

Japan Arbitration Update: New JCAA Rules – Comparison of Key Asian Arbitral Institutions

INTRODUCTION

As [we reported recently](#), the Japan Commercial Arbitration Association (JCAA) published new Commercial Arbitration Rules earlier this year. The new JCAA Rules apply to all arbitrations commenced on or after 1 February 2014.

This note compares the new JCAA Rules to the latest rules of three other major institutions popular with parties in Asia: SIAC (the Singapore International Arbitration Centre), HKIAC (the Hong Kong International Arbitration Centre), and the ICC (International Chamber of Commerce):

- (a) SIAC Rules (5th edition, 1 April 2013);
- (b) HKIAC Administered Arbitration Rules (2013); and
- (c) ICC Arbitration Rules (2012).

The new JCAA Rules include a number of provisions intended to bring the Rules up-to-date with revisions to the rules of other institutions. It is hoped that the revised Rules will attract more parties to arbitrate in Japan.

SUMMARY

This summary table highlights the extent to which the new JCAA Rules are in line with recent trends in international arbitration and the adoption of modern procedures by major institutions in Asia.

In particular, the new JCAA Rules now include provisions dealing with multi-party and/or multi-contract arbitrations, the appointment of emergency arbitrators in cases requiring urgent interim relief, and the use of expedited procedures in low value and/or limited complexity cases.

	JCAA	SIAC	HKIAC	ICC
Emergency Arbitrator	YES	YES	YES	YES
Expedited Procedure	YES	YES	YES	NO
Consolidation	YES	NO	YES	YES
Joinder	YES	YES	YES	YES

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DISTINGUISHING FEATURES

While the above table demonstrates the broad uniformity across the rules of the major institutions on issues such as multi-party arbitration and the appointment of emergency arbitrators, there remain differences between the procedures of the main institutions. In particular, the distinguishing features of JCAA arbitration include:

- (a) the option to use 'med-arb' procedures – i.e. mediation of a dispute subject to arbitration proceedings with the same person appointed as both mediator and arbitrator;
- (b) no Terms of Reference stage (in contrast to the ICC Rules);
- (c) no provision for scrutiny of draft awards (in contrast to the ICC Rules and the SIAC Rules); and
- (d) a comparatively limited panel of arbitrators, which is considered by some in the Tokyo market to be relatively domestic and opaque in its constitution.

A detailed comparison and further commentary on the rules of each institution is set out below.

FURTHER INFORMATION

If you would like further information on any aspect of this note, please contact a person mentioned below.

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This note is written as a general guide only. It should not be relied upon as a substitute for specific legal advice.

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	Japan Commercial Arbitration Association (JCAA)	Singapore International Arbitration Centre (SIAC)	Hong Kong International Arbitration Centre (HKIAC)	International Chamber of Commerce International Court of Arbitration (ICC)
Offices	The JCAA is based in Tokyo, and has offices in other major Japanese cities.	SIAC's headquarters are in Singapore. SIAC also has an office in Mumbai, India.	HKIAC is based in Hong Kong. There are no regional centres.	The ICC's headquarters are in Paris. The ICC also has a regional centre in Hong Kong and an office in Singapore.
Procedure	The tribunal is empowered to direct and control the arbitration proceedings (Rule 37.1). The tribunal is required to treat the parties equally and give each party sufficient opportunity to state and defend its case (Rule 37.2). The tribunal must also use reasonable efforts to resolve the dispute expeditiously (Rule 27.3).	The tribunal has a broad discretion to determine the procedure to be followed in the arbitration, but is required to conduct the arbitration in a manner that ensures the "fair, expeditious, economical and final determination of the dispute" (Rule 16).	The tribunal has a broad discretion to determine the procedure to be followed in the arbitration, but is required to adopt suitable procedures in order to avoid unnecessary delay or expense, provided such procedures ensure equal treatment of the parties and afford them a reasonable opportunity to present their case (Article 13.1).	Subject to the ICC Rules, the tribunal has discretion as to how to conduct proceedings (Article 19). The tribunal and the parties are required to make every effort to conduct the arbitration in an expeditious and cost-effective manner (Article 22). Note that arbitrations under the ICC Rules have an additional Terms of Reference procedural stage.
Confidentiality	JCAA arbitral proceedings are required to be held in private, and all records of the proceedings are closed to the public (Rule 38.1). The parties, their counsel, the tribunal, the JCAA, and other relevant persons are prohibited from disclosing facts related to or learned through the proceedings, except where disclosure is required by law, court proceedings or other justifiable grounds (Rule 38.2).	The parties and the tribunal are required to keep all matters relating to the arbitration and the award confidential (Rule 35.1). Limited exceptions to the prohibition on disclosure are set out at Rule 35.2. Note that SIAC may publish any award with the names of the parties and other identifying information redacted (Rule 28.10).	The parties, the tribunal, any experts, witnesses or secretary of the tribunal are prohibited from disclosing (subject to limited exceptions) any information relating to the arbitration or an award (Article 42). Note that, provided no party objects, HKIAC may publish an anonymised version of the award (Article 42.5).	There is no automatic confidentiality obligation under the ICC Rules. However, upon the request of a party, the tribunal may make orders concerning the confidentiality of the proceedings or any other matters in connection with the arbitration. The tribunal may also take measures for protecting trade secrets and confidential information (Article 22.3).
Number of arbitrators	If the parties do not notify the JCAA in writing of their agreement on the number of arbitrators within four weeks of receipt by the respondent of the Request for Arbitration, the number shall be one (Rule 26.1). Either party may, within this period, request that such number shall be three (Rule 26.2).	Unless the parties have agreed otherwise (or the Registrar considers that the dispute warrants the appointment of three arbitrators), the default number of arbitrators is one (Rule 6.1).	In the absence of party agreement, HKIAC will decide whether a sole arbitrator or three arbitrators will be appointed (Article 6.1).	Where the parties have not agreed on the number of arbitrators, the ICC Court will appoint a sole arbitrator unless it considers that the dispute warrants the appointment of three arbitrators (Article 12.2).
Restrictions on arbitrators	Arbitrators must be independent and impartial (Rule 24.1). There are no restrictions on the nationality of arbitrators, but (if it appoints the arbitrator) the JCAA will respect a request that the arbitrator should be a different nationality to the parties (Rules 27.3 and 28.6).	Arbitrators must be independent and impartial (Rule 10.1). There are no restrictions on the nationality of arbitrators.	Arbitrators must be independent and impartial (Article 11.1). As a general rule, where the parties are of different nationalities, a sole arbitrator or the presiding arbitrator may not have the same nationality as any party (Article 11.2). This rule may be displaced, provided neither party objects (Article 11.3).	Arbitrators must be independent and impartial (Article 11.1). A sole arbitrator or the president of the tribunal may not be of the same nationality as either of the parties (Article 13.5).

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Appointment of arbitrators	<p>Arbitrator(s) shall be appointed by agreement of the parties (Rule 25.2). In the absence of party agreement, the JCAA Rules specify the procedure.</p> <p>If a sole arbitrator is to be appointed, the parties shall jointly appoint the arbitrator and notify the JCAA within two weeks of receipt by the respondent of the Request for Arbitration (Rule 27.1), or (if Rule 26.1 applies) within two weeks of the Rule 26.1 deadline (Rule 27.2). If the appointment is not made within this time limit, the JCAA shall appoint the arbitrator (Rule 27.3).</p> <p>If three arbitrators are to be appointed, each party shall appoint one arbitrator and notify the JCAA within three weeks of receipt by the respondent of the Request (Rule 28.1), or (if Rule 26.2 applies) within three weeks of receipt of notice of the Rule 26.2 determination (Rule 28.2). If the appointment is not made within this time limit, the JCAA will appoint the arbitrator (Rule 28.3). The two arbitrators shall jointly appoint and notify the JCAA of the third arbitrator within three weeks of receipt of the notice of appointment of the two arbitrators (Rule 28.4). If the appointment is not made within this time frame, the JCAA will appoint the third arbitrator (Rule 28.5).</p> <p>Similar provisions apply for the appointment of three arbitrators in a multi-party arbitration (Rule 29). If either the claimant(s) or respondent(s) fail to notify the JCAA of the appointment of an arbitrator, the JCAA shall appoint all three arbitrators (Rule 29.7).</p> <p>All party appointments are subject to confirmation by the JCAA (Rule 25.3).</p>	<p>Any agreement between the parties to appoint an arbitrator shall be treated as an agreement to nominate an arbitrator (Rule 6.2). All nominations are subject to appointment by the President (Rule 6.3).</p> <p>If a sole arbitrator is to be appointed, the parties may make a joint nomination (Rule 7.1). If the parties cannot agree on a joint nomination or if either party so requests, the appointment will be made by the President (Rule 7.2).</p> <p>If three arbitrators are to be appointed, each party shall nominate one arbitrator (Rule 8.1). If a party fails to make a nomination, the President will appoint an arbitrator on its behalf (Rule 8.2). Unless the parties have agreed otherwise, the presiding arbitrator will be appointed by the President (Rule 8.3).</p> <p>In the case of multi-party arbitrations where three arbitrators are to be appointed, the Claimant(s) shall jointly nominate one arbitrator and the Respondent(s) shall jointly nominate one arbitrator. If both nominations are not made within 28 days of receipt by the Registrar of the Notice of Arbitration, the President shall appoint all three arbitrators (Rule 9.1).</p> <p>In the case of multi-party arbitrations where one arbitrator is to be appointed, all parties shall agree on an arbitrator. If a joint nomination is not made, the President shall appoint the arbitrator (Rule 9.2).</p>	<p>If a sole arbitrator is to be appointed, the parties shall jointly designate the sole arbitrator (Article 7.1). If the parties fail to make such designation within 30 days of (i) receipt by the Respondent of the Notice of Arbitration; or (ii) the decision of HKIAC that a sole arbitrator is to be appointed (as applicable), HKIAC will appoint the sole arbitrator (Article 7.2).</p> <p>If three arbitrators are to be appointed, each party shall designate one arbitrator. If a party fails to make such designation, HKIAC will appoint the arbitrator. The two party-appointed arbitrators will designate a third presiding arbitrator. Failing such designation, HKIAC will appoint the presiding arbitrator (Article 8.1).</p> <p>In the case of multi-party arbitrations where three arbitrators are to be appointed, the Claimant(s) shall designate an arbitrator and the Respondent(s) shall designate an arbitrator (Article 8.2(a)). The two party-appointed arbitrators will designate a third presiding arbitrator. Failing such designation, HKIAC will appoint the presiding arbitrator. If the Claimant(s) or Respondent(s) fail to designate an arbitrator, HKIAC may appoint all three arbitrators (Article 8.2(c)).</p> <p>All designations of an arbitrator are subject to confirmation by HKIAC (Article 9).</p>	<p>Where the parties have agreed to the appointment of a sole arbitrator, they may nominate the sole arbitrator by agreement. If the parties fail to make such nomination within 30 days after receipt by the respondent of the Request for Arbitration, the ICC Court shall appoint the sole arbitrator (Article 12.3).</p> <p>Where the parties have agreed to the appointment of three arbitrators, each party shall nominate an arbitrator in the Request and the Answer, respectively. If a party fails to nominate an arbitrator, the ICC Court will make the appointment (Article 12.4). Unless the parties have agreed otherwise, the third presiding arbitrator will be appointed by the Court (Article 12.5). If the parties have agreed to a procedure for the appointment of a third arbitrator, the nomination must be made within 30 days of appointment of the co-arbitrators – otherwise the ICC Court will appoint the presiding arbitrator (Article 12.5).</p> <p>If (in the absence of party agreement) the ICC has determined that three arbitrators shall be appointed, each party shall nominate an arbitrator. If a party fails to nominate an arbitrator the appointment will be made by the ICC Court (Article 12.2).</p> <p>In the case of multi-party arbitrations, the claimant(s) shall jointly nominate one arbitrator and the respondent(s) shall jointly nominate one arbitrator (Article 12.6). In the absence of a joint nomination, the ICC Court may appoint each member of the tribunal and designate one as president (Article 12.8).</p> <p>All nominations of an arbitrator are subject to confirmation by the ICC Court (Article 13).</p>

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Emergency arbitrator provisions	<p>Parties may apply for emergency measures (i) prior to constitution of the tribunal; or (ii) when any arbitrator has ceased to perform his duties (Rule 70.1). An application for emergency measures must include (amongst other things) details of the measures sought and a statement supporting their necessity (Rule 70.2). The Request for Arbitration must be submitted within 10 days after the date of the application (Rule 70.7).</p> <p>The JCAA will use reasonable efforts to appoint a sole emergency arbitrator within two business days from receipt of the application (Rules 71.1 and 71.4). Immediately following his appointment, the emergency arbitrator shall make a procedural schedule (Rule 72.2) and may, if considered necessary, hold a one day hearing (Rule 72.3). The emergency arbitrator must make a decision on the emergency measures within two weeks of his appointment (Rule 72.4).</p> <p>Any emergency measures ordered shall be binding on the parties and are deemed to be interim measures granted by the tribunal when it is constituted. The emergency measures remain in effect until modified, suspended or terminated by the tribunal (Rule 72.6). The emergency measures will cease to be effective if (i) the tribunal is not constituted within three months from the grant of emergency measures; (ii) the arbitral proceedings are terminated; or (iii) a Request for Arbitration is not submitted within 10 days after the date of the application for emergency measures (Rule 72.6). Unless the parties agree otherwise, an emergency arbitrator may not act as an arbitrator in any future arbitration relating to the dispute.</p>	<p>Parties may apply for emergency interim relief prior to the constitution of the tribunal (Rule 26.2). The emergency arbitrator procedures are contained in Schedule 1 to the SIAC Rules.</p> <p>An application for emergency relief may be made at the same time as or after the Notice of Arbitration is filed. The party seeking such relief must provide written notice of the relief sought, the basis of entitlement to such relief and the reasons it is required on an emergency basis.</p> <p>If the application is granted, the SIAC President will endeavour to appoint an emergency arbitrator within one day of receipt of the application and filing fees. The emergency arbitrator shall establish a timetable in respect of the application within two business days of his appointment.</p> <p>The emergency arbitrator is empowered to order or award any interim relief that he deems necessary. This is binding on the parties, but shall cease to be binding if the tribunal is not constituted within 90 days. Unless the parties agree otherwise, an emergency arbitrator may not act as an arbitrator in any future arbitration relating to the dispute. Once the tribunal is constituted it may reconsider, modify or terminate the interim award or order.</p> <p>According to figures provided by SIAC, it received 19 applications to appoint an emergency arbitrator in 2013. All the applications were accepted. As at 31 December 2013, SIAC had accepted 30 emergency arbitrator applications in total since the procedure was introduced in 2010.</p>	<p>Parties may apply for emergency interim relief prior to the constitution of the tribunal (Article 23.1). The emergency arbitrator procedures are set out in Schedule 4 to the HKIAC Rules.</p> <p>An application for emergency relief may be made at the same time as or after the Notice of Arbitration is filed. The application must include (amongst other things) details of the relief sought, the basis of entitlement and the reasons it is required on an emergency basis.</p> <p>If the application is granted, HKIAC will seek to appoint an emergency arbitrator within two days of receipt of the application and the deposit (details of which are stated on the HKIAC website).</p> <p>The emergency arbitrator may conduct the proceedings in the manner he considers appropriate, taking into account the urgency inherent in the proceedings and ensuring that each party has a reasonable opportunity to be heard on the application. The emergency arbitrator shall make a decision, order or award on the application within 15 days after the date on which HKIAC transmitted the file to the emergency arbitrator.</p> <p>The emergency decision has the same effect as an interim measure granted by a tribunal and is binding on the parties. The emergency decision will cease to be binding if the tribunal is not constituted within 90 days. An emergency decision may be modified, suspended or terminated by the emergency arbitrator or the tribunal. Unless the parties agree otherwise, an emergency arbitrator may not act as an arbitrator in any future arbitration relating to the dispute.</p>	<p>A party requiring urgent interim or conservatory measures prior to the constitution of the tribunal may apply for the appointment of an emergency arbitrator (Article 29.1). The Emergency Arbitrator Rules are contained in Appendix V to the ICC Rules.</p> <p>The application for the appointment of an emergency arbitrator must be made prior to the transmission of the file to the tribunal and may be made before submission of the Request for Arbitration (although the Request must be submitted within 10 days after the application). The application must include (amongst other things) a statement of the emergency measures sought and the reasons relief is sought on an emergency basis.</p> <p>If the application is granted, the President of the ICC Court will appoint normally appoint an emergency arbitrator within two days of receipt by the ICC Secretariat of the application. The emergency arbitrator will normally establish a timetable for the proceedings within two days of transmission of the file by the ICC. The emergency arbitrator shall conduct the proceedings in the manner he considers appropriate, taking into account the nature and urgency of the application. The emergency arbitrator's decision must be made within 15 days of transmission of the file. The tribunal may modify, terminate or annul the emergency arbitrator's order (Article 29.2). The emergency arbitrator may not act as arbitrator in any arbitration relating to the dispute.</p> <p>The emergency arbitrator provisions under the ICC Rules will not apply if: (a) the arbitration agreement was concluded before the date on which the Rules came into force; (b) the parties opt out of the provisions; or (c) the parties have agreed to another pre-arbitral procedure that provides for the granting of conservatory, interim or similar measures.</p>

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Expedited procedure	<p>Parties may agree that any dispute (irrespective of value) shall be conducted in accordance with the JCAA's expedited procedures, provided written notice of the parties' agreement is given to the JCAA within two weeks of the respondent's receipt of the notice of Request for Arbitration (Rule 75.1).</p> <p>Alternatively, under Rule 75.2, expedited procedures will apply for any case where the value of the claimant's claim(s) does not exceed JPY 20,000,000 (approx. US\$ 200,000). This rule will be displaced if, within two weeks from the respondent's receipt of the notice of the Request for Arbitration:</p> <ul style="list-style-type: none"> (a) the JCAA is notified in writing of the parties' agreement not to submit their dispute to expedited procedures; (b) the JCAA is notified in writing of the parties' agreement not to submit their dispute to expedited procedures; or (c) a counterclaim or set-off defence is submitted with a value exceeding JPY 20,000,000 (except where the parties have agreed to submit this to expedited procedures). <p>Where expedited procedures are conducted, time limits apply for the submission of any counterclaim or set off defences and the parties are prohibited from amending their claims/defences. The proceedings shall be conducted by a sole arbitrator, to be appointed in accordance with Rule 79. For arbitrations conducted under the expedited procedures, the hearing may not exceed one day and the arbitrator shall make an award within three months of his appointment. Third party joinder and consolidation are also not permitted.</p>	<p>Proceedings may be conducted in accordance with SIAC's Expedited Procedure (a) where the amount in dispute does not exceed S\$5 million; (b) upon agreement of the parties; or (c) in cases of exceptional urgency (Rule 5.1). The application for use of the Expedited Procedure must be made before constitution of the tribunal.</p> <p>SIAC received 36 applications for Expedited Procedure in 2013, of which 22 were accepted. SIAC has not provided any guidance on what constitutes "exceptional urgency". According to SIAC, as at May 2013 no applications for Expedited Procedure on the grounds of "exceptional urgency" had been accepted.</p> <p>Where the President determines that the Expedited Procedure shall apply the arbitration will be conducted in accordance with the procedure set out at Rule 5.2: (i) the Registrar may shorten any time limits under the SIAC Rules; (ii) a sole arbitrator will be appointed; (iii) an oral hearing will be held; (iv) the award will be made within six months of constitution of the tribunal; and (v) the tribunal shall state the reasons for the award in summary form.</p>	<p>Proceedings may be conducted in accordance with HKIAC's Expedited Procedure (a) where the amount in dispute does not exceed HK\$25 million; (b) upon agreement of the parties; or (c) in cases of exceptional urgency (Article 41.1). The application for use of the Expedited Procedure must be made before constitution of the tribunal. Where HKIAC grants an application for use of the Expedited Procedure, the arbitration shall be conducted in accordance with the HKIAC Rules, subject to amendments set out at Article 41.2:</p> <ul style="list-style-type: none"> (a) a sole arbitrator will be appointed (except where the arbitration agreement provides for three arbitrators and the parties do not agree to the appointment of a sole arbitrator); (b) HKIAC may shorten the time limits provided for in the HKIAC Rules; (c) after submission of the Answer to the Notice of Arbitration, the parties shall in principle only be entitled to submit one round of written statements; (d) the tribunal shall decide the dispute on paper, unless it decides that it is appropriate to hold a hearing; (e) the award shall be made within six months of transmission of the file to the tribunal; and (f) unless the parties have agreed that no reasons are to be given, the tribunal shall state the reasons for the award in summary form. <p>Note that unless the parties agree otherwise, the Expedited Procedure shall not apply to consolidated arbitration proceedings or a single arbitration concerning claims made under multiple contracts (Article 41.3).</p>	<p>Unlike the JCAA Rules, SIAC Rules and HKIAC Rules, the ICC Rules do not include provision for the use of an Expedited Procedure. However, Article 38 does permit the parties to agree (subject to the approval of the tribunal) to shorten the time limits set out in the Rules.</p>

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Multi-party and multi-contract arbitrations	<p>The JCAA Rules permit joinder of third parties to arbitration proceedings as a respondent if: (a) all parties and the third party have agreed in writing; or (b) all claims are made under the same arbitration agreement and (if the joinder occurs after constitution of the tribunal) the third party consents (Rule 52.1). However, the tribunal may refuse permission to join a third party if it finds that joinder will delay the proceedings or on any other reasonable grounds (Rule 52.4).</p> <p>A tribunal may, on the written request of a party, consolidate existing proceedings with proceedings in respect of which no tribunal has been constituted if: (a) all parties agree in writing; (b) the claims arise under the same arbitration agreement and any party who was not a party to the existing proceedings consents in writing; or (c) all claims arise between the same parties, and (i) give rise to the same or similar questions of fact or law; (ii) the arbitration agreement provides for the dispute to be referred to the JCAA; and (iii) the proceedings are capable of being conducted in a single proceeding.</p>	<p>The SIAC Rules permit joinder of third parties to an arbitration provided (i) such person is a party to the arbitration agreement; and (ii) they consent in writing (Rule 24(b)).</p> <p>The SIAC Rules do not contain any provision for the consolidation of arbitration proceedings.</p>	<p>The HKIAC Rules permit a third party to be joined to an arbitration on the application of either (i) a party to the arbitration; or (ii) the third party, provided that, prima facie, the additional party is bound to an arbitration agreement under the HKIAC Rules giving rise to the arbitration (Article 27). Note that where the additional party is joined to the arbitration prior to confirmation of the tribunal, all parties are deemed to have waived their right to designate an arbitrator and HKIAC shall appoint the tribunal (Article 27.11).</p> <p>HKIAC may consolidate two or more arbitrations: (a) upon the agreement of the parties; (b) where all claims are made under the same arbitration agreement; or (c) where the claims are made under more than one arbitration agreement, a common question of law or fact arises in all the arbitrations, the rights to relief claimed are in respect of or arise out of the same transaction or series of transactions, and HKIAC finds the arbitration agreements to be compatible (Article 28.1). Unless the parties agree or HKIAC decides otherwise, the arbitrations shall be consolidated into the first commenced arbitration (Article 28.4). All parties are deemed to have waived their right to designate an arbitrator and HKIAC shall appoint the tribunal (Article 28.6).</p> <p>Claims arising under more than one arbitration agreement may be made in a single arbitration provided that: (a) all parties to the arbitration are bound by each arbitration agreement; (b) a common question of law or fact arises under each arbitration agreement; (c) the rights to relief claimed are in respect of or arise out of the same transaction(s); and (d) the arbitration agreements under which those claims are made are compatible (Article 29.1).</p>	<p>Under the ICC Rules an application for the joinder of a third party may be made to the ICC Secretariat (Article 7.1). Unless all parties agree, such application may not be made after the appointment of any arbitrator.</p> <p>In the case of multi-party arbitrations, any party may make claims against any other party (Article 8).</p> <p>The ICC Rules permit claims arising out of more than one contract to be made in a single arbitration, irrespective of whether such claims are made under one or more arbitration agreement(s) (Article 9).</p> <p>The ICC Court may consolidate two or more arbitrations: (a) upon agreement of the parties; (b) where all the claims are made under the same arbitration agreement; or (c) where the claims are made under more than one arbitration agreement, the arbitrations are between the same parties, the disputes in the arbitrations arise in connection with the same legal relationship, and the Court finds the arbitration agreements to be compatible (Article 10).</p> <p>Unless the parties agree otherwise, the arbitrations shall be consolidated into the first commenced arbitration.</p>

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Costs and interest	<p>The tribunal's and JCAA's fees are determined in accordance with the Regulations for Arbitrator's Remuneration and the Administrative Fee Regulations, respectively (Rule 83).</p> <p>The parties are required to pay the JCAA a deposit on the tribunal's fees and other expenses, in the manner and within the time limit fixed by the JCAA (Rule 85).</p> <p>The tribunal may determine and apportion the costs of the arbitration (including reasonable legal fees) between the parties, taking into account the parties' conduct, the determination on the merits, and any relevant circumstances (Rule 83.2).</p>	<p>The tribunal's and SIAC's fees are determined according to SIAC's Schedule of Fees (Rule 30.1). The Registrar will fix an advance on fees to be split between the parties equally (unless the Registrar directs otherwise) (Rule 30.2). Parties are jointly and severally liable for the costs of the arbitration (Rule 30.6).</p> <p>Unless the parties have agreed otherwise, the tribunal will apportion the costs of the arbitration (including the tribunal's fees and expenses and SIAC's administrative fees and expenses) between the parties (Rule 31).</p> <p>The tribunal has the authority to make an award that the legal or other costs of a party shall be paid by another party (Rule 33). If such an award is made and the tribunal does not fix the amount of the costs to be paid, the costs may be assessed by the Registrar of SIAC (Schedule of Fees).</p>	<p>The parties may agree whether the tribunal's fees are to be determined in accordance either with an hourly rate as set out in Schedule 2 to the HKIAC Rules or a schedule of fees based on the sum in dispute as set out in Schedule 3 (Article 10.1). If the parties do not agree on the basis of determination, HKIAC shall decide the applicable method. The HKIAC's fees are determined in accordance with the sum in dispute (Schedule 1).</p> <p>Following receipt of the Notice of Arbitration, HKIAC will ask the parties to deposit an equal amount as an advance on costs (Article 40.1). HKIAC may require the parties to make supplementary deposits during the course of the arbitration (Article 40.3).</p> <p>The tribunal shall determine the costs of the arbitration (including the tribunal's fees and expenses, HKIAC's fees, the parties' legal costs and the reasonable expenses of witnesses and experts) in its award (Article 33.1) and may apportion all or part of the costs between the parties (Article 33.2).</p>	<p>The ICC Court will fix an advance on costs to cover the fees and expenses of the arbitrators and the ICC administrative fees. The advance on costs is payable in equal shares between the claimant and the respondent (Article 36). The amount of the advance is subject to readjustment at any time during the arbitration.</p> <p>The final award shall fix the costs of the arbitration (including the fees and expenses of the arbitrators, the ICC administrative expenses and the reasonable legal and other costs of the parties) and decide how such costs shall be apportioned between the parties (Article 37).</p>
Challenge of awards	JCAA awards are final and binding on the parties (Rule 59).	A SIAC award is final and binding upon the parties. The SIAC Rules exclude the possibility of any appeal. By agreeing to arbitration under the SIAC Rules, the parties irrevocably waive their rights to any form of appeal, review or recourse to any judicial authority (Rule 28.9).	An HKIAC award is final and binding on the parties. Pursuant to the HKIAC Rules, the parties are deemed to have waived their rights to any form of recourse or defence in respect of enforcement and execution of any award (Article 34.2).	ICC awards are final and binding on the parties. By submitting a dispute to arbitration under the ICC Rules, the parties are deemed to have waived their right to any form of recourse (Article 34.6).

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Comments & other considerations	<p>Non-Japanese parties may wish to bear in mind that for arbitrations seated in Japan, any associated court proceedings will be conducted in Japanese.</p> <p>In addition, in contrast to Singapore and Hong Kong, Japan has a civil law system. While this may seem unfamiliar to parties more used to the common law systems of former English colonies, Japan's legal system is based in large part on German law and therefore bears some resemblance to European civil law jurisdictions.</p> <p>The recent amendments to the JCAA Rules bring the institution firmly in line with modern trends in international arbitration. It is hoped that the new Rules will serve to make Japan a more attractive destination for international arbitration.</p> <p>It is also worth noting that the new Rules amended the provisions concerning 'med-arb', about which international parties may previously have had some concerns. While the option of med-arb with the same person acting as arbitrator and mediator remains, the new Rules restrict the ability of the mediator/arbitrator to consult separately with parties and also include provision for mediation with a third party mediator to be appointed. These amendments should serve to address to some extent concerns about the impact on an arbitrator's impartiality where they have previously conducted an unsuccessful mediation between the parties.</p>	<p>SIAC is an increasingly popular alternative to ICC arbitration in Singapore. Unlike ICC arbitration, the SIAC Rules do not impose an additional Terms of Reference procedural stage.</p> <p>In common with the ICC Rules, the SIAC Rules provide that an award may not be rendered without approval by the relevant institutional authority. Under Rule 28.2, the draft award must be submitted to the SIAC Registrar for scrutiny within 45 days of closing of the proceedings. In theory, this process should ensure that awards are of high quality and less susceptible to annulment. However, it can lead to delays in the publication of the award.</p> <p>Unlike the HKIAC Rules and ICC Rules, the SIAC Rules do not contain any provision for the consolidation of arbitration proceedings. In multi-party / multi-contract situations, parties contemplating SIAC arbitration should consider including express provision for consolidation in their arbitration agreement.</p>	<p>Until 2008 HKIAC did not, strictly speaking, offer its own set of procedural rules for institutional arbitration. Rather, HKIAC arbitrations were governed by UNCITRAL Arbitration Rules as modified by the HKIAC Procedures for the Administration of International Arbitration.</p> <p>In September 2008, HKIAC issued its own set of institutional arbitral rules. It is worth noting that HKIAC Rules remain characterized by a "light touch" in keeping with their UNCITRAL heritage. HKIAC Rules were modeled on the Swiss Rules of International Arbitration, themselves based on UNICTRAL Rules which, designed primarily for ad hoc arbitration, do not provide for any institutional involvement in the arbitration process. The "light" administrative involvement prescribed by the HKIAC Rules contrasts with the stronger institutional approach of institutions such as the ICC and SIAC.</p>	<p>ICC arbitrations contain an additional procedural stage – within two months of receipt of the file from the ICC Secretariat, the tribunal is required to draw up Terms of Reference (Article 23). This is an exhaustive summary of the claims and issues in dispute. While this stage can result in a more focused arbitration, it is often contentious and can be a cause of delay. It is also worth noting that the ICC Rules prohibit new claims being introduced by any party after the Terms of Reference have been signed or approved by the ICC Court – unless the tribunal authorizes such new claims (Article 23.4).</p> <p>A further source of potential delay in ICC arbitrations is the scrutiny of draft awards by the ICC Court. ICC awards cannot be rendered unless approved by the ICC Court.</p> <p>The ICC Rules do not impose an automatic confidentiality obligation on parties. Parties contemplating ICC arbitration in jurisdictions where the procedural law also does not prohibit disclosure of information relating to the arbitration may wish to consider including a confidentiality provision in their arbitration agreement.</p> <p>As the ICC Rules do not include any expedited procedure, parties contemplating arbitration where the sums involved and/or number and complexity of issues in dispute are likely to be limited, may wish to consider (i) selecting an institution which provides for the use of an expedited procedure; and (ii) agreeing to the use of such procedure in their arbitration agreement.</p>

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Model clause	All disputes, controversies or differences which may arise between the parties hereto, out of or in relation to or in connection with this Agreement shall be finally settled by arbitration in (name of city) in accordance with the Commercial Arbitration Rules of the Japan Commercial Arbitration Association.	Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in Singapore in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC Rules") for the time being in force, which rules are deemed to be incorporated by reference in this clause. The tribunal shall consist of [<i>one/three</i>] arbitrator(s). The language of the arbitration shall be [<i>English</i>].	Any dispute, controversy or claim arising out of or relating to this contract, including the existence, validity, interpretation, performance, breach or termination thereof or any dispute regarding non-contractual obligations arising out of or relating to it shall be referred to and finally resolved by arbitration administered by the Hong Kong International Arbitration Centre under the Hong Kong International Arbitration Centre Administered Arbitration rules in force when the Notice of Arbitration is submitted. The seat of arbitration shall be [<i>Hong Kong</i>]. The number of arbitrators shall be [<i>one/three</i>]. The arbitration proceedings shall be conducted in [<i>English</i>].	All disputes arising out of or in connection with the present contract shall be submitted to the International Court of Arbitration of the International Chamber of Commerce and shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.