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Japan

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1 Making Construction Projects

1.1 What are the standard types of construction contract in your jurisdiction? Do you have: (i) any contracts which place both design and construction obligations upon contractors; (ii) any forms of design-only contract; and/or (iii) any arrangement known as management contracting, with one main managing contractor and with the construction work done by a series of package contractors? (*NB* For ease of reference throughout the chapter, we refer to "construction contracts" as an abbreviation for construction and engineering contracts.)

For private construction works, a committee of architects and contractors (*minkan (nanakai) rengo kyotei koji ukeoi keiyaku yakkan iinkai*) (the 'Committee') published the 'General Conditions for Construction Contracts' ('GCCC') (amended in January 2023). Under these conditions, a contractor must perform the construction works in accordance with the design provided by the employer.

For private design-build works, the Japan Federation of Construction Contractors published the 'General Conditions for Design-Build Contracts' ('GCDB') (amended in January 2023). There are two types of GCDB: Type A; and Type B. According to Type A, an employer and a contractor must (i) first execute a contract for basic design works, and (ii) after completion of a basic design, enter into a main contract for detailed design construction. Under Type B, an employer and a contractor must (i) first execute a main design-build contract, and (ii) after completing the design for execution, enter into a 'confirmation' agreement to start the construction. Both types of GCDB require the parties to enter into another contract after the completion of the design, which means that the employer and the contractor may renegotiate a price for construction works. This is a unique mechanism compared to international practice in relation to design-build contracts.

For design and supervision services, the Committee published the 'General Conditions for Design Work and Supervision' (amended in August 2024).

For domestic engineering, procurement and construction works, the Engineering Advancement Association ('ENAA') published the 'ENAA General Conditions for Domestic Plant Construction Works' ('ENAA-Domestic') (amended in September 2020). The ENAA-Domestic is a turnkey contract under which a contractor undertakes design, procurement, construction and commissioning. The price under the ENAA-Domestic is a fixed lump-sum.

There is no arrangement known as management contracting in Japan, with one main managing contractor and with the construction work done by a series of package contractors.

1.2 How prevalent is collaborative contracting (e.g. alliance contracting and partnering) in your jurisdiction? To the extent applicable, what forms of collaborative contracts are commonly used?

Collaborative contracting refers to a contracting and project framework whereby the key parties cooperate on all aspects of the project, and share and manage information, risks and rewards based on the principles of mutual trust and gain. We understand it is a type of contract originated from common law countries, and there is no form of collaborative contracting in Japan. The Japanese government has been studying collaborative contracting to see whether it may be adopted to domestic public works, and the Ministry of Land, Infrastructure, Transport and Tourism published a study report in 2002 summarising how collaborative contracting is being utilised in overseas countries.[1]

1.3 What industry standard forms of construction contract are most commonly used in your jurisdiction?

The GCCC is the most widely used standard form for a domestic construction project between Japanese parties. Since the GCCC contains some unfamiliar provisions from an international standard perspective,[2] foreign companies tend to be reluctant to use the GCCC in their investment in construction projects in Japan.

For an international project involving a Japanese company, an international standard form is often used, notably FIDIC (International Federation of Consulting Engineers) contracts and international standard forms published by the ENAA.[3] FIDIC contracts are often used in Official Development Assistance projects funded by the Japan International Cooperation Agency ('JICA'), since the JICA adopts FIDIC contracts as general conditions of standard bidding documents for JICA-funded projects.

1.4 Are there any standard forms of construction contract that are used on projects involving public works?

For public construction works, the central government published the 'Public Work Standard Contract' ('PWSC') (amended in June 2022) as a set of general conditions that apply to public

construction works. Under the PWSC, a contractor must perform the construction works in accordance with the design provided by the employer.

There are no general conditions for public design-build works published by the central government.

There are some standard forms for specific public design-build works published by private industry associations. For example, the Japan Society of Civil Engineers published the 'General Conditions for Design-Build for Public Civil Works' (amended in April 2022) as a set of general conditions for the public design and construction civil works. Under these conditions, a contractor is obliged to prepare a design deliverable in accordance with the specifications provided by an employer and execute the construction in accordance with the design deliverable at a fixed lump-sum price.

1.5 What (if any) legal requirements are there to create a legally binding contract (e.g. in common law jurisdictions, offer, acceptance, consideration and intention to create legal relations are usually required)? Are there any mandatory law requirements which need to be reflected in a construction contract (e.g. provision for adjudication or any need for the contract to be evidenced in writing)?

'Freedom of contract' is proclaimed by Article 521 of the Civil Code (Act No. 89 of 1896):

> *Parties to a contract may freely decide the terms of the contract, subject to the restrictions prescribed by laws and regulations.*

Based on this principle, parties are free to agree, or not to agree, to any terms of the contract. However, a contract is void if it is *contra bonos mores* or inconsistent with the provisions of laws and regulations relating to public policy.[4]

There are no formal requirements on how to enter into a construction contract, as this is categorised as a consensual contract that requires only the agreement of the parties to enter into force. However, in practice, it is commonly understood that the construction contract will become effective only after it has been signed in writing by both parties.

The Construction Business Act (Act No. 199 of 1949) ('CBA') lists the items to be contained in a construction contract.[5] Although the CBA does not directly invalidate contract terms that violate the CBA, the Minister of Land, Infrastructure, Transport and Tourism or the prefectural governors will provide the parties, particularly certain large general contractors, with a notification or instruction to observe the CBA.

1.6 In your jurisdiction, please identify whether there is a concept of what is known as a "letter of intent", in which an employer can give either a legally binding or non-legally binding indication of willingness either to enter into a contract later or to commit itself to meet certain costs to be incurred by the contractor whether or not a full contract is ever concluded.

There is a concept of a 'letter of intent' in Japan. It is sometimes issued by an employer to a potential contractor to express its intention to enter into a contract. Most of which are issued as a non-binding letter and in most cases, it is clearly provided that the letter does not create a contractual relationship between the parties. However, any provisions provided in the letter of intent would be a basis of negotiation for a definitive contract and it is not practically easy to demand terms or conditions that are different from those under the letter of intent.

1.7 Are there any statutory or standard types of insurance which it would be commonplace or compulsory to have in place when carrying out construction work? For example, is there employer's liability insurance for contractors in respect of death and personal injury, or is there a requirement for the contractor to have contractors' all-risk insurance?

There is no standard type of insurance required by statute except for mandatory workers' accident compensation liability insurance. The GCCC, the GCDB and the ENAA-Domestic require a contractor to purchase and maintain insurance to cover an executed portion of work, materials, building equipment and other items. A contractor usually purchases all-risk insurance.

1.8 Are there any statutory requirements in relation to construction contracts in terms of: (a) labour (i.e. the legal status of those working on site as employees or as self-employed sub-contractors); (b) tax (payment of income tax of employees); and/or (c) health and safety?

The CBA provides 14 items to be stipulated in the construction contract, such as scope of work, contract price, commencement date and completion date, variation, *force majeure*, price adjustment, damages to third parties, defect liability, delay and damages, and dispute resolution. Labour, tax and health and safety are not legally required items to be stipulated in a construction contract.

1.9 Are there any codes, regulations and/or other statutory requirements in relation to building and fire safety which apply to construction contracts?

The contractor that undertakes the construction of the building is required to take certain certification and inspection measures under the Building Standards Act (Act No. 201 of 1950) and the Fire Service Act (Act No. 186 of 1948), etc. The contractor is also required to meet the requirements, if any, under local ordinances.

1.10 Is the employer legally permitted to retain part of the purchase price for the works as a retention to be released either in whole or in part when: (a) the works are substantially complete; and/or (b) any agreed defects liability period is complete?

There is no regulation as for retention, so long as the contract is a main contract between the principle employer and the main contractor. With regard to subcontracts, the main contractor is required to pay the full amount to the subcontractor within a certain period of time once the subcontracted work is completed and taken over by the main contractor (Articles 24(3) and 24(5) of the CBA). Retaining part of the subcontract price is permissible to the extent it complies with such requirements.

1.11 Is it permissible/common for there to be performance bonds (provided by banks and others) to guarantee the contractor's performance? Are there any restrictions on the nature of such bonds? Are there any grounds on which a call on such bonds may be restrained (e.g. by interim injunction); and, if so, how often is such relief generally granted in your jurisdiction? Would such bonds typically provide for payment on demand (without pre-condition) or only upon default of the contractor?

Under Japanese law, it is permissible for there to be performance

bonds. However, it is not common for a Japanese contractor to accept to provide performance bonds (except for public works). If the bonds are issued, most of them provide for payment on demand.

In some projects in which contractors provide performance bonds, some contractors apply for an injunctive relief to suspend an employer's call on bonds. There are some (but not many) decisions by which a Japanese court has issued an order to grant such application when the employer's call would constitute fraud or be baseless.

1.12 Is it permissible/common for there to be company guarantees provided to guarantee the performance of subsidiary companies? Are there any restrictions on the nature of such guarantees?

It is permissible for there to be company guarantees, but it is not so often that a Japanese contractor successfully persuades its parent company to issue the parent guarantee (except for public works). There is no restriction on the nature of such guarantee.

1.13 Is it possible and/or usual for contractors to have retention of title rights in relation to goods and supplies used in the works? Is it permissible for contractors to claim that, until they have been paid, they retain title and the right to remove goods and materials supplied from the site?

It is possible for the parties to agree that a contractor is entitled to retain titles to goods and supplies used in the works, unless and until they are indivisibly attached to uncompleted construction works, upon which many contracts provide that titles to goods and supplies are transferred to an employer. There are some contracts providing that an employer shall acquire all titles to goods and supplies once they are delivered to the site or upon completing all payments of such goods and supplies.

2 Supervising Construction Contracts

2.1 Is it common for construction contracts to be supervised on behalf of the employer by a third party (e.g. an engineer)? Does any such third party have a duty to act impartially between the contractor and the employer? If so, what is the nature of such duty (e.g. is it absolute or qualified)? What (if any) recourse does a party to a construction contract have in the event that the third party breaches such duty?

While not so common, it sometimes occurs that a third party (a design company) is retained by an employer as a supervisor to supervise the construction works. Unlike the engineer under the FIDIC form, such third party does not have a duty to act impartially; it is merely obliged to check whether the actual construction works are in accordance with the design documents. If a third party breaches its duty, an employer may seek for compensatory damages against such third party based on a contract between an employer and a third party.

2.2 Are employers free to provide in the contract that they will pay the contractor when they, the employer, have themselves been paid; i.e. can the employer include in the contract what is known as a "pay when paid" clause?

It is possible for the parties to agree that an employer will pay a contractor when the employer has been paid themselves. However, as for payment to subcontractors, it is subject to a regulation under the CBA and the Act against Delay in Payment of Subcontract Proceeds, Etc. to Subcontractors (Act No. 120 of 1956) ('J-ADPSPS').[6]

2.3 Are the parties free to agree in advance a fixed sum (known as liquidated damages) which will be paid by the contractor to the employer in the event of particular breaches, e.g. liquidated damages for late completion? If such arrangements are permitted, are there any restrictions on what can be agreed? E.g. does the sum to be paid have to be a genuine pre-estimate of loss, or can the contractor be bound to pay a sum which is wholly unrelated to the amount of financial loss likely to be suffered by the employer? Will the courts in your jurisdiction ever look to revise an agreed rate of liquidated damages; and, if so, in what circumstances?

The parties are free to agree on liquidated damages. Such agreement is valid to the extent the agreed amount is not contrary to public policy (Article 90 of the Civil Code). The agreement on liquidated damages does not hinder the right to demand performance or the right to terminate a contract (Article 420(2) of the Civil Code). It is commonly understood that a contractor is liable for paying liquidated damages only if the delay is attributable to the contractor.

3 Common Issues on Construction Contracts

3.1 Is the employer entitled to vary the works to be performed under the contract? Is there any limit on that right?

Parties are free to agree to a particular change/variation mechanism in the contract. The GCCC explicitly provides that the employer is entitled to order additional or extra works or changes in the works and, if such order is issued, the contractor makes a claim for a necessary adjustment to the contract price.

The GCCC also stipulates that a contractor is entitled to (i) request an adjustment to the contract sum (Article 29 of the GCCC), and (ii) claim 'damages' due to the employer's order for change from a private law perspective. It is not clear enough what 'damages' mean in a context of change to the work.

3.2 Can work be omitted from the contract? If it is omitted, can the employer carry out the omitted work himself or procure a third party to perform it?

It is permissible for the parties to agree that an employer may omit certain works from the contract. There is also no restriction under Japanese law that prohibits the employer from carrying out the omitted work himself or procuring a third party to perform it.

3.3 Are there terms which will/can be implied into a construction contract (e.g. a fitness for purpose obligation, or duty to act in good faith)?

It depends on the facts surrounding the formation of the contract. If any dispute occurs between the parties, the judge will take into account any circumstances before and after the formation of the contract and, in some cases, would recognise the implied terms or obligations.

3.4 If the contractor is delayed by two concurrent events, one the fault of the contractor and one the fault or risk of the employer, is the contractor entitled to: (a) an extension of time; and/or (b) the costs arising from that concurrent delay?

There is no specific provision under Japanese law or court precedent that addresses the consequence of the concurrent delay. The judge would consider whether, and to what extent, the contractor is entitled to an extension of time and/or the costs arising from that concurrent delay, taking into account the proportion of liability in both parties' delay.

3.5 Is there a statutory time limit beyond which the parties to a construction contract may no longer bring claims against each other? How long is that period and when does time start to run?

In Japan, some construction contracts do not provide a time period during which a contractor is required to make a claim. For example, the GCCC and the ENAA-Domestic do not stipulate a specific time period within which the contractor must make a claim.

Instead, a notice period is often provided for in construction contracts in Japan. However, even if a contractor fails to provide a notification within such period, there are no cases in which Japanese courts have held that the contractor consequently loses its right to make a claim.

The Civil Code provides a one-year notice period during which an employer is required to provide notice after it becomes aware of non-compliance.[7] Unless the employer provides notice within such period, the employer may not demand fulfilment of performance, reduction of remuneration, compensation for damages or termination.[8]

3.6 What is the general approach of the courts in your jurisdiction to contractual time limits to bringing claims under a construction contract and requirements as to the form and substance of notices? Are such provisions generally upheld?

Please refer to the answer to question 3.4 above.

3.7 Which party usually bears the risk of unforeseen ground conditions under construction contracts in your jurisdiction?

It is the employer who usually bears the risk of unforeseen ground conditions under construction contracts. The GCCC provides that, if the contractor discovers any unforeseeable obstruction to the construction work at the site, the contractor shall immediately notify the administrative architect of this in writing (Articles 16(1) and (2) of the GCCC). The GCCC also provides that, if the employer gives instructions to the contractor in writing, either party may ask the other party to make a claim for necessary change of the time for completion or a claim for necessary adjustment to the contract price.

3.8 Which party usually bears the risk of a change in law affecting the completion of the works under construction contracts in your jurisdiction?

It is the employer who usually bears the risk of a change in law. The GCCC provides that, if in a long-term contract the amount of the contract price corresponding to any portion of the work that shall have been executed after the first anniversary of conclusion of the contract is inappropriate and improper due to an enactment, revision or abrogation of any law, ordinance or regulation, either party may make a claim for a necessary adjustment to the contract price (Article 29(1)(f) of the GCCC).

3.9 Which party usually owns the intellectual property in relation to the design and operation of the property?

Copyrights to the design documents shall be vested in the architect who created them. Once the building is completed in accordance with the design documents, the copyright to the building shall be vested in the architect so long as the building meets the requirements of architectural works.

It depends on the contract as to which party usually owns or obtains such intellectual property rights. The GCDB allows the architect or contractor who actually made the design to keep the copyright, whereas the ENAA-Domestic is silent on this matter.

3.10 Is the contractor ever entitled to suspend works?

Japanese law does not allow a contractor to suspend works prior to completion. The GCCC entitles a contractor to suspend works in certain circumstances, such as the employer's delay in making advance or partial payment, impossibility of continuation of the work due to the employer's failure to make the site or the construction area available for use of the contractor, an extraordinary delay in work due to a cause attributable to the employer, and impossibility of execution of the work because of *force majeure* (Article 32(1) of the GCCC).

3.11 Are there any grounds which automatically or usually entitle a party to terminate the contract? Are there any legal requirements as to how the terminating party's grounds for termination must be set out (e.g. in a termination notice)?

The employer is entitled to terminate the contract without any cause before the completion of the work (Article 641 of the Civil Code). The contractor is also entitled to terminate the contract due to the events attributable to the employer (Articles 541 and 543 of the Civil Code).

Each standard form provides specific termination grounds of each party, respectively, such as breach of contract, lack of credibility for payment, abandonment of works and delay of progress that is not recoverable.

3.12 Do construction contracts in your jurisdiction commonly provide that the employer can terminate at any time and for any reason? If so, would an employer exercising that right need to pay the contractor's profit on the part of the works that remains unperformed as at termination?

As stated above, the employer is entitled to terminate the contract without any cause before the completion of the work (Article 641 of the Civil Code). In such case, the employer is required to pay compensation for loss or damage incurred by the contractor as a result of such termination (Article 641 of the Civil Code). There are many court cases that determined that

compensation for loss or damage means the contractor's profit on the works, including the part of the works that remains unperformed; however, a few court cases determined that compensation for loss or damage is limited to the contractor's profit on the works that were already performed as at termination.

Most construction contracts, including the GCCC, the GCDB and the ENAA-Domestic, provide for an employer's termination right for its own convenience, as well as the employer's obligation to pay compensation for loss or damage to the contractor. The scope of compensation is not clearly stated in those forms.

3.13 Is the concept of *force majeure* or frustration known in your jurisdiction? What remedy does this give the affected party? Is it usual/possible to argue successfully that a contract which has become uneconomic is grounds for a claim for *force majeure*?

There is a concept of '*force majeure*' but there is no concept of 'frustration' in Japan.

Although the term '*force majeure*' is used in the Civil Code,[9] the Civil Code does not provide a definition for '*force majeure*'. Most of the construction contracts used in Japan provide a definition for the term '*force majeure*'. For example, the GCCC defines '*force majeure*' as a natural or man-made event that is not attributable to either the employer or the contractor.

The remedy of *force majeure* is that one party is released from liability for delay in or non-performance of its obligations under a contract due to a *force majeure* event, which has a consequence equivalent to an extension of time. Japanese law does not provide a party's right to claim additional costs, but many Japanese standard form construction contracts, including the GCCC, the GCDB and the ENAA-Domestic, allow either party to claim for additional costs.

The fact that a contract has become uneconomic does not generally constitute a *force majeure* event. Rather, Japanese construction contract standard forms have a price adjustment clause separately from a *force majeure* clause.

3.14 Are parties, who are not parties to the contract, entitled to claim the benefit of any contractual right which is made for their benefit? E.g. is the second or subsequent owner of a building able to claim against the contractor pursuant to the original construction contracts in relation to defects in the building?

If both parties agree to grant the beneficiary right to a third party, such third party may claim a benefit. Also, a third party may bring a claim as a tort claim against either party.

3.15 On construction and engineering projects in your jurisdiction, how common is the use of direct agreements or collateral warranties (i.e. agreements between the contractor and parties other than the employer with an interest in the project, e.g. funders, other stakeholders, and forward purchasers)?

If the project is a project finance practice, it is common for lenders to enter into direct agreements. Direct agreements generally provide the prohibition of the contractor from amending the contract without lender's consent and the lender's step-in rights in the case of the employer's failure to perform its obligation under the contract.

3.16 Can one party (P1) to a construction contract, who owes money to the other (P2), set off against the sums due to P2 the sums P2 owes to P1? Are there any limits on the rights of set-off?

Under Japanese law, either party may set off against the sums due to the other party. There are some limitations on such rights (for example, set off against tort claims arising from wilful misconduct or set off against claims for compensation for loss or damage for death or injury is prohibited) but these limitations do not apply if the obligor acquires a claim corresponding to the relevant obligation from another person (Article 509 of the Civil Code).

3.17 Do parties to construction contracts owe a duty of care to each other either in contract or under any other legal doctrine? If the duty of care is extra-contractual, can such duty exist concurrently with any contractual obligations and liabilities?

The Civil Code does not specifically stipulate the contractor's required degree of performance.

There are two principles in relation to the obligor's required degree of performance. The principle of '*kekka saimu*' provides that, if an obligor commits to achieve certain results, for example, under a sales contract or a construction contract, but fails to achieve these results, the obligor should be liable for non-performance (like the 'fit for purpose' standard). Conversely, the principle of '*syudan saimu*' provides that, if an obligor is obliged to fulfil the duty of care of a good manager, for instance, under a mandate contract, the obligor is not liable for non-performance even if the obligor fails to achieve the results (like the 'due care and diligence' standard).

From a practical perspective, determining which standard applies depends on the nature of the works as well as the wording of the contract. For example, even if the text of the contract provides that the works by a contractor must be 'fit for purpose', if no documents stipulate the details of the 'purpose' (e.g. specifications or technical requirements) that are to be attached to the contract, an employer may not be able to hold a contractor liable for a breach of fitness for purpose.

3.18 Where the terms of a construction contract are ambiguous, are there rules which will settle how that ambiguity is interpreted?

There is no specific rule as to how the ambiguity is interpreted. Japanese courts would interpret the contract by exploring the parties' reasonable intention, which sometimes departs from the literal wording of the contract.

3.19 Are there any terms which, if included in a construction contract, would be unenforceable?

There are no terms that would become unenforceable upon being included in the contract, unless they are contrary to public policy (Article 90 of the Civil Code).

3.20 Where the construction contract involves an element of design and/or the contract is one for design only, are the designer's obligations absolute or are there limits on the extent of his liability? In particular, does the designer have to give an absolute guarantee in respect of his work?

There is no limitation on the extent of the designer's liability. Generally, the designer owes a duty of due care and diligence towards the employer, and if the designer breaches such duty, the designer is liable for compensating for loss or damage incurred by the employer.

3.21 Does the concept of decennial liability apply in your jurisdiction? If so, what is the nature of such liability and what is the scope of its application?

There is no equivalent concept of decennial liability in Japan, but there is a similar concept in the Act on the Promotion of Housing Quality Assurance (Act No. 81 of 1999), which provides that a seller or a contractor of a new residence is liable for defects in the main structural components for 10 years; if the defect is found, the seller or contractor is liable for remedying such defect for free.

4 Dispute Resolution

4.1 How are construction disputes generally resolved?

Litigation
In Japan, construction disputes are generally resolved by courts. No specialist construction court exists. Except for small claims, the District Courts are the first instance courts for commercial construction disputes.

Mediation
Mediation is also generally used to resolve construction disputes. The Tokyo/Osaka District Courts have a Building Dispute Department (*kenchiku-shuchu-bu*). Since housing complex 'defect' disputes are common in urbanised areas, these courts have established a special department to handle such disputes. Once filed, the court designates mediation panel members (*chotei-iin*) from its private list, encouraging the parties to settle the dispute amicably. The judges in charge of the case are the sole members of the panel. Parties are not entitled to designate their own panel members. Usually, listed members are retired architects, retired employees of construction/manufacturing companies and private practitioners. Since the majority of the claims are defect-related matters, the list does not include programme experts or quantum surveyors. In reality, programme experts and quantum surveyors are not chartered professionals in Japan.

Dispute adjudication board
The CBA establishes the construction dispute adjudication board (*Kensetsu-Funso-Shinsa-Kai*) ('KKFSK') as a government-sponsored alternative dispute resolution body.[10] The KKFSK is formulated mainly for domestic disputes, and around 40 cases were registered at the central KKFSK in 2019. However, it should be noted that the KKFSK strongly recommends amicable settlement rather than an issuance of an award based on adversarial procedures. That being said, the central KKFSK only issued three awards based on adversarial procedures in 2019, while the KKFSK settled 16 cases with '*Assen (expedited Chotei)*' and '*Chotei (quasi-mediation)*' during the same period of time. The KKFSK's procedure is significantly different from international arbitration – notably, there is no party-appointed arbitrator/mediator, no document disclosure and almost no witness examinations. There are no reports that any of the cases before the KKFSK were conducted in English.

Arbitration
Although arbitration is not a popular method of dispute resolution for domestic disputes, Japanese courts have sought to take an arbitration-friendly position. The Japan Commercial Arbitration Association is the national arbitration institution generally used for construction disputes in Japan. However, parties are free to choose any other foreign arbitration institution instead.

4.2 Do you have adjudication processes in your jurisdiction (whether statutory or otherwise) or any other forms of interim dispute resolution (e.g. a dispute review board)? If so, please describe the general procedures.

There is no statutory adjudication process in Japan. Court-supported meditators generally take the role by rendering determination. The mediators' determination is final and binding unless parties expressly disagree with it (Articles 17 and 18 of the Civil Mediation Act (Act No. 222 of 1951)).

4.3 Do the construction contracts in your jurisdiction commonly have arbitration clauses? If so, please explain how, in general terms, arbitration works in your jurisdiction.

Arbitration is rarely used for domestic disputes. On the other hand, if one party to a construction contract is a Japanese company and the other party is a foreign company, arbitration is usually chosen as a dispute resolution mechanism.

4.4 Where the contract provides for international arbitration, do your jurisdiction's courts recognise and enforce international arbitration awards? Please advise of any obstacles (legal or practical) to enforcement.

Japanese courts usually recognise and enforce international arbitration awards so long as the award is rendered in Member States of the New York Convention. There are no unique obstacles to enforcement in Japan.

4.5 Where a contract provides for court proceedings in your jurisdiction, please outline the process adopted, any rights of appeal and a general assessment of how long proceedings are likely to take to arrive at: (a) a decision by the court of first jurisdiction; and (b) a decision by the final court of appeal.

A civil litigation may be commenced by a plaintiff by filing a complaint with a court. After receiving the complaint and a writ of summons from a court, a defendant files an answer with a court. After that, each party submits its argument, rebuttals and evidence several times. At the last stage, the examination of witnesses takes place. After that, a judgment is issued. In general, it takes around one to two years until a judgment is issued by the first instance court.

Japan's court system is a three-trial system, and a losing party may file an appeal (*koso*) and final appeal (*jokoku*). It generally takes around two to three years after the complaint is filed until the judgment becomes final and binding.

4.6 Where the contract provides for court proceedings in a foreign country, will the judgment of that foreign court be upheld and enforced in your jurisdiction? If the answer depends on the foreign country in question, are there any foreign countries in respect of which enforcement is more straightforward (whether as a result of international treaties or otherwise)?

It depends on the country where the judgment is issued. Article 118 of the Code of Civil Procedure (Act No. 109 of 1996) provides certain requirements for the judgment by a foreign court to be recognised and enforced in Japan: (i) the jurisdiction of the foreign court is recognised pursuant to laws and regulations, conventions, or treaties; (ii) the defeated defendant has been served (excluding service by publication or any other service similar thereto) with the requisite summons or order for the commencement of litigation, or has appeared without being so served; (iii) the content of the judgment and the litigation proceedings are not contrary to public policy in Japan; and (iv) a guarantee of reciprocity is in place. Whether these requirements are satisfied depends on each case, and it is not possible to specify the specific foreign country in which enforcement is more straightforward.

4.7 Do you have any special statutory remedies and/or dispute resolution processes in your jurisdiction for building safety-related claims?

There are no special statutory remedies and/or dispute resolution processes for building safety-related claims in Japan.

Endnotes

1 https://www.mlit.go.jp/kisha/kisha02/01/010801_.html

2 Article 33(I) of the GCCC provides that, upon termination of the contract, the parties shall discuss and settle the account based on the assumption that the employer takes over the completed portions and the inspected materials. This provision is relatively ambiguous compared to international standard form contracts, such as FIDIC contracts (Articles 15.3, 15.4 and 16.4).

3 See, e.g., 'ENAA Model Form: International Contract for Process Plant Construction', 'ENAA Model Form: International Contract for Power Plant Construction' and 'ENAA Model Form: International Contract for Engineering, Procurement and Supply for Plant Construction'.

4 Article 90 of the Civil Code.

5 Article 19(1) of the CBA.

6 Article 24-3(1) of the CBA provides that, after receiving payment for the work completed or payment after completion of all work, the main contractor is required to pay to the subcontractor a subcontract price that is equivalent to the amount of work completed within one month or within as short a period as possible after receiving payment from the employer.

Article 24-5(1) of the CBA further provides that, regardless of the subcontractor's receipt of payments from the employer, the date of payment for the subcontract price for subcontracts in which the main contractor is a Special Construction Business Operator (*tokutei-kensetsu-gyo-sha*) (i.e. a construction business operator that retains the subcontractor and the aggregate amount of the subcontract prices exceeds 40,000,000 JPY (in case of architectural and construction business, 60,000,000 JPY)) shall be fixed as within 50 days after the date of application by the subcontractor and within as short a period as possible.

Also, the J-ADPSPS applies to the services other than the construction work (e.g. design work, material manufacturing work). Under Article 2-2(1) of the J-ADPSPS, the date of payment of the subcontract proceeds shall be fixed within 60 days, and moreover within as short a period as possible, from the day on which the main contractor receives the work from the subcontractor, regardless of whether or not the main contractor inspects the work in detail. Article 2-2(2) of the J-ADPSPS further provides that the date of payment of the subcontract proceeds shall be deemed to be (i) the date on which a main contractor receives the work from a subcontractor when the date of payment was not fixed, or (ii) the day prior to the date on which 60 days from the day on which a main contractor receives the work from the subcontractor have elapsed when the date of payment of the subcontract proceeds was fixed in violation of Article 2-2(1) of the J-ADPSPS.

7 *Ibid.*, Article 637(I).

8 *Ibid.*

9 See, e.g., Article 419(III) of the Civil Code (n. 2).

10 Article 25 of the CBA (n. 33).

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