages and would waive any recourse to judicial remedies against it (the Non-litigation Agreement). The Supreme Court held that, while agreements not to litigate between private parties will generally be upheld by courts in principle, such agreements are invalid if they violate public policy. The Supreme Court outlined a framework for this assessment, clarifying the need to consider various factors, including: (1) the parties' attributes and relationship; (2) the background, intent and purpose of the agreement; (3) the nature of the rights or legal relationships covered by the agreement; (4) the degree of disadvantage imposed on a party; and (5) other relevant circumstances.

Given that (1) Ahad been under the Church's psychological influence for a long time, (2) the Non-litigation Agreement had been concluded at the initiative of the Unification Church members, (3) A was 86 years old when he signed it, and (4) Awas subsequently diagnosed with Alzheimer's disease, the Supreme Court held that A was not in a position to make a rational judgment whether to enter into the Non-litigation Agreement and that the Non-litigation Agreement imposed a substantial and one-sided disadvantage on A. Accordingly, the Supreme Court declared the Non-litigation Agreement invalid for violating public policy.

The Supreme Court's finding that agreements not to litigate are subject to public policy considerations may affect how multi-tiered dispute resolution clauses are enforced. This is because there is the case of ***Elpida v NEC and Hitachi***, where the Tokyo District Court-[6] characterised a multi-tiered dispute resolution clause[7] as an agreement not to litigate (unless certain conditions were met), whereas on appeal, the Tokyo High Court[8] held that the preconditions to negotiate and mediate before commencing formal arbitration proceedings did not have to be met before the parties could commence arbitration. The Tokyo High Court's rationale was that, among others, both negotiation and mediation would likely be futile when a party had already initiated litigation without going through negotiation and mediation as this situation suggests that trust among the parties were already broken. Since such trust relationship was crucial to negotiation and mediation, a multi-tiered dispute resolution clause was essentially a 'gentlemen's agreement'. The Tokyo High Court thus did not enforce the preconditions, which was completely opposite to the District Court's position. It remains to be seen whether the Supreme Court would take the Tokyo District Court approach and characterise multi-tiered dispute resolution clauses as enforceable agreements not to litigate, or it would follow the Tokyo High Court's view. If the

Supreme Court follows the Tokyo District Court's approach, the public policy considerations in ***Unification*** case would apply in the enforcement of multi-tiered dispute resolution clauses.

Last, it is important to note that the Japanese courts have not yet considered the impact of non-compliance with preconditions in an agreement not to litigate in the context of arbitration; whether it is an admissibility or jurisdictional issue. This distinction is important as the latter affects the integrity of the award while the former does not. In the UK, for instance, the English Commercial Court held in ***Republic of Sierra Leone v SL Mining Ltd*** [2021] EWHC 286 (Comm) that failure to comply with a multi-tiered clause concerns admissibility, not jurisdiction. The Court emphasised that such issues – eg, whether a claim is ripe for arbitration – are matters for the arbitral tribunal to determine and do not justify a jurisdictional challenge before a court.

On the other hand, the Singapore Court of Appeal had held in 2014[9] that non-compliance with preconditions to arbitration went towards the jurisdiction of the tribunal, and thus awards rendered by such tribunals were liable to be set aside. That said, two recent Singapore Court of Appeal cases seem to suggest that the better view is that failure to comply with preconditions to arbitration goes towards admissibility rather than jurisdiction.[10] The trend appears to be to treat non-compliance with preconditions to arbitration as an admissibility issue and not jurisdictional, and it remains to be seen how Japanese courts will deal with this issue in the future.

X V SAINT BITTS JAPAN LLC (ALSO KNOWN AS BITCOIN.COM) AND X V UNITED AIRLINES, INC

On 26 April 2023,[11] in ***X v Saint Bitts Japan LLC*** (the ***Bitcoin*** case), the Tokyo High Court affirmed the Tokyo District Court's[12] refusal to take jurisdiction over a case brought by a US national (X) against a Japanese tech company, Saint Bitts Japan LLC, also known as Bitcoin.com, for payment of outstanding wages under an alleged employment relationship. The Court upheld the arbitration clause in the 'independent contractor agreement' governed by Hong Kong law under which X was appointed as a 'product designer'. This case is noteworthy because the Court assessed the validity of the arbitration clause (that was governed by a foreign law with a foreign seat) under article 4 of Supplementary Provisions in Japan's Arbitration Act (AA), which provides that any arbitration agreement concluded after 1 March 2004 (the date that AA came into force) that covers individual labour-related disputes is invalid.[13] The exception in article 4 of the Supplementary Provisions is not commonly found in other jurisdictions.

Ultimately, as the Court found that X was an independent contractor and not an employee, the agreement between the parties was not a labour contract. This meant that article 4 of the Supplementary Provisions would not operate to invalidate the arbitration agreement. To determine whether to apply the aforementioned provision, the Court examined the following non-exhaustive factors to decide whether the contractual relationship between the parties was considered an employment contract: (1) the presence of constraints on working time and location; (2) the existence of a supervisory relationship; and (3) whether the remuneration constituted payment for services rendered.

Subsequently, in 26 February 2024, in ***X v United Airlines, Inc*** (the ***United Airlines*** case) in which United Airlines dismissed airline staff due to decreased demand caused by the covid-19 pandemic, the Tokyo District Court upheld an arbitration clause governed by US law and seated outside Japan.[14] In the process, the Court also considered article 4 of

the Supplementary Provisions but found that it did not apply because the labour contracts between the plaintiffs and United Airlines were entered into before 1 March 2004, the date when the AA came into force. The Court also held that such labour contracts were not contrary to Japan's public policy.

Article 4 of the Supplementary Provisions deems arbitration clauses invalid to protect employees at least 'for the time being' in view of the situation where the imbalance of power between workers and their employers, as arbitration was not widely used as a means of dispute resolution at the time the AA came into force. There have been court cases in which foreign employees have filed lawsuits in Japanese courts to challenge the purported termination of employment contracts with foreign employers despite the existence of arbitration clauses, arguing that the arbitration clauses were invalid on the basis of article 4 of the Supplementary Provisions.

However, the scope of application of article 4 of the Supplementary Provisions has not been settled yet, in particular with respect to arbitration clauses providing for a seat outside of Japan and governed by non-Japanese law. The courts in the ***Bitcoin*** and ***United Airlines*** cases both denied the application of article 4 of the Supplementary Provisions without discussing why article 4 was relevant to an arbitration clause governed by non-Japanese law and providing for a seat outside Japan. Some scholars argue that article 4 of the Supplementary Provisions is an issue of arbitrability and therefore the Japanese court should apply the law of the seat of the court, namely the AA, including article 4, regardless of the governing law or a seat of arbitration of the arbitration agreement. Others argue that article 4 is only relevant when labour disputes have a Japan nexus, such as employment services having been provided in Japan.

The Supreme Court of Japan has not yet been called upon to rule on this particular matter; however, employers seeking to employ individuals with a connection to Japan, such as those based in Japan, should be aware of the possibility that disputes may be brought before the Japanese courts under article 4 of the Supplementary Provisions. This would apply despite the fact that arbitration clauses of employment contracts are subject to the laws of a jurisdiction other than Japan and provide for a seat outside Japan.

Endnotes

1 https://www.cas.go.jp/jp/seisaku/kokusai_chusai/pdf/r06_sisin.pdf. ^ Back to section

2 https://www.cas.go.jp/jp/seisaku/kokusai_chusai/pdf/r6_kenkyukai_houkoku.pdf. ^ Back to section

3 https://www.moj.go.jp/EN/kokusai/m_kokusai06_00008.html. ^ Back to section

4 https://globalarbitrationreview.com/article/emerging-isds-trends-explored-in-tokyo. ^ Back to section

5 Supreme Court Judgment of 11 July 2024, Minshu, Vol. 78, Issue 3, p. 921. ^ Back to section

6 Tokyo District Court Judgment, 8 December 2010,***Hanrei Jiho***, No. 2116, p. 68. ^ Back to section

7 The multi-tiered dispute resolution clause in Elpida v NEC and Hitachi was as follows: ^ Back to section

8 Tokyo High Court Judgment, 22 June 2011, ***Hanrei Jiho***, No. 2116, p. 64. ^ Back to section

9 *International Research Corp PLC v Lufthansa Systems Asia Pacific Pte Ltd & Anor* [2014] 1 SLR 130 at [64]. ^ Back to section

10 *BBA v BAZ* [2020] 2 SLR 453 at [77]; ***BTN v BTP*** [2021] 1 SLR 276 at [70]. Both judgments referred to Jan Paulsson's 'Tribunal versus Claim' test as described in 'Jurisdiction and Admissibility' (2005) in ***Global Reflections on International Law, Commerce and Dispute Resolution***: ***Liber Amicorum in honour of Robert Briner*** (Gerald Aksen ***et al*** eds) (ICC Publishing, 2005). ^ Back to section

11 Tokyo High Court Judgment of 26 April 2023, ***Westlaw Japan***, 2023WLJPCA04266007.- ^ Back to section

12 Tokyo District Court Judgment of 20 October 2022, *D1-Law.com**Hanrei Taikei***-, 29073825. ^ Back to section

13 Arbitration Act (Act No. 138 of 2003), Supplementary Provisions (***Fusoku***), article 4: 'For the time being, any arbitration agreement concluded after this Act came into force that covers individual labor-related disputes arising in the future (meaning individual labor-related disputes as defined in Article 1 of the Act on the Promotion of the Resolution of Individual Labor-Related Disputes (Act No. 112 of 2001)) shall be deemed invalid'. ^ Back to section

14 Tokyo District Court Judgment of 26 February 2024, LEX/DB 25620317. ^ Back to section

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