

Arbitration System for Intellectual Property

Japan Patent Office
Asia-Pacific Industrial Property Center, JIII

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MATERIAL

1. UNCITRAL Model Law on International Commercial Arbitration

(As adopted by the United Nations Commission on International Trade Law on 21 June 1985,
and as amended by the United Nations Commission on International Trade Law on 7 July
2006)

2. WIPO ARBITRATION AND MEDIATION CENTER

3. Arbitration Center for Industrial Property (Guidebook)

(Japan Federation of Bar Association [Logo]

& Japan Patent Attorneys Association [Logo]

4. THE JAPAN COMMERCIAL ARBITRATION ASSOCIATION COMMERCIAL ARBITRATION RULES

5. Arbitration Law

(Law No.138 of 2003)

6. The Act on Promotion of Use of Alternative Dispute Resolution

(Act No. 151 of 2004)

1. Expansion and activation of an alternative dispute resolution procedure

(1) Intellectual property rights are at present a core of the knowledge-driven economy and their efficient use is important. Intellectual property rights potentially lose their value by dispute so that business enterprises lower the value of their basic assets.

Dispute of intellectual property rights may go to court for solution, but examples in which parties to a dispute submit the dispute to a mediation, arbitration, or other alternative dispute resolution (ADR) procedure have been increasing in recent years.

(2) The size and kind of disputes that take place in society are widely varied, but it is highly significant as a person close to justice to prevent disputes from escalating by intensifying the resolution activity of various disputes according to the content of cases and the circumstances of the parties. An alternative dispute resolution (ADR) procedure is different from a strict court procedure and capable of flexible response such as solutions utilizing user's initiative, closed-door solutions while keeping privacy and trade secrets, simple and quick solutions at low cost, well-thought-out solutions utilizing knowledge of experts in various fields, and solutions in line with actual conditions without limiting to pros and cons of rights and duty covered by law.

As ADR in Japan there are various forms such as mediation procedures in courts and arbitration, mediation, conciliation, and consultation out of court mainly operated by administrative agencies, private organizations, bar associations, patent attorney organizations and the like.

On the other hand, internationally the United Nations and the like have intended to develop a mechanism of quickly solving international commercial disputes as economic activities have been globalized and informatized. Private business type ADR has been developed in various foreign countries under a competitive environment

After considering these circumstances, in addition to expanding the judicial function to make access to justice easier, we have intended to expand and intensify various ADR activities by utilizing each characteristic of them as an attractive option for solving disputes along with court litigation.

2. ADR Act

(1) The "Act on Promoting of Use of Alternative Dispute Resolution" (called the ADR Act) (Act No. 151 of 2004) was made public on December 1, 2004 and went into effect on April 1, 2007.

(2) This act is aimed at making easier selection of procedures suitable to solve disputes between parties by enhancing the function of the alternative dispute resolution procedure and at properly delivering citizens their rights and interests.

It specifically includes as main contents;

- i) defining a basic principle of the alternative dispute resolution procedure,
- ii) defining responsibility of the nation and the like for the alternative dispute resolution procedure,
- iii) establishing a system in which the Minister of Justice authorizes if among alternative dispute resolutions the arbitration, mediation and conciliation for settlement by private enterprises meet a certain requirement in order to keep its business going appropriately, and
- iv) providing special effects such as the interruption of prescription, injunction of a litigation procedure and the like on the arbitration business of settlements by the private enterprise authorized in the procedure in section iii above.

3. Arbitration Law (Law No. 138 of 2003)

(1) Background

Law concerning arbitration in Japan was set forth in last part of the old Civil Procedure Code (Articles 786-805) when established. When the old Civil Procedure Code was amended in 1996, the articles concerning the arbitration was separated to be independent, but the content itself was not practically amended. On the other hand, a legal system such as the Model Law on International Commercial Arbitration (hereinafter referred to as “Model Law”) established in 1985 by the UN Commission on International Trade Law (UNCITRAL) has been developed in various foreign countries. Consequently a new arbitration law has been in effect in Japan since March 1, 2004 (Law No. 138 of 2003).

(2) Features

In this arbitration law, the relationship with courts, interruption of prescription and examination procedure have been newly set forth and developed.

As a rule, arbitration eligibility is construed as a case which can be settled between parties as a civil dispute (Article 13, Section 1) and a case with disputes of intellectual property right, except where procedures to the Patent Office are covered. Therefore, when validity of patents becomes an issue, the case has to be replaced with a form of a civil dispute such as “to seek an arbitral award of not infringing the patent right with item X since this patent is invalid.”

An arbitration agreement means the agreement to solve disputes by arbitration and as once parties agree, even if one party wants to solve the dispute in courts during the arbitration, his appeal will be dismissed unless the other party agrees (Article 14).

A written form is requested for formalities of the arbitration agreement, but use of e-mail for the arbitration agreement is also construed as use of a written form (Article 14, Section 4) so that recent development of communication is reflected in formalities.

An arbitration award is construed as having the same effect as final and conclusive judgment (Article 45, Section 1) and has the power to enforce the judgment, and parties can ask the court to decide its enforcement (Article 46).

The arbitration procedure will be commenced at a time when a notice granted to arbitration is received by the other party unless a different agreement exists between the parties (Article 29, Section 1). Request in the arbitration procedure is construed as having the effect of interruption of prescription (Article 29, Section 2). However, when the arbitration procedure concerned is closed without having an arbitral award, interruption of prescription does not take effect (conditional clause in ditto Section), so that attention has to be paid to the situation in which interruption of prescription takes effect when the arbitration procedure is closed regardless of the party's wishes (ditto Section, Number 4 and others) except in the case in which both parties agree with close the arbitration (Article 40, Sections 2, Number 1-3).

When the arbitral tribunal approves needs, the arbitral tribunal or parties can request a tribunal to examine evidence (Article 35). The arbitral tribunal cannot examine evidence, which imposes the obligation to a third party. Furthermore, parties can request an additional arbitral award on items on which the arbitral award was requested but not judged (Article 43).

4. Activation of ADR system

(1) Utilization of expert view

In order to intend appropriate use of the alternative dispute resolution in the field of intellectual property right, patent attorneys in addition to attorneys work as an agent of parties to process the proceedings of alternative dispute resolution and to intend widely and properly utilizing their knowledge as an expert for fast alternative dispute resolution.

Table 1 Scope of service set forth in the Patent Attorney Law

Procedure (service)		Industrial property right (Patent law, utility model law, design law and trademark law)	Use right of circuit layout (Law concerning a layout of integrated circuit of semiconductor)	Specific unfair competition (Unfair Competition Prevention Law)	Copyright (Copyright law)
Act as agent to proceed with public offices		○ Patent Attorney Law, Article 4, Section 1	×		×
Act as agent to proceed an application to a customs office for injunction of import.		○ Patent Attorney Law, Article 4, Section 2, Number 1	○ Patent Attorney Law, Article 4, Section 2, Number 1	○ (according to amendment of Unfair Competition Prevention Law, Article 2, Section 1, Number 1-3, Law on Custom Tariff Rate 18.03.01) Patent Attorney Law, Article 4, Section 2, Number 1	○ Patent Attorney Law, Article 4, Section 2, Number 1
Act as agent to proceed an alternative dispute resolution	Arbitration	○ Patent Attorney Law, Article 4, Section 2, Number 2	○ Patent Attorney Law, Article 4, Section 2, Number 2	○ Patent Attorney Law, Article 4, Section 2, Number 2	×→○ Patent Attorney Law, Article 4, Section 2, Number 2
	Mediation and conciliation	△→○ Patent Attorney Law, Article 4, Section 2, Number 2	△→○ Patent Attorney Law, Article 4, Section 2, Number 2	△→○ Patent Attorney Law, Article 4, Section 2, Number 2	×→○ Patent Attorney Law, Article 4, Section 2, Number 2
Act as agent and consultant for agreement such as license and the like		○ Patent Attorney Law, Article 4, Section 3	○ Patent Attorney Law, Article 4, Section 3	○ (Confidentiality in technology) Patent Attorney Law, Article 4, Section 3	○ Patent Attorney Law, Article 4, Section 3
Serve as counsel in infringement litigation and the like		○ Patent Attorney Law, Article 5, Section 1	○ Patent Attorney Law, Article 5, Section 1	○ Patent Attorney Law, Article 5, Section 1	×
Act as agent in litigation for injunction of decision		○ Patent Attorney Law, Article 6, Section 1			
Act as agent for infringement litigation		○ Patent Attorney Law, Article 6-2	○ Patent Attorney Law, Article 6-2	○ Patent Attorney Law, Article 6-2	×

(Quoted from Tokugikon No. 237)

(2) WIPO Arbitration and Mediation Center

The WIPO Arbitration and Mediation Center in Geneva, Switzerland was established in 1994 as the sole international institution to solve disputes concerning intellectual property through an alternative dispute process.

Specifically, subjects covered include disputes concerning the agreement (for example, license of patents and software, agreement with concurrency of identical trademarks, agreement with manufacture or research and development of drugs and the like) and a field not related to the agreement (patent infringement and the like). A party can select an applicable law, a venue and a language in the arbitration proceedings.

The WIPO Arbitration and Mediation Center provides the mediation, arbitration, expedited arbitration (arbitration procedure conducted in a short period of time and at low cost) and mediation in combination with arbitration (when the mediation fails, the arbitration is used in combination with the mediation).

Both parties agree to implement the arbitration decision without delay under the rule of WIPO. The international arbitration decision is enforced in a domestic trial based on the New York Convention. At present more than 120 countries are parties to this Convention.

Comparison of WIPO Arbitration with WIPO Expedited Arbitration

Procedural stage	WIPO arbitration	WIPO expedited arbitration
Request for arbitration	May be accompanied by Statement of Claim	Must be accompanied by Statement of Claim
Answer to the Request	Submit within 30 days from receipt of Request for Arbitration	Submit within 20 days from receipt of Request of Arbitration Must be accompanied by Statement of Defense
Arbitral tribunal	One or three arbitrators	One arbitrator
State of claim	Submit within 30 days following notification of establishment of Tribunal	Provided with Answer to the Request for Arbitration
Statement of defense (including counterclaim)	Within 30 days after notification of establishment of Tribunal or of Statement of Claim (whichever is later)	Provided with Answer to the Request for Arbitration
Reply to counterclaim (if any)	Submit within 30 days after receipt of Statement of Defense	Submit within 20 days after receipt of Statement of Defense
Hearings	Date, time and venue to be set by Tribunal	Conduct within 30 days after receipt of Answer to the Request for Arbitration
Closure of proceedings	Within 9 months after transmittal of Statement of Defense or establishment of Tribunal (whichever is later)	Within 3 months after transmittal of Statement of Defense or establishment of Tribunal (whichever is later)
Final award	Within 3 months of closure of proceedings	Within in 1 month of closure of proceedings
Costs	Fixed by the Center in consultation with parties and Tribunal	Fixed if amount in dispute is up to US\$ 10 million

(Quoted from *WIPO Publication No. 779(J)*)

Common feature of many intellectual property disputes	Court litigation	Arbitration
International	<ul style="list-style-type: none"> ✓ Multiple proceedings under the law are required, with risk of conflicting results ✓ Possibility of actual or perceived home court advantage of party that litigates in its own country 	<ul style="list-style-type: none"> ✓ A single proceeding under the law determined by parties ✓ Arbitral procedure and nationality of arbitrator can be neutral to law, language and institutional culture of parties
Technical	<ul style="list-style-type: none"> ✓ Decision maker might not have relevant expertise 	<ul style="list-style-type: none"> ✓ Parties can select arbitrator(s) with relevant expertise
Urgent	<ul style="list-style-type: none"> ✓ Procedures are often drawn-out ✓ Injunctive relief is available in certain jurisdictions 	<ul style="list-style-type: none"> ✓ Arbitrator (s) and parties can shorten the procedure ✓ WIPO arbitration may include provisional measures and does not preclude seeking court-ordered injunction
Require finality	<ul style="list-style-type: none"> ✓ Possibility of appeal 	<ul style="list-style-type: none"> ✓ Limited appeal option
Confidentiality, trade secrets and risk to reputation	<ul style="list-style-type: none"> ✓ Public proceedings 	<ul style="list-style-type: none"> ✓ Proceedings and award are confidential

(Quoted from *WIPO Publication No. 779(J)*)

(3) Japan Intellectual Property Arbitration Center

Both the Japan Federation of Bar Association (JFBA) and the Japan Patent Attorneys Association jointly established and opened the “Arbitration Center for Industrial Property Protection” in April, 1998. Since then, amendments to the Patent Attorney Law changed the kind of work by patent attorneys, in which service of the representation agreement and the like concerning buying and selling copyright and confidentiality in technology has been added (see Figure 2) so that the Center has been renamed as the “Japan Intellectual Property Arbitration Center” to cover overall intellectual property.

Specifically the Center does the service on mediation, arbitration, judgment and consultation for disputes concerning intellectual properties such as patent right, model utility right, design right, trademark right, copyright, seed and seedling right and right on JP domain names and the like.

“The Japan Intellectual Property Arbitration Center” accepts cases for allegation in Tokyo, Osaka, Nagoya and Fukuoka, and as a rule administration service on cases accepted is carried out in Tokyo, the Kansai area or Nagoya in order to provide convenience to applicants and respondents.

The Center also cooperates and has ties with various institutions associated with intellectual property at home and abroad including the cooperation agreement with WIPO.
<http://www.jp.adr.gr.jp>

(4) Arbitration Tribunals in the world

The followings are the major arbitration institutions in other countries. The table below lists foreign ADR institutions having the agreement with the Japan Commercial Arbitration Association

Table 2 Institutions with the arbitration agreement

Organization name	Effective date (Year/Months/Day)
The American Arbitration Association (AAA)	1952.9.16
The Arbitration Tribunal of the Federation of Indian Chambers of Commerce and Industry	1955.5.23
The Commercial Arbitration Tribunal of the Federation of Pakistan Chambers of Commerce and Industry	1956.6.19
The Inter-American Commercial Arbitration Commission	1958.8.5
The Court of Arbitration at the Bulgarian Chamber of Commerce and Industry	1961.7.6
The Court of Arbitration attached to the Hungarian Chamber of Commerce	1961.11.13
Arbitration Institute of the Stockholm Chamber of Commerce	1962.8.9
The Netherlands Arbitration Institute	1962.11.30
The Arbitration Committee of the Central Chamber of Commerce of Finland	1967.7.28
The Court of Arbitration for Foreign Trade attached to The Chamber of Commerce of the Republic of Cuba	1973.2.23
The London Court of International Arbitration (LCIA)	1973.5.8
The Korean Commercial Arbitration Board	1973.10.26
The Office of the Arbitration Tribunal attached to The Board of Trade of Thailand	1975.9.1
Italian Association for Arbitration	1976.6.28
The Indonesian National Board of Arbitration	1980.6.19
Commercial Arbitration Chambers, Ghana	1980.10.16
The Zurich Chamber of Commerce	1983.6.9
Regional Centre for Arbitration Kuala Lumpur	1984.2.1
British Columbia International Commercial Arbitration Centre	1988.4.12
The Cairo Regional Centre for International Commercial Arbitration	1990.4.19
The Arbitration Association of the Republic of China	1990.6.11
The Scottish Council for Arbitration	1991.3.27
The International Court of Arbitration, International Chamber of Commerce (ICC)	1991.10.7
Hong Kong International Arbitration Centre	1992.10.5
Singapore International Arbitration Centre	1992.11.11
The Swiss Arbitration Association	1994.2.1
Australian Centre for International Commercial Arbitration	1994.11.29
The Court of Arbitration at the Polish Chamber of Commerce	1995.5.29
German Institution of Arbitration	1995.6.15
The International Commercial Arbitration Court at The Chamber of Commerce and Industry of the Russian Federation	1995.9.27
The Foreign Trade Court of Arbitration attached to The Yugoslav Chamber of Economy	1996.8.26
The Court of International Commercial Arbitration attached to the Chamber of Commerce and Industry of Romania	1996.8.27
The Arbitration Court attached to the Economic Chamber of the Czech Republic and Agricultural Chamber of the Czech Republic	1997.6.12
The Permanent Court of Arbitration attached to The Chamber of Commerce and Industry of Slovenia	1997.7.15
The Chartered Institute of Arbitrators(CIA)	1997.12.8
The Arbitration Office, Ministry of Justice, Thailand	1997.12.12
WIPO Arbitration and Mediation Center	1998.1.1

The Chamber of National and International Arbitration of Milan	1998.4.16
Hong Kong Institute of Arbitrators Limited	1999.5.10
The Arbitration and Mediation Center of the Santiago Chamber of Commerce	1999.6.8
Singapore Mediation Centre	2000.11.20
The China International Economic and Trade Arbitration Commission	2002.3.7
Vietnam International Arbitration Center	2003.9.16
The Mongolian National Arbitration Court at the Mongolian National Chamber of Commerce and Industry	2006.3.10
The Beijing Arbitration Commission	2008.1.25

(Quoted from the website of the Japan Commercial Arbitration Association).

For example, AAA has more than 40 branches in America. AAA has not received financial assistance from the government or any particular business association. There have recently been a series of case laws and statutes confirming the importance of arbitration in commercial disputes. This situation has enabled AAA to take a vital role in the settlement of various commercial disputes, especially for construction or insurance companies.

ICC in Paris, which is famous for having such commercial regulations as INTERCOMS, also deals with a wide variety of arbitration cases from all over the world. It is a common practice at the time of the making of an international contract to create a provision in the contract regarding arbitration according to the rule of ICC. ICC, with more than 7,000 members in more than 100 countries, deals with about a hundred arbitration cases a year.

LCIA, established in 1892, deals with 40 arbitration cases a year.

In the Asian and Oceanic Region, the above arbitration institutes have continued to take an important role in the settlement of various international disputes in the area.

5. Option for resolution of dispute other than court litigation

(1) Mediation

Mediation is a system in which a mediator cooperates as a fair third party to solve disputes between parties and helps to reach a mutually satisfactory settlement, and mediation is always under the control of the parties to solve the dispute.

Opinion and judgment of the mediator do not bind the parties to accept an outcome, but when the parties agreed with the outcome after considering the opinion and judgment of the mediator, they are bound by the settlement agreement. Mediation can be said to be a very valuable means to solve disputes in the field of intellectual property in terms of reaching a fast and satisfactory solution rather than resulting in an unyielding argument and proof with a heavy burden

(2) Arbitration

Arbitration is a system to solve disputes in which parties accept as given to relegate neutral judgment not to a court but to an arbitrator as a third party and agree to carry out the judgment of the arbitrator so that his judgment has the same effect as the final and conclusive judgment. The award can be enforced after an enforcement decision by the court is obtained (Arbitration Law, Articles 13, 14, 45 and 46).

As different from court litigation proceedings, the arbitration procedure has merits to solve disputes faster since the proceedings can be carried out behind closed-doors, hearings and examination can be concentrated on and repetition of the proceedings is not planned.

Particularly in the field of intellectual property right, protection of incorporeal substances such as invention, device, design, trademark, trade secret, copyright and the like are covered so that as the extent of rights and infringing articles becomes difficult to identify, not only a high level of expertise not found in general civil lawsuits is demanded in solving the disputes, but also in some cases both parties might want a reasonable but indecisive solution behind closed doors. The arbitration can be said to be a means to fit in solving these disputes of intellectual property right.

Even if an arbitration agreement is not reached, such an approach is available as contents of the dispute are well reviewed during the mediation proceedings and both parties subsequently agree to go to an arbitration and move to the arbitration proceedings and obtain the arbitral award, which is secured to have enforcement of the decision.

The arbitration law in Japan was wholly amended in 2003 and the new arbitration law went into effect in 2004.

Since the role close to that of a judge is given to the mediator and arbitrator, they are asked to have a high level of neutrality and logicity with no leaning towards one particular party at all. The mediator and arbitrator cannot accept cases of the mediation and arbitration, which may possibly cause conflict of interest concerning their daily business operation.

(3) Method of solving extra-judicial dispute other than mediation and arbitration.

There are “consultation” and “conciliation” as methods of solving extra-judicial disputes other than mediation and arbitration. “Consultation” is generally the action of listening to and discussing with another for his opinion in order to decide things, whereas “conciliation” is the action in which a third party listens to opposite opinions between the parties and then recommends a settlement to the parties.

However, since the intellectual property right is an incorporeal substance and knowledge of

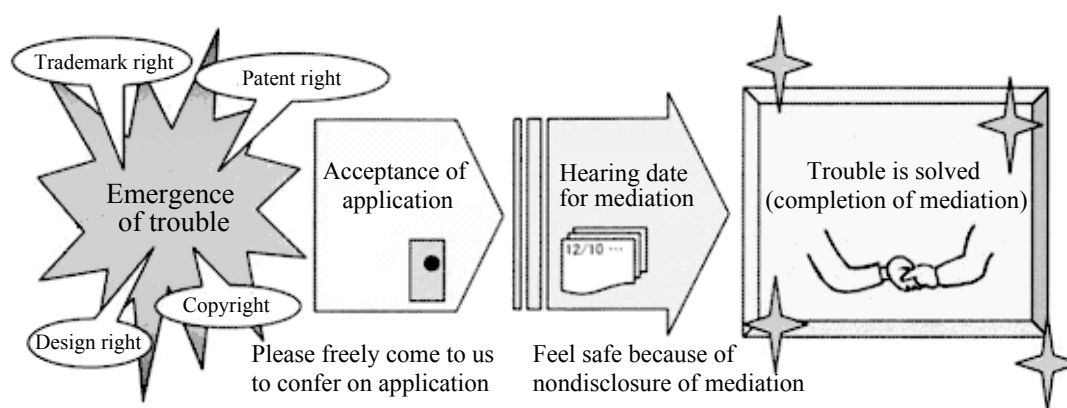
expertise is required in discussion of disputes, mediation and arbitration are generally utilized as a means of the alternative dispute resolution.

6. Kinds of ADR

There are three ADRs: a judicial ADR, a government ADR and a civil ADR.

(1) Judicial ADR

There are the civil lawsuit and the civil mediation in courts as a typical method of solving disputes concerning civil affairs. Lawsuit is a system in which after a judge listens to a claim of both parties and investigates evidence of their claims, he decides which claim is correct following the law. On the other hand, mediation is aimed at intending to solve disputes after both parties agree to apply to a mediation and one of the alternative dispute resolution (ADR) procedures. Civil mediation can be widely used to solve immediate disputes such as requesting debt repayment and vacating a house, as well as disputes of intellectual property right.



Civil mediation proceeds by a **mediation committee** composed of one judge and two or more mediation members. The **mediation member**, which is a key player in this mediation committee, is composed of a person with good sense and selected from the private sector. The mediation member needs to have broad knowledge and experience in order to respond to various legal problems when solving disputes and would give an opinion as an expert with expertise in disputes in the field of intellectual property right (Quoted from the website of the Supreme Court of Japan and modified in part to match the content of this text).

(2) Government ADR

Government ADR includes the mediation and arbitration of labor disputes by the Committee on Labor Affairs, the mediation and arbitration of solving disputes over pollution by the Environmental Dispute Coordination Committee and the mediation and arbitration of contract agreements for construction work by the Dispute Review Board in Public Construction Work. However, government ADR does not handle intellectual property.

(3) Civil ADR

There is the Japan Intellectual Property Arbitration Center as an institution of a civil ADR concerning the intellectual property, and the Center handles approximately 20 cases annually. In addition to this Center, there is the Conciliation and Arbitration Center by Japan Federation of Bar Associations for civil ADR, and this Center handles approximately 960 cases including 6 cases concerning intellectual property rights in 2006.

7. Merits of ADR

(1) Fast and flexible the proceedings independent of trial

Parties involved easily understand a competence level of the mediator and arbitrator so that after mutual trust of the parties with the mediator and arbitrator is established, the proceedings do not end up in seeking a compromise in which claims of both parties are simply added and divided by two, but allow for finding an appropriate solution based on actual facts.

When parties are a corporation, there is a merit to make corporate approval of the proceedings easier. Such a favorable environment allows for friendly faster solution of disputes by other than court litigation.

(2) Reasonable solution by expert

Since both the mediator and arbitrator have high expertise, they as the mediator and arbitrator can step in their evaluation of cases based on their own view, for example, predicting an outcome in subsequent court litigation if the meditation failes to produce agreement followed by litigation, and propose persuasive solutions. That is, parties can be guided to an appropriate solution of disputes in a form of consent by both parties.

(3) Confidentiality due to nature of nondisclosure

Parties generally do not like to let a third party know there is a dispute. At present almost all court decisions concerning intellectual property rights have been disclosed on the website of the Supreme Court of Japan. When the current situation is considered in which society pays attention to the filing of lawsuits themselves, ADR can meet the desire of the parties involved by solving disputes behind closed doors.

8. Disadvantages of ADR

(1) Requirement of agreement by both parties

There may be little room to utilize the mediation when parties are an enterprise with adequate

staff in the department of intellectual property and capable of negotiating themselves to solve disputes, when parties are competitors of each other and there is no room to bargain at all, or when parties want at any rate to decide which is right no matter what results are obtained.

An arbitration has a disadvantage in that the arbitration cannot be applied unless both parties agree (agreement to use the arbitration in dispute resolution). A mediation also has a disadvantage in that an mediation procedure cannot be commenced unless the other party agrees to go to the mediation.

(2) Lack of binding power in mediation

The mediator can propose a solution plan for disputes if both parties agree to go to the mediation, but it is up to the parties to decide whether its proposal is acceptable. When there is no room to compromise, the parties may subsequently file court litigation.

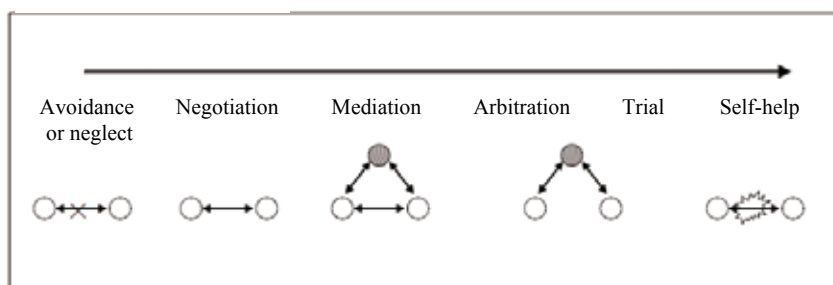
(3) Distrust caused by nondisclosure

So far, as ADR relies on an institution for dispute resolution, assurance of its neutrality and fairness is a logical premise, but to the contrary, merits of nondisclosure could cause distrust of neutrality and fairness.

9. About mediation

(1) Mediation is a procedure, in which a mediator demonstrates a solution plan to parties to a dispute and tries to solve the dispute by settlement between the parties involved.

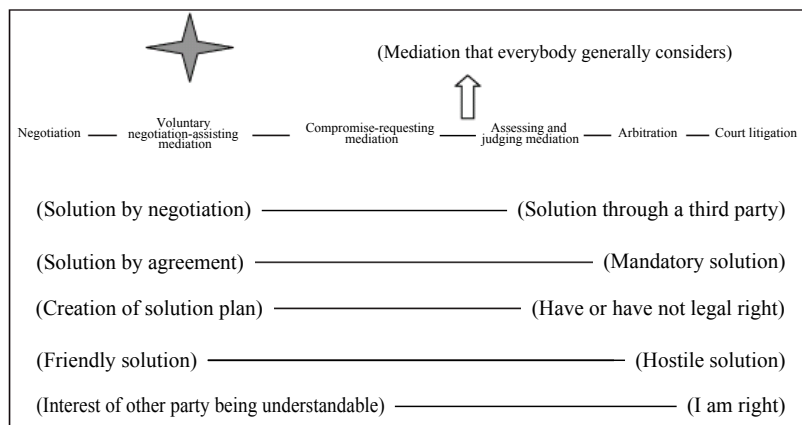
“Mediation” is carried out based on a tripartite relationship. In the mediation a mediator intervenes in the process of negotiation between both parties and assists to promote better negotiation. The mediator negotiates with each party, but both parties also negotiate themselves.



(Quoted from the Text Preparation Committee for Training of Mediators in the Japan Commercial Arbitration Association and the Japan Arbitrator Association, “Text for Training of Mediators, Basic Edition”. 2004 edition.)

(2) Types of mediation

There are various types of mediation such as a voluntary negotiation-assisting mediation, a compromise-requesting mediation, an assessing and judging mediation and the like. The mediation is not always superior to court litigation and there might be cases of arbitration to ultimately go to court litigation to decide which party is right.



(Quoted from the Text Preparation Committee for Training of Mediators in the Japan Commercial Arbitration Association and the Japan Arbitrator Association, "Text for Training of Mediators, Basic Edition", 2004 edition.)

	Assessing and judging mediation	Compromise-requesting mediation	Voluntary negotiation-assisting mediation
Goal	Similar conclusion to court litigation	Solution at middle position of party's claim	Satisfy party's real intention Not solve a dispute by legal judgment
Intervention by mediator	Strong intervention in conclusion	Little intervention	Intervention in negotiation process
Type of mediator	Legal professional	Elite of society	Individual with knowledge and technique to manage negotiation process
Strength	Judicial solution by judgment of professional	Solution by authority	Keeping relationship of parties by voluntary solution
Weakness	Hostile relation remains in parties	Cannot step in essential nature of disputes	Patience is required before reaching a solution As a result solution might not be obtained

(Quoted from the Text Preparation Committee for Training of Mediators in the Japan Commercial Arbitration Association and the Japan Arbitrator Association, "Text for Training of Mediators, Basic Edition". 2004 edition.)

(3) Comparison of mediation with court litigation

	Mediation		Arbitration		Court litigation	
Flexibility	◎	<ul style="list-style-type: none"> * Parties can decide rule and are free so far as a basic rule in negotiation is respected. ("Basic rule", 3.3 Greetings in commencement of mediation) * Free in selecting time and venue * Free in attendance by concerned parties and interested parties * What has to be solved? → Can respond in any way in the proceedings. 			×	<ul style="list-style-type: none"> * Civil Procedure Code (Claim) Written complaint, written answer, preparatory document (Presentation of evidence) Documentary evidence, evidence statement, written evidence application, alternate examination, verification * Date set by court. Court is opened based on convenience of only party's representative and judge * Only a principal or representative can attend. * Issue is only on litigation subject specified in a written complaint * Formalities are required for change of litigation (Civil Procedure Code, Article 143)

Speed	◎	<ul style="list-style-type: none"> * Any time, any place and any length of time when parties and mediator agree * Final solution at time when agreement is reached 			×	<ul style="list-style-type: none"> * Exchange of claims Several times to more than 10 times at frequency of once a month * Examination of a witness Long period of time is required. Date of conclusion will be delayed in future. * Judicial decision needs the court a time to draft a plan * litigation→appeal
Confidentiality	◎	<ul style="list-style-type: none"> * Proceedings are not disclosed * In principle the agreement is not disclosed * Parties can determine how much agreement will be disclosed 			×	In principle proceedings and judicial decision are publicly disclosed.
Is attorney's assistance required?	◎	<ul style="list-style-type: none"> * Not necessarily required * Okay so far as a basic rule is respected and negotiation is possible * Okay so far as parties or their representative have a right to agree with other parties or their representative → Free to consult with attorneys. 			×	<ul style="list-style-type: none"> * Required * Formalities of proceedings→ Practically difficult without the presence of an attorney * Subjects of judgment→Have or have not a legal right Equal to win or loss Equal to requirement of attorney's assistance
Is cost low?	○	<ul style="list-style-type: none"> Application fee (Fee based on service time) Reward when completed (attorney's fee) 			×	<ul style="list-style-type: none"> Revenue stamp for pasting Prepaid stamp Attorney's fee
Can good relationship be kept?	◎	<ul style="list-style-type: none"> * Maintain * Intend to solve dispute through negotiation * Maintain good relationship after agreement 			×	<ul style="list-style-type: none"> * Cannot maintain * Have or have not a legal right Equal to fight for win or loss Equal to hostile relationship * Difficult to keep good relationship after closure of litigation
Who controls the proceedings?	◎	<ul style="list-style-type: none"> * Parties involved * Proceedings proceed with voluntary participation of parties * Proceedings can be stopped any time * Free to agree or not 			×	<ul style="list-style-type: none"> * Court * Proceedings proceed based on law * Participation is forced. * Not free to withdraw * As a rule concluded with judicial decision
Content of solution	◎	<ul style="list-style-type: none"> Agreement of parties Content of the agreement can be determined in any way by parties involved. 			×	Judged only on request from a litigant

(quoted from the Text Preparation Committee for Training of Mediators in the Japan Commercial Arbitration Association and the Japan Arbitrator Association, "Text for Training of Mediators, Basic Edition". 2004 edition.)

(4) Representative

Parties themselves or their representative can apply a mediation and follow-up the request, but for example, in the Japan Intellectual Property Arbitration Center, the representative has to be an attorneys, patent attorney, a person with power of attorney requested by another to act, or an individual approved to be suitable as a representative by this Center.

(5) Mediator

Mediator candidates of the Japan Intellectual Property Arbitration Center are composed of attorneys, patent attorneys and academic experts and a selected mediator uses his expertise and experience to solve disputes through mediation. In the Japan Intellectual Property Arbitration Center, the candidate is called the mediator candidate since the candidate becomes the mediator the first time the candidate is selected as a mediator to commence a mediation procedure.

(6) Examination of mediation (Quoted from the website of the Japan Intellectual Property Arbitration Center)

i) Application to mediation

To apply for a mediation to the Japan Intellectual Property Arbitration Center, one of parties submits as an applicant a written request for mediation along with an application fee to the Legal Division of Tokyo Office or the Administrative Division of Kansai or Nagoya Office in the Japan Intellectual Property Arbitration Center.

The written application for mediation shall include the following items
(i) the names (or titles, hereinafter, the same), domiciles (or residences, hereinafter the same), and contact information (telephone numbers, fax numbers, e-mail addresses) of the parties, and names of the parties' representatives if the parties are juridical persons;
(ii) the names and domiciles of agents, if any;
(iii) summary of the dispute;
(iv) the gist of the resolution for which the application is made; and
(v) where the applicant has a preference for the number of the mediators, one or three, such preference must be stated.

The following attachments are necessary for the application for mediation.
(1) the certificate of qualification for the applicant's representative or the respondent's representative, if either or both of them are juridical persons;
(2) the power of attorney if an application is made by an agent;
(3) documentary evidence such as a patent publication or a trademark publication, etc., which indicate the scope of the rights which have become the basis for the dispute;
(4) documentary evidence other than those as provided in (3) above; and
(5) duplicates of documentary evidence as provided in (3) and (4) above (the number of duplicates shall be the sum of the number of respondents and mediators).

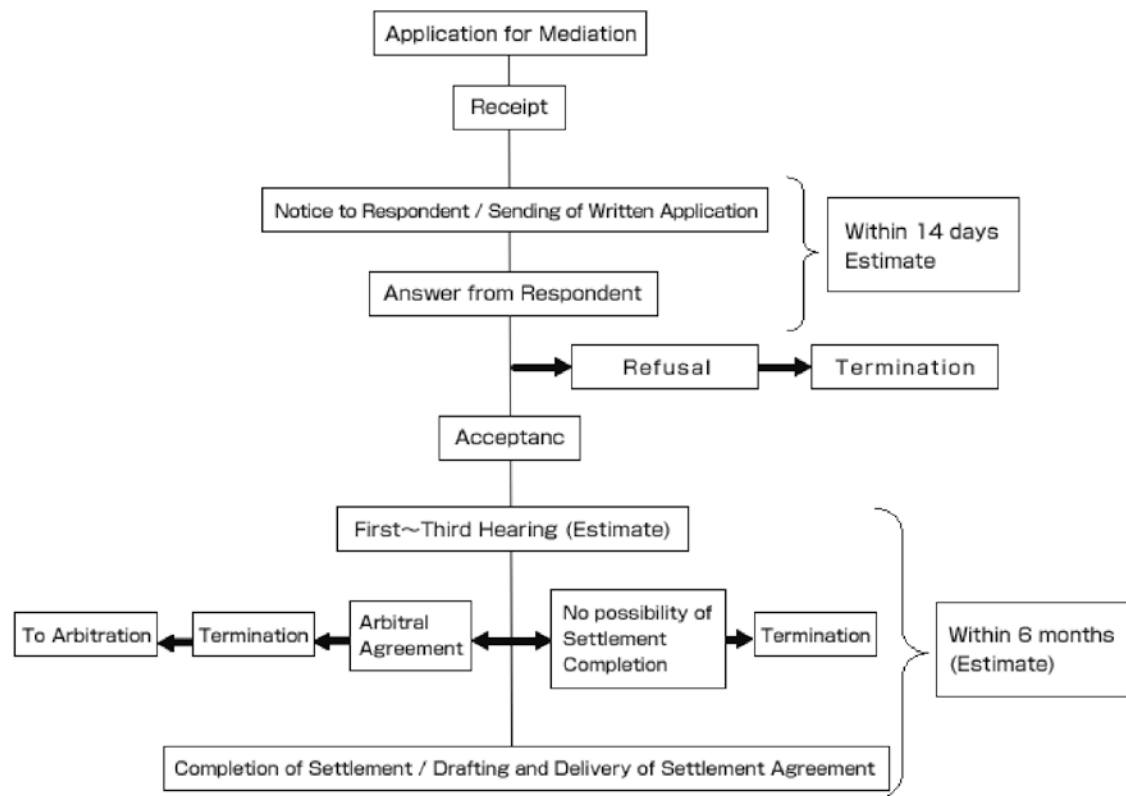
(Quoted from the website of the Japan Intellectual Property Arbitration Center)

ii) Cost for mediation

(1) Application Fee
50,000 yen (tax included, hereinafter the same in chapter "2. Mediation") The applicant shall bear this fee at the time of submitting an application for mediation. In the case where the application is dismissed for reasons as provided for in this Center's Rules for Mediation Proceedings, or in cases where the respondent refuses to attend the mediation proceedings, 30,000 yen of this fee shall be reimbursed.
(2) Fee for Hearing
50,000 yen / one hearing Both the applicant and respondent shall pay the same fee amount for each hearing (50,000 yen each / one hearing), and as a general rule, as promptly as possible after the termination of each mediation hearing.
(3) Settlement Agreement Writing Drafting, Attendance Fee
When a settlement agreement is reached, each party shall pay 150,000 yen promptly upon reaching a settlement. Moreover, in the case where there are special circumstances, the amount can be increased or decreased within limits of 50,000 yen, or increased up to 300,000 yen.
(4) Other matters
Actual costs such as fees for interpretation, translation, inspection, experiment, business trip, and connection fees in the case of teleconferences in the mediation proceedings, shall in principle, be equally borne by the parties.

(Quoted from the website of the Japan Intellectual Property Arbitration Center)

iii) Flow of mediation procedure



(Quoted from the website of the Japan Intellectual Property Arbitration Center)

iv) Legal effect of mediation

Effectiveness when mediation is completed

When mediation is completed with a settlement and a written settlement agreement is prepared by the mediator in the Japan Intellectual Property Arbitration Center, effects of the agreement with the Civil Code arise from the written settlement agreement. That is, as different from the settlement in court litigation, the settlement through mediation in the Arbitration Center has no enforcement power in the same way as the general private agreement. Therefore, when the settlement agreement is in default, parties may go to court for solution if dissatisfied with it.

Move to court litigation when mediation fails

When disputes cannot be settled through the mediation, one or both of parties can go to court to move for litigation.

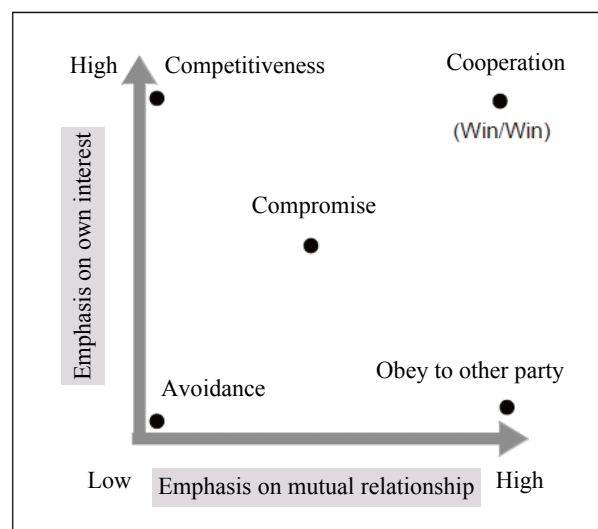
Interruption of prescription when approved

We have to pay attention to the fact that the mediation does not have interruption of prescription. However, when the mediator is approved as an authorized business proprietor for dispute resolution according to the ADR Act and in the mediation procedure carried out by the mediator of the Arbitration Center, a party files a complaint with the request which was aimed at mediation within a month from the day when this lawsuit was notified to the parties, prescription is interrupted at the time when the request was made to the Arbitration Center.

(7) Proceedings of mediation in meeting

i) Attitude of parties to dispute

In the voluntary negotiation-assisting mediation, it is preferred that both parties are not persuaded in a go-and-take principle of “avoidance”, “compromise”, or “obedience to an opponent,” but mutual benefits are emphasized to find a solution satisfactory to both parties.

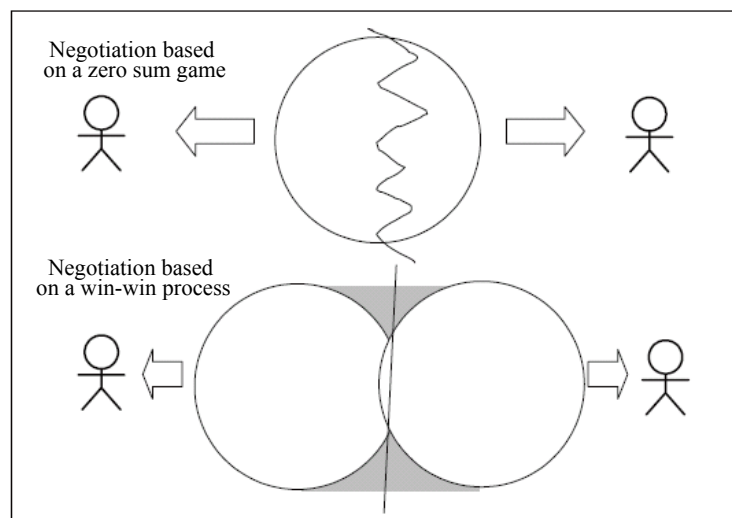


(Quoted from the Text Preparation Committee for Training of Mediators in the Japan Commercial Arbitration Association and the Japan Arbitrator Association, “Text for Training of Mediators, Basic Edition”, 2004 edition.)

ii) Negotiation

General disputes such as court litigation are often likely to have an image in which negotiation is a sort of zero-sum game (sum becomes zero). This has a relationship in that one party gets an advantage, while the other party has a disadvantage. In such proceedings of disputes neither party can help being competitive.

On the other hand, in negotiation for a win-win solution, a solution plan can be created and options are developed to allow for expanding a size of pie for solution. Difference in value by both parties can also be utilized for a kind of bargaining to find a solution satisfactory to both parties. The voluntary negotiation-assisting mediation can encourage both parties to negotiate for the win-win solution (empowerment to both parties).



(Quoted from the Text Preparation Committee for Training of Mediators in the Japan Commercial Arbitration Association and the Japan Arbitrator Association, “Test for Training of Mediators, Basic Edition”, 2004 edition.)

(8) Value of voluntary negotiation-assisting mediation method (promotional means for mediation)

A voluntary negotiation-assisting mediation method (promotional means for mediation) does not use the way to straightforwardly seek solutions from request and claim by parties, but to carefully search underlying interests and real intention and to gradually move to a solution after closely listening to the opinions of both parties. Therefore, this means of solving disputes is sometimes believed to be “inefficient”.

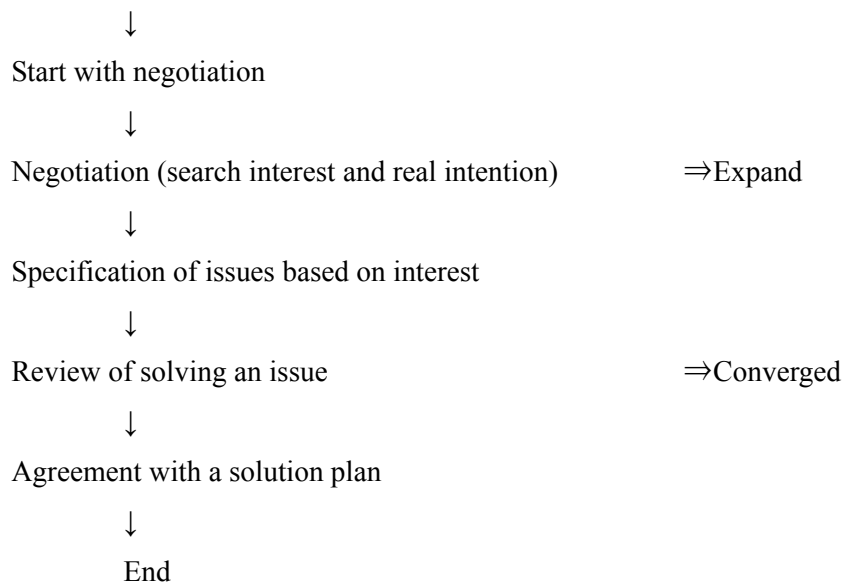
If only request and claim by both parties are considered, an “unsurpassable” rift is formed between the parties involved before reaching a solution unless underlying interests and real intention are not revealed. Therefore, the mediator needs to behave patiently.

(9) Steps of mediation

The mediation has a flow of stages (processes or steps). A voluntary negotiation-assisting type mediator consciously utilizes his skill as an expert of managing this flow and process of

negotiation, as well as the time elapsed in negotiation to guide to a goal for every step.

Start ((1) statement and claim by applicant, (2) call for participation by other party and (3) answer and claim by other party



In the above flow there are two steps composed of broadening communication in the first half, and then converging to the agreement in the second half.

10. About arbitration

(1) System developed in Anglo-American countries

Britain is the birthplace of the modern commercial arbitration.

A history of arbitration in Britain is said to be as old as British law and there is a record of an arbitration case in 1291. History shows that in Britain in the Middle Ages arbitration functioned as a unique means of solving private disputes among merchants.

The arbitration system has been developed as a means of solving international disputes in Anglo-American countries.

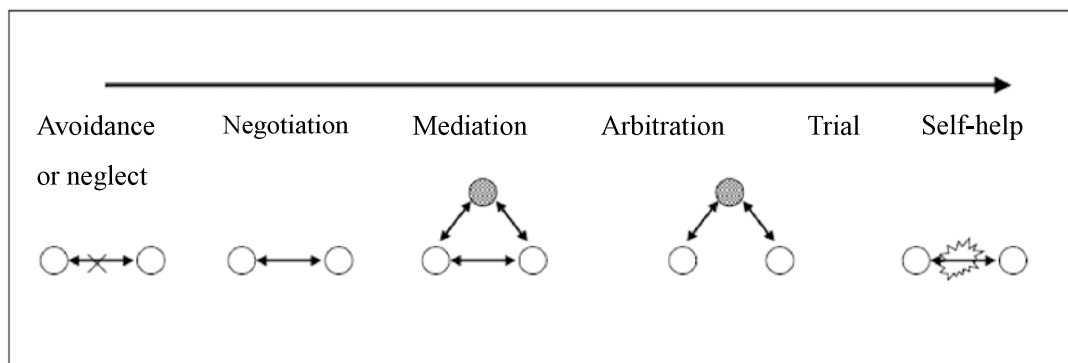
(2) Utilization of the arbitration system in international disputes

The arbitration system has developed aiming at preventing the parties from rehashing disputes in court on cases such as international commercial disputes not suitable for solution in the courts according to dissatisfaction by one party and at practically achieving reasonable judgment within a short period of time and at low cost. The arbitration is based on the one-tier system in order to achieve this objective and the arbitrary award has binding power.

(3) About arbitration

In modal meaning, arbitration is premised on the presence of an arbitration agreement between parties to disputes (arbitration contract), that is, “an agreement, in which one or several arbitrators are selected to judge disputes concerning legal relations in civil statute and both parties accept their judgment.” Therefore, arbitration fundamentally differs from mediation, which is the procedure of intending to solve disputes without going through the arbitration agreement.

Accordingly, the arbitral award demonstrated by the arbitrator binds parties to disputes and a complaint in principle cannot be filed (including appeal to courts).



(Quoted from the Text Preparation Committee for Training of Mediators in the Japan Commercial Arbitration Association and the Japan Arbitrator Association, “Text for Training of Mediators, Basic Edition”, 2004 edition.)

(4) Comparison of court litigation with arbitration

Court litigation	Arbitration
Parties cannot select a “judge”	Parties can freely select an “arbitrator” according to a case of dispute
Adversary process and sentencing proceedings are disclosed	Arbitration proceedings and arbitration award are confidential
“Three-tiered judicial system” Proceedings take a long period of time and uneconomic while appealable	“One-tier system” Fast solution can be sought and economical
Absence of multilateral treaty concerning cross-border enforcement of decision by domestic court	New York Convention has a power of cross-border enforcement of arbitral award

(Quoted from the website of the Japan Commercial Arbitration Association)

(5) Representative

Application and follow-up of the arbitration can be carried out by parties themselves or their representative. For example, in the Japan Intellectual Property Arbitration Center, the applicant has to be a representative, patent attorney or person with power of attorney approved by statute.

(6) Arbitrator

Arbitrator candidates of the Japan Intellectual Property Arbitration Center are composed of attorneys, patent attorneys and academic experts. A person selected as an arbitrator uses his expertise and experience to solve disputes through arbitration.

In the Japan Intellectual Property Arbitration Center, candidates are called an arbitrator candidate since the candidate becomes an arbitrator the first time the candidate is selected as an arbitrator to commence an arbitration procedure.

(7) Examination of arbitration

1) To apply for arbitration

To apply for an arbitration to the Japan Intellectual Property Arbitration Center, one of the parties submits as an applicant an arbitration application form along with an application fee to the Japan Intellectual Property Arbitration Center (in Tokyo, Nagoya or Osaka).

The written application for arbitration shall include the following items
(i) the names (or titles, hereinafter, the same), domiciles (or residences, hereinafter the same), and contact information (telephone number, fax number, e-mail address) of the parties, and names of the parties' representatives if the parties are juridical persons
(ii) the names and domiciles of agents, if any;
(iii) the gist of the application and grounds for the application; and
(iv) evidence to be submitted (if necessary).

The following attachments are necessary for an application for arbitration.
(1) the document which establishes the existence of an agreement between the parties to submit the dispute to the arbitration of this Center (Arbitral Agreement);
(2) the certificate of qualification for the applicant's representative or the respondent's representative, if either or both of them are juridical persons;
(3) the power of attorney if an application is made by an agent;
(4) documentary evidence; and(5) duplicates of documentary evidence (the number of duplicates shall be the sum of the number of respondents and arbitrators).

(Quoted from the website of the Japan Intellectual Property Arbitration Center)

ii) Cost for arbitration

A following cost is required to apply to an arbitration to the Japan Intellectual Property Arbitration Center.

(1) Application Fee
100,000 yen (tax included, hereinafter the same in chapter "3. Arbitration")
The applicant shall bear this fee at the time of submitting an application for arbitration. In the case where the application is dismissed for the reasons as provided in this Center's Rules for Arbitral Proceedings, half the amount thereof (50,000 yen) shall be reimbursed.

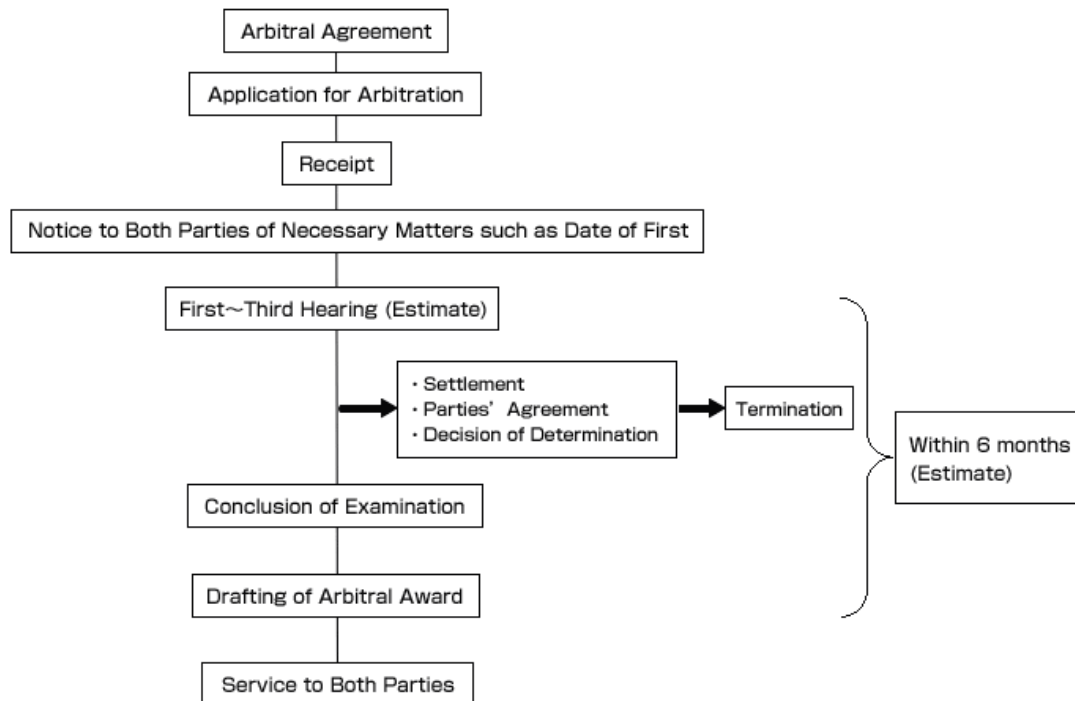
(2) Fee for Hearing
100,000 yen / one hearing
Both applicant and respondent shall pay the same fee amount for each hearing (100,000 yen each/ one hearing), and as a general rule, promptly after the termination of each arbitration hearing.

(3) Arbitral Award Drafting Fee
When an arbitral award is drafted, each party shall pay 200,000 yen promptly after the service thereof. In addition, in the case where a settlement contract is reached in the course of the arbitral proceedings, each party shall pay 150,000 yen promptly upon reaching such settlement.

(4) Other matters
Actual costs such as fees for interpretation, translation, inspection, experiment, business trip, and connection fees in the case of teleconferences in the arbitral proceedings, shall as a general rule, be equally borne by the parties.

(Quoted from the website of the Japan Intellectual Property Arbitration Center)

iii) Flow of arbitration procedure



(Quoted from the website of the Japan Intellectual Property Arbitration Center)

(8) Legal effect of arbitration

i) Effectiveness of arbitral award

When the Japan Intellectual Property Mediation Center decides an arbitral award and drafts a written form of the arbitral award, this written draft in principle has the same legal effect as a final and conclusive decision by court.

However, the arbitral award by the Japan Intellectual Property Arbitration Center can be enforced only after receiving the enforcement decision by the court.

ii) Appeal for revocation of arbitral award

Even if the parties were dissatisfied with the arbitral award by the Japan Intellectual Property Arbitration Center and files a lawsuit to a litigation court, the arbitral award has the legal effect similar to the final and conclusive decision, that is, the immediate power of judgment so that the litigation court can dismiss the appeal.

However, parties can file a lawsuit to the litigation court for revocation of the arbitral award by the Japan Intellectual Property Arbitration Center in the following cases; (1) when the

arbitration agreement is invalid, (2) when the arbitral award exceeds the arbitration agreement or scope of request for arbitration, (3) when a case to which arbitration was applied is a dispute (criminal case) with no possibility to reach arbitration, (4) when the arbitration procedure has defects, and (5) when the arbitrary award offends public order and morals.

11. About international commercial arbitration

(1) Comparison of court litigation with international commercial arbitration (merits of arbitration)

i) Judgment of an expert selected by parties

In arbitration it can be anticipated to have expert judgment responding to the content of disputes, since parties in principle can freely select the arbitrator, who is a third party, to solve disputes. To the contrary, in court litigation parties do not have a right to select a judge.

ii) Confidentiality

Arbitration proceedings are generally carried out behind closed doors and the arbitral award is not disclosed publicly unless both parties agree. Therefore, trade secrets and privacy can be kept. To the contrary, court litigation is in principle open to the public and the adversary trial process and delivery of judgment are open to the public.

iii) Quick action and economical efficiency

The three-tiered judicial system is utilized for lawsuits in Japan so that cases can be appealed, but can be prolonged uneconomically. Arbitration differs from a lawsuit and accepts no appeals. Since a period of time in which an arbitral award has to be reached can be determined upon agreement of both parties, the arbitration for dispute resolution does not take as long a time as compared with court litigation, enabling a faster solution. A shorter time required for dispute resolution can save costs.

iv) International character

In the case of court litigation it is not always easy to enforce the judgment in foreign countries because of the difference in judicial systems. To the contrary, in the arbitration there is the “New York Convention on the Recognition and Enforcement of Foreign Arbitral Award,” called the New York Convention of 1958, and more than 130 countries including this country are presently contracting states so that enforcement of the arbitrary award is very easy.

v) Utilization of foreign lawyers licensed in Japan

As different from the court litigation, not only Japanese attorneys and Japanese patent attorneys, but also foreign lawyers licensed in Japan can act as an agent for proceeding a case of the international arbitration, and foreign lawyers working on legal business in foreign countries can act as an agent for proceeding a case of the international arbitration requested or received in the corresponding country (Act on Special Measures concerning the Handling of Legal Services by Foreign Lawyers).

(2) Handling of intellectual property in international commercial arbitration

In the arbitral award in cases of international commercial arbitration, a technical scope of patent rights in foreign countries and judgment of their effectiveness or invalidity become an issue, but the arbitral award is supposedly construed as being enforced.

12. New York Convention

(1) What is the New York Convention?

The official name of the commonly called the New York Convention is the “New York Convention on the Recognition and Enforcement of Foreign Arbitral Award,” concluded in New York in 1958.

Japan did not conclude the treaty for recognizing and enforcing the court decision in foreign countries, but this New York Convention makes to proceed the foreign arbitral award relatively easier. Member countries of the New York Convention are obliged to recognize and enforce the arbitral award delivered abroad according to the rules in the New York Convention, except in a limited number of explicit cases.

However, the arbitrary award by the New York Convention member countries cannot be enforced if recognition or enforcement of their award disrupts the public order in this country.

Reference, New York Convention, Article 3

Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles. There shall not be imposed substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards to which this Convention applies than are imposed on the recognition or enforcement of domestic arbitral awards.

13. Case example (Quoted from the website of the Japan Intellectual Property Arbitration Center)

(1) Case 1: Joint development

i) Background

Company X was asked to develop a product for Company Y, a manufacturer delivering their products to Company A, the end user. Company Y funded some of the cost for its development. The product was successfully delivered to Company A through Company Y. However, there were defects in the product, which were corrected and then the product was manufactured by Company Y and then delivered to Company A. Company X thereafter registered the patent application, but Company X did not receive an order for the product from Company Y. Company X thereby applied to a mediation.

ii) Summary requested by applicant

Company X sought an injunction of manufacturing and selling the product by Company Y, as well as compensation for damages born from the past practice. Company X also sought to have the product ordered from Company X and not Company Y, who delivered this product to Company A.

iii) Claim by respondent

The respondent claimed this patent right shall naturally be jointly vested in Company X and Company Y when considering the background of its development, while Company X retained sole ownership of this patent right. The invention itself was reduced to practice by employees of Company Y. Furthermore, Company Y retained a prior user's right on the present patent.

iv) Issue

The respondent, Company Y, allowed the fact that the product associated with manufacturing and selling by Company Y resided within the technical scope of the patented invention. Therefore, who owned the patent right became an issue.

v) Conclusion

Company Y will pay Company X 1,000,000 yen as settlement money of the dispute. Company X will transfer Company Y the patent right of the present case.

vi) Features of the present case

This is a case where an issue of who owns the patent right was contested and complicated, but solved by mutual efforts of the mediator, the applicant and the respondent.

(2) Case 2: Infringement on trademark 1

i) Background

Company X is the trademark owner of the trademark "AAAA Onion" (for processed food),

and imported and sold the product using this registered trademark. Company X had repeated negotiations with Company Y, who imported and sold frozen foods under the trade name of “Mount AAAA” in this country and sought an injunction for infringing the trademark and compensation for damages, but was it not settled. Company X thereby applied for a mediation.

ii) Summary requested by applicant

Company X sought an injunction on importing and selling the product with the trademark “Mount AAAA” by Company Y and compensation for damages.

iii) Claim by respondent

The respondent claimed the term “AAAA” could not arise from separating and extracting the term “AAAA” from the registered trademark “AAAA Onion” in the present case so that the term “Mount AAAA” was not similar to the registered trademark in the present case.

iv) Issue

Whether the registered trademark of “AAAA Onion” in the present case was an integrated indivisible trademark or could be separated to give a single trade name of “AAAA” became an issue.

v) Conclusion

Claim by both parties was directly contradicted and compensation for damages thereby could not be adjusted so that the applicant withdrew the request.

(3) Case 3: Infringement on trademark 2

I) Background

Company X, who was licensed a famous overseas registered trademark and manufactured and sold a certain product in this country, sent a warning letter to Company Y, who manufactured and sold the same product, and sought discontinuation of use of the trademark. However, Company Y claimed invalidity of the trademark registration and Company X could not get a clue for settlement. Company X thereby applied to a mediation.

ii) Summary requested by applicant

Company X sought discontinuation of infringing the trademark right and compensation for damages.

iii) Claim by respondent

The respondent claimed the registration of the trademark right was invalid because it did not meet the requirements of conspicuity in the Trademark Law, Article 3.

iv) Issue

Effectiveness of the trademark registration

v) Conclusion

a) Company Y will pay Company X 1,000,000 yen as settlement money and sell inventories only for one year thereafter.

b) Company Y will not advertize for inventories.

vi) Features of the present case

This is a case, where defense based on invalidity of the trademark registration and infringement of the trademark were contested, but both parties accepted the mediation plan proposed by the mediator, enabling them to solve the dispute quickly.

(4) Case 4: Infringement of patent right 1

i) Background

Company X, who is a patentee of a patent concerning a stabilization means for a finished article, applied for a mediation to compensate for damages by the infringement of patent right from Company Y, who temporarily practiced the stabilization means for the product during manufacturing.

ii) Summary requested by applicant (request of Company X against Company Y)

Company Y infringed the patent right in the present case in manufacturing and completing the product. Company X sought payment of XXX thousand yen as compensation for damages.

iii) Claim by respondent

The stabilization measure manufactured by Company Y did not fall in the technical scope of the patented invention in the present case.

iv) Issue

An issue was whether the stabilization means in the patented invention of the present case was limited to a finished article in which this means was permanently practiced, but not to the stabilization means which was practiced in manufacturing the body and removed after completion so that it did not fall in the technical scope of the patented invention in the present case.

v) Conclusion

A meeting for mediation was held eight times, but neither party came to a compromise and the mediation ended in failure.

(5) Case 5: Infringement of patent right 2

i) Background

Company X, who owns a patent for a product characterized with mechanism, sought an injunction on Company Y on selling the product and compensation for damages as manufacturing and selling the product, which infringed the patent right of Company X.

However, Company Y claimed the product did not fall in the technical scope of the patented invention by Company X and negotiation was not settled. Company X thereby applied for a mediation.

ii) Summary requested by application

Company X sought discontinuation by Company Y of manufacturing and selling the product, which infringed the patent right of Company X and payment of an appropriate royalty for the past practice.

iii) Claim by respondent

Company Y did not practice the patented invention of Company X and therefore did not infringe its patent right.

iv) Issue

The issue was whether specification of a body produced by the manufacturing method in the scope of patent claims affected judgment of whether the product of Company Y fell in the technical scope of the patent.

v) Conclusion

Both parties gave concessions resulting in a satisfactory settlement.

vi) Features of the present case

This is an example in which both parties showed respect for the judgment by the mediator and made concessions to solve the case. The parties probably considered the benefit in time and cost in the arbitration over court litigation.

(6) Case 6: Infringement of patent right 3

i) Background

Person X managing a manufacturing company found an advertisement of a product from Company Y running in a trade paper, considered the product was reduced to practice X's patented invention and sought for discontinuation of manufacturing and selling its product by Company Y, and compensation for damages. Both parties negotiated but did not settle. Person X applied for a mediation.

(ii) Summary requested by applicant

Person X sought discontinuation of manufacturing and selling the product by Company Y, disposal of inventories and compensation for damages.

(iii) Claim by respondent

The product from Company Y did not meet constituent features for the patented invention of Person X.

(iv) Issue

The issue was whether the product from Company Y fell in the technical scope of the invented patent of Person X.

(v) Conclusion

Company Y was not pursuant to the mediation plan so the mediation of the present case was terminated.

(7) Case 7: Infringement of patent right 4 (prior user's right)

i) Background

Company X, which holds a patent right in a certain field, sought discontinuation of manufacturing and selling of products concerned by Company Y, and payment of compensation for damages. Company Y claimed not to infringe the patent right and was not pursuant to the request.

ii) Summary requested by applicant

Company X sought discontinuation of manufacturing and selling of products concerned and payment of an amount of damages in the past.

iii) Subsequent progress

As a written form of application from Company X was transmitted to Company Y, and Company Y provided Company X evidence on the fact of prior use beyond the scope of the mediation, Company X reviewed the fact and withdrew the request, solving the case.

iv) Features of the present case

This is an example of solving the case between both parties. Applying for a mediation before going to court is an effective method of solution.

(8) Case 8: Infringement of patent right 5 (indirect infringement)

i) Background

Company X, which holds a patent right on materials related to building and civil engineering, sought discontinuation of manufacturing and selling products concerned by Company Y, and payment of compensation for damages. Company Y offered discontinuation of manufacturing hereafter, though did not admit to the infringement and claimed the amount of damages requested by Company X was too high. Thus, both parties negotiated but remained as far apart as ever on both issues of infringement and estimation of damages, and therefore Company X applied for a mediation

ii) Summary requested by applicant

Company X sought discontinuation of manufacturing and selling of products concerned and payment of an amount of damages in the past

iii) Claim by respondent.

The product manufactured and sold by Company Y was not “the product used only” for practice of the patented invention in the present case so that the product primarily did not infringe the patented invention. Even if the product were “the product used only” as above, most of the products concerned were not relevant to it and an amount of damages is minimal.

iv) Issue

The issue was whether infringement was direct infringement or indirect infringement, how far target objects were covered if it were indirect infringement, and how the quantity of products manufactured and sold and damages could be estimated.

v) Conclusion

Indirect infringement was completed in part. Company X paid X million yen as settlement money for both damages in the past and future in the form of a lump sum.

vi) Features of the present case

The respondent left their books with the mediator, who comprehensively examined the quantity of products manufactured and sold. Both parties sought an opinion from the mediator based on the rules set in prior negotiation and satisfactorily solved the dispute after a meeting for mediation was held three times over a two-months period after the date of application.

Material 1

Part One

UNCITRAL Model Law on International Commercial Arbitration

(United Nations documents A/40/17,
annex I and A/61/17, annex I)

**(As adopted by the United Nations Commission on
International Trade Law on 21 June 1985,
and as amended by the United Nations Commission
on International Trade Law on 7 July 2006)**

CHAPTER I. GENERAL PROVISIONS

Article 1. Scope of application¹

(1) This Law applies to international commercial² arbitration, subject to any agreement in force between this State and any other State or States.

(2) The provisions of this Law, except articles 8, 9, 17 H, 17 I, 17 J, 35 and 36, apply only if the place of arbitration is in the territory of this State.

(Article 1(2) has been amended by the Commission at its thirty-ninth session, in 2006)

(3) An arbitration is international if:

(a) the parties to an arbitration agreement have, at the time of the conclusion of that agreement, their places of business in different States; or

¹Article headings are for reference purposes only and are not to be used for purposes of interpretation.

²The term “commercial” should be given a wide interpretation so as to cover matters arising from all relationships of a commercial nature, whether contractual or not. Relationships of a commercial nature include, but are not limited to, the following transactions: any trade transaction for the supply or exchange of goods or services; distribution agreement; commercial representation or agency; factoring; leasing; construction of works; consulting; engineering; licensing; investment; financing; banking; insurance; exploitation agreement or concession; joint venture and other forms of industrial or business cooperation; carriage of goods or passengers by air, sea, rail or road.

(b) one of the following places is situated outside the State in which the parties have their places of business:

- (i) the place of arbitration if determined in, or pursuant to, the arbitration agreement;
- (ii) any place where a substantial part of the obligations of the commercial relationship is to be performed or the place with which the subject-matter of the dispute is most closely connected; or

(c) the parties have expressly agreed that the subject matter of the arbitration agreement relates to more than one country.

(4) For the purposes of paragraph (3) of this article:

(a) if a party has more than one place of business, the place of business is that which has the closest relationship to the arbitration agreement;

(b) if a party does not have a place of business, reference is to be made to his habitual residence.

(5) This Law shall not affect any other law of this State by virtue of which certain disputes may not be submitted to arbitration or may be submitted to arbitration only according to provisions other than those of this Law.

Article 2. Definitions and rules of interpretation

For the purposes of this Law:

(a) “arbitration” means any arbitration whether or not administered by a permanent arbitral institution;

(b) “arbitral tribunal” means a sole arbitrator or a panel of arbitrators;

(c) “court” means a body or organ of the judicial system of a State;

(d) where a provision of this Law, except article 28, leaves the parties free to determine a certain issue, such freedom includes the right of the parties to authorize a third party, including an institution, to make that determination;

(e) where a provision of this Law refers to the fact that the parties have agreed or that they may agree or in any other way refers to an agreement of the parties, such agreement includes any arbitration rules referred to in that agreement;

(f) where a provision of this Law, other than in articles 25(a) and 32(2) (a), refers to a claim, it also applies to a counter-claim, and where it refers to a defence, it also applies to a defence to such counter-claim.

Article 2 A. International origin and general principles

(As adopted by the Commission at its thirty-ninth session, in 2006)

(1) In the interpretation of this Law, regard is to be had to its international origin and to the need to promote uniformity in its application and the observance of good faith.

(2) Questions concerning matters governed by this Law which are not expressly settled in it are to be settled in conformity with the general principles on which this Law is based.

Article 3. Receipt of written communications

(1) Unless otherwise agreed by the parties:

(a) any written communication is deemed to have been received if it is delivered to the addressee personally or if it is delivered at his place of business, habitual residence or mailing address; if none of these can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee's last-known place of business, habitual residence or mailing address by registered letter or any other means which provides a record of the attempt to deliver it;

(b) the communication is deemed to have been received on the day it is so delivered.

(2) The provisions of this article do not apply to communications in court proceedings.

Article 4. Waiver of right to object

A party who knows that any provision of this Law from which the parties may derogate or any requirement under the arbitration agreement has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay or, if a time-limit is provided therefor, within such period of time, shall be deemed to have waived his right to object.

Article 5. Extent of court intervention

In matters governed by this Law, no court shall intervene except where so provided in this Law.

Article 6. Court or other authority for certain functions of arbitration assistance and supervision

The functions referred to in articles 11(3), 11(4), 13(3), 14, 16(3) and 34(2) shall be performed by ... [Each State enacting this model law specifies the court, courts or, where referred to therein, other authority competent to perform these functions.]

CHAPTER II. ARBITRATION AGREEMENT

Option I

Article 7. Definition and form of arbitration agreement

(As adopted by the Commission at its thirty-ninth session, in 2006)

- (1) “Arbitration agreement” is an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.
- (2) The arbitration agreement shall be in writing.
- (3) An arbitration agreement is in writing if its content is recorded in any form, whether or not the arbitration agreement or contract has been concluded orally, by conduct, or by other means.
- (4) The requirement that an arbitration agreement be in writing is met by an electronic communication if the information contained therein is accessible so as to be useable for subsequent reference; “electronic communication” means any communication that the parties make by means of data messages; “data message” means information generated, sent, received or stored by electronic, magnetic, optical or similar means, including, but not

limited to, electronic data interchange (EDI), electronic mail, telegram, telex or telecopy.

(5) Furthermore, an arbitration agreement is in writing if it is contained in an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by the other.

(6) The reference in a contract to any document containing an arbitration clause constitutes an arbitration agreement in writing, provided that the reference is such as to make that clause part of the contract.

Option II

Article 7. Definition of arbitration agreement

(As adopted by the Commission at its thirty-ninth session, in 2006)

“Arbitration agreement” is an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

Article 8. Arbitration agreement and substantive claim before court

(1) A court before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so requests not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration unless it finds that the agreement is null and void, inoperative or incapable of being performed.

(2) Where an action referred to in paragraph (1) of this article has been brought, arbitral proceedings may nevertheless be commenced or continued, and an award may be made, while the issue is pending before the court.

Article 9. Arbitration agreement and interim measures by court

It is not incompatible with an arbitration agreement for a party to request, before or during arbitral proceedings, from a court an interim measure of protection and for a court to grant such measure.

CHAPTER III. COMPOSITION OF ARBITRAL TRIBUNAL

Article 10. Number of arbitrators

- (1) The parties are free to determine the number of arbitrators.
- (2) Failing such determination, the number of arbitrators shall be three.

Article 11. Appointment of arbitrators

(1) No person shall be precluded by reason of his nationality from acting as an arbitrator, unless otherwise agreed by the parties.

(2) The parties are free to agree on a procedure of appointing the arbitrator or arbitrators, subject to the provisions of paragraphs (4) and (5) of this article.

(3) Failing such agreement,

(a) in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator; if a party fails to appoint the arbitrator within thirty days of receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within thirty days of their appointment, the appointment shall be made, upon request of a party, by the court or other authority specified in article 6;

(b) in an arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator, he shall be appointed, upon request of a party, by the court or other authority specified in article 6.

(4) Where, under an appointment procedure agreed upon by the parties,

(a) a party fails to act as required under such procedure, or

(b) the parties, or two arbitrators, are unable to reach an agreement expected of them under such procedure, or

(c) a third party, including an institution, fails to perform any function entrusted to it under such procedure,

any party may request the court or other authority specified in article 6 to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.

(5) A decision on a matter entrusted by paragraph (3) or (4) of this article to the court or other authority specified in article 6 shall be subject to no

appeal. The court or other authority, in appointing an arbitrator, shall have due regard to any qualifications required of the arbitrator by the agreement of the parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and, in the case of a sole or third arbitrator, shall take into account as well the advisability of appointing an arbitrator of a nationality other than those of the parties.

Article 12. Grounds for challenge

(1) When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose any circumstances likely to give rise to justifiable doubts as to his impartiality or independence. An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to the parties unless they have already been informed of them by him.

(2) An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his impartiality or independence, or if he does not possess qualifications agreed to by the parties. A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.

Article 13. Challenge procedure

(1) The parties are free to agree on a procedure for challenging an arbitrator, subject to the provisions of paragraph (3) of this article.

(2) Failing such agreement, a party who intends to challenge an arbitrator shall, within fifteen days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstance referred to in article 12(2), send a written statement of the reasons for the challenge to the arbitral tribunal. Unless the challenged arbitrator withdraws from his office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.

(3) If a challenge under any procedure agreed upon by the parties or under the procedure of paragraph (2) of this article is not successful, the challenging party may request, within thirty days after having received notice of the decision rejecting the challenge, the court or other authority specified in article 6 to decide on the challenge, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an award.

Article 14. Failure or impossibility to act

(1) If an arbitrator becomes *de jure* or *de facto* unable to perform his functions or for other reasons fails to act without undue delay, his mandate terminates if he withdraws from his office or if the parties agree on the termination. Otherwise, if a controversy remains concerning any of these grounds, any party may request the court or other authority specified in article 6 to decide on the termination of the mandate, which decision shall be subject to no appeal.

(2) If, under this article or article 13(2), an arbitrator withdraws from his office or a party agrees to the termination of the mandate of an arbitrator, this does not imply acceptance of the validity of any ground referred to in this article or article 12(2).

Article 15. Appointment of substitute arbitrator

Where the mandate of an arbitrator terminates under article 13 or 14 or because of his withdrawal from office for any other reason or because of the revocation of his mandate by agreement of the parties or in any other case of termination of his mandate, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

CHAPTER IV. JURISDICTION OF ARBITRAL TRIBUNAL

Article 16. Competence of arbitral tribunal to rule on its jurisdiction

(1) The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void shall not entail *ipso jure* the invalidity of the arbitration clause.

(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence. A party is not precluded from raising such a plea by the fact that he has appointed, or participated in the appointment of, an arbitrator. A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the

matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified.

(3) The arbitral tribunal may rule on a plea referred to in paragraph (2) of this article either as a preliminary question or in an award on the merits. If the arbitral tribunal rules as a preliminary question that it has jurisdiction, any party may request, within thirty days after having received notice of that ruling, the court specified in article 6 to decide the matter, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal may continue the arbitral proceedings and make an award.

CHAPTER IV A. INTERIM MEASURES AND PRELIMINARY ORDERS

(As adopted by the Commission at its thirty-ninth session, in 2006)

Section 1. Interim measures

Article 17. Power of arbitral tribunal to order interim measures

(1) Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, grant interim measures.

(2) An interim measure is any temporary measure, whether in the form of an award or in another form, by which, at any time prior to the issuance of the award by which the dispute is finally decided, the arbitral tribunal orders a party to:

(a) Maintain or restore the status quo pending determination of the dispute;

(b) Take action that would prevent, or refrain from taking action that is likely to cause, current or imminent harm or prejudice to the arbitral process itself;

(c) Provide a means of preserving assets out of which a subsequent award may be satisfied; or

(d) Preserve evidence that may be relevant and material to the resolution of the dispute.

Article 17 A. Conditions for granting interim measures

(1) The party requesting an interim measure under article 17(2)(a), (b) and (c) shall satisfy the arbitral tribunal that:

(a) Harm not adequately reparable by an award of damages is likely to result if the measure is not ordered, and such harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted; and

(b) There is a reasonable possibility that the requesting party will succeed on the merits of the claim. The determination on this possibility shall not affect the discretion of the arbitral tribunal in making any subsequent determination.

(2) With regard to a request for an interim measure under article 17(2)(d), the requirements in paragraphs (1)(a) and (b) of this article shall apply only to the extent the arbitral tribunal considers appropriate.

Section 2. Preliminary orders

Article 17 B. Applications for preliminary orders and conditions for granting preliminary orders

(1) Unless otherwise agreed by the parties, a party may, without notice to any other party, make a request for an interim measure together with an application for a preliminary order directing a party not to frustrate the purpose of the interim measure requested.

(2) The arbitral tribunal may grant a preliminary order provided it considers that prior disclosure of the request for the interim measure to the party against whom it is directed risks frustrating the purpose of the measure.

(3) The conditions defined under article 17A apply to any preliminary order, provided that the harm to be assessed under article 17A(1)(a), is the harm likely to result from the order being granted or not.

Article 17 C. Specific regime for preliminary orders

(1) Immediately after the arbitral tribunal has made a determination in respect of an application for a preliminary order, the arbitral tribunal shall give notice to all parties of the request for the interim measure, the application for

the preliminary order, the preliminary order, if any, and all other communications, including by indicating the content of any oral communication, between any party and the arbitral tribunal in relation thereto.

(2) At the same time, the arbitral tribunal shall give an opportunity to any party against whom a preliminary order is directed to present its case at the earliest practicable time.

(3) The arbitral tribunal shall decide promptly on any objection to the preliminary order.

(4) A preliminary order shall expire after twenty days from the date on which it was issued by the arbitral tribunal. However, the arbitral tribunal may issue an interim measure adopting or modifying the preliminary order, after the party against whom the preliminary order is directed has been given notice and an opportunity to present its case.

(5) A preliminary order shall be binding on the parties but shall not be subject to enforcement by a court. Such a preliminary order does not constitute an award.

Section 3. Provisions applicable to interim measures and preliminary orders

Article 17 D. Modification, suspension, termination

The arbitral tribunal may modify, suspend or terminate an interim measure or a preliminary order it has granted, upon application of any party or, in exceptional circumstances and upon prior notice to the parties, on the arbitral tribunal's own initiative.

Article 17 E. Provision of security

(1) The arbitral tribunal may require the party requesting an interim measure to provide appropriate security in connection with the measure.

(2) The arbitral tribunal shall require the party applying for a preliminary order to provide security in connection with the order unless the arbitral tribunal considers it inappropriate or unnecessary to do so.

Article 17 F. Disclosure

- (1) The arbitral tribunal may require any party promptly to disclose any material change in the circumstances on the basis of which the measure was requested or granted.
- (2) The party applying for a preliminary order shall disclose to the arbitral tribunal all circumstances that are likely to be relevant to the arbitral tribunal's determination whether to grant or maintain the order, and such obligation shall continue until the party against whom the order has been requested has had an opportunity to present its case. Thereafter, paragraph (1) of this article shall apply.

Article 17 G. Costs and damages

The party requesting an interim measure or applying for a preliminary order shall be liable for any costs and damages caused by the measure or the order to any party if the arbitral tribunal later determines that, in the circumstances, the measure or the order should not have been granted. The arbitral tribunal may award such costs and damages at any point during the proceedings.

Section 4. Recognition and enforcement of interim measures

Article 17 H. Recognition and enforcement

- (1) An interim measure issued by an arbitral tribunal shall be recognized as binding and, unless otherwise provided by the arbitral tribunal, enforced upon application to the competent court, irrespective of the country in which it was issued, subject to the provisions of article 17 I.
- (2) The party who is seeking or has obtained recognition or enforcement of an interim measure shall promptly inform the court of any termination, suspension or modification of that interim measure.
- (3) The court of the State where recognition or enforcement is sought may, if it considers it proper, order the requesting party to provide appropriate security if the arbitral tribunal has not already made a determination with respect to security or where such a decision is necessary to protect the rights of third parties.

Article 17 I. Grounds for refusing recognition or enforcement³

(1) Recognition or enforcement of an interim measure may be refused only:

(a) At the request of the party against whom it is invoked if the court is satisfied that:

- (i) Such refusal is warranted on the grounds set forth in article 36(1)(a)(i), (ii), (iii) or (iv); or
- (ii) The arbitral tribunal's decision with respect to the provision of security in connection with the interim measure issued by the arbitral tribunal has not been complied with; or
- (iii) The interim measure has been terminated or suspended by the arbitral tribunal or, where so empowered, by the court of the State in which the arbitration takes place or under the law of which that interim measure was granted; or

(b) If the court finds that:

- (i) The interim measure is incompatible with the powers conferred upon the court unless the court decides to reformulate the interim measure to the extent necessary to adapt it to its own powers and procedures for the purposes of enforcing that interim measure and without modifying its substance; or
- (ii) Any of the grounds set forth in article 36(1)(b)(i) or (ii), apply to the recognition and enforcement of the interim measure.

(2) Any determination made by the court on any ground in paragraph (1) of this article shall be effective only for the purposes of the application to recognize and enforce the interim measure. The court where recognition or enforcement is sought shall not, in making that determination, undertake a review of the substance of the interim measure.

*Section 5. Court-ordered interim measures**Article 17 J. Court-ordered interim measures*

A court shall have the same power of issuing an interim measure in relation to arbitration proceedings, irrespective of whether their place is in

³The conditions set forth in article 17 I are intended to limit the number of circumstances in which the court may refuse to enforce an interim measure. It would not be contrary to the level of harmonization sought to be achieved by these model provisions if a State were to adopt fewer circumstances in which enforcement may be refused.

the territory of this State, as it has in relation to proceedings in courts. The court shall exercise such power in accordance with its own procedures in consideration of the specific features of international arbitration.

CHAPTER V. CONDUCT OF ARBITRAL PROCEEDINGS

Article 18. Equal treatment of parties

The parties shall be treated with equality and each party shall be given a full opportunity of presenting his case.

Article 19. Determination of rules of procedure

(1) Subject to the provisions of this Law, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings.

(2) Failing such agreement, the arbitral tribunal may, subject to the provisions of this Law, conduct the arbitration in such manner as it considers appropriate. The power conferred upon the arbitral tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

Article 20. Place of arbitration

(1) The parties are free to agree on the place of arbitration. Failing such agreement, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.

(2) Notwithstanding the provisions of paragraph (1) of this article, the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of goods, other property or documents.

Article 21. Commencement of arbitral proceedings

Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.

Article 22. Language

(1) The parties are free to agree on the language or languages to be used in the arbitral proceedings. Failing such agreement, the arbitral tribunal shall determine the language or languages to be used in the proceedings. This agreement or determination, unless otherwise specified therein, shall apply to any written statement by a party, any hearing and any award, decision or other communication by the arbitral tribunal.

(2) The arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

Article 23. Statements of claim and defence

(1) Within the period of time agreed by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state his defence in respect of these particulars, unless the parties have otherwise agreed as to the required elements of such statements. The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit.

(2) Unless otherwise agreed by the parties, either party may amend or supplement his claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow such amendment having regard to the delay in making it.

Article 24. Hearings and written proceedings

(1) Subject to any contrary agreement by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials. However, unless the parties have agreed that no hearings shall be held, the arbitral tribunal shall hold such hearings at an appropriate stage of the proceedings, if so requested by a party.

(2) The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purposes of inspection of goods, other property or documents.

(3) All statements, documents or other information supplied to the arbitral tribunal by one party shall be communicated to the other party. Also any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties.

Article 25. Default of a party

Unless otherwise agreed by the parties, if, without showing sufficient cause,

(a) the claimant fails to communicate his statement of claim in accordance with article 23(1), the arbitral tribunal shall terminate the proceedings;

(b) the respondent fails to communicate his statement of defence in accordance with article 23(1), the arbitral tribunal shall continue the proceedings without treating such failure in itself as an admission of the claimant's allegations;

(c) any party fails to appear at a hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the award on the evidence before it.

Article 26. Expert appointed by arbitral tribunal

(1) Unless otherwise agreed by the parties, the arbitral tribunal

(a) may appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal;

(b) may require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for his inspection.

(2) Unless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal considers it necessary, the expert shall, after delivery of his written or oral report, participate in a hearing where the parties have the opportunity to put questions to him and to present expert witnesses in order to testify on the points at issue.

Article 27. Court assistance in taking evidence

The arbitral tribunal or a party with the approval of the arbitral tribunal may request from a competent court of this State assistance in taking evidence.

The court may execute the request within its competence and according to its rules on taking evidence.

CHAPTER VI. MAKING OF AWARD AND TERMINATION OF PROCEEDINGS

Article 28. Rules applicable to substance of dispute

(1) The arbitral tribunal shall decide the dispute in accordance with such rules of law as are chosen by the parties as applicable to the substance of the dispute. Any designation of the law or legal system of a given State shall be construed, unless otherwise expressed, as directly referring to the substantive law of that State and not to its conflict of laws rules.

(2) Failing any designation by the parties, the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable.

(3) The arbitral tribunal shall decide *ex aequo et bono* or as *amiable compositeur* only if the parties have expressly authorized it to do so.

(4) In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.

Article 29. Decision-making by panel of arbitrators

In arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal shall be made, unless otherwise agreed by the parties, by a majority of all its members. However, questions of procedure may be decided by a presiding arbitrator, if so authorized by the parties or all members of the arbitral tribunal.

Article 30. Settlement

(1) If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.

(2) An award on agreed terms shall be made in accordance with the provisions of article 31 and shall state that it is an award. Such an award has the same status and effect as any other award on the merits of the case.

Article 31. Form and contents of award

- (1) The award shall be made in writing and shall be signed by the arbitrator or arbitrators. In arbitral proceedings with more than one arbitrator, the signatures of the majority of all members of the arbitral tribunal shall suffice, provided that the reason for any omitted signature is stated.
- (2) The award shall state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given or the award is an award on agreed terms under article 30.
- (3) The award shall state its date and the place of arbitration as determined in accordance with article 20(1). The award shall be deemed to have been made at that place.
- (4) After the award is made, a copy signed by the arbitrators in accordance with paragraph (1) of this article shall be delivered to each party.

Article 32. Termination of proceedings

- (1) The arbitral proceedings are terminated by the final award or by an order of the arbitral tribunal in accordance with paragraph (2) of this article.
- (2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings when:
 - (a) the claimant withdraws his claim, unless the respondent objects thereto and the arbitral tribunal recognizes a legitimate interest on his part in obtaining a final settlement of the dispute;
 - (b) the parties agree on the termination of the proceedings;
 - (c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.
- (3) The mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings, subject to the provisions of articles 33 and 34(4).

Article 33. Correction and interpretation of award; additional award

- (1) Within thirty days of receipt of the award, unless another period of time has been agreed upon by the parties:
 - (a) a party, with notice to the other party, may request the arbitral

tribunal to correct in the award any errors in computation, any clerical or typographical errors or any errors of similar nature;

(b) if so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.

If the arbitral tribunal considers the request to be justified, it shall make the correction or give the interpretation within thirty days of receipt of the request. The interpretation shall form part of the award.

(2) The arbitral tribunal may correct any error of the type referred to in paragraph (1)(a) of this article on its own initiative within thirty days of the date of the award.

(3) Unless otherwise agreed by the parties, a party, with notice to the other party, may request, within thirty days of receipt of the award, the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award. If the arbitral tribunal considers the request to be justified, it shall make the additional award within sixty days.

(4) The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, interpretation or an additional award under paragraph (1) or (3) of this article.

(5) The provisions of article 31 shall apply to a correction or interpretation of the award or to an additional award.

CHAPTER VII. RECOURSE AGAINST AWARD

Article 34. Application for setting aside as exclusive recourse against arbitral award

(1) Recourse to a court against an arbitral award may be made only by an application for setting aside in accordance with paragraphs (2) and (3) of this article.

(2) An arbitral award may be set aside by the court specified in article 6 only if:

(a) the party making the application furnishes proof that:

(i) a party to the arbitration agreement referred to in article 7 was under some incapacity; or the said agreement is not

valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of this State; or

- (ii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
- (iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside; or
- (iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Law from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Law; or

(b) the court finds that:

- (i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of this State; or
- (ii) the award is in conflict with the public policy of this State.

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the award or, if a request had been made under article 33, from the date on which that request had been disposed of by the arbitral tribunal.

(4) The court, when asked to set aside an award, may, where appropriate and so requested by a party, suspend the setting aside proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the arbitral tribunal's opinion will eliminate the grounds for setting aside.

CHAPTER VIII. RECOGNITION AND ENFORCEMENT OF AWARDS

Article 35. Recognition and enforcement

(1) An arbitral award, irrespective of the country in which it was made, shall be recognized as binding and, upon application in writing to the

competent court, shall be enforced subject to the provisions of this article and of article 36.

(2) The party relying on an award or applying for its enforcement shall supply the original award or a copy thereof. If the award is not made in an official language of this State, the court may request the party to supply a translation thereof into such language.⁴

(Article 35(2) has been amended by the Commission at its thirty-ninth session, in 2006)

Article 36. Grounds for refusing recognition or enforcement

(1) Recognition or enforcement of an arbitral award, irrespective of the country in which it was made, may be refused only:

(a) at the request of the party against whom it is invoked, if that party furnishes to the competent court where recognition or enforcement is sought proof that:

- (i) a party to the arbitration agreement referred to in article 7 was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or
- (ii) the party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
- (iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or
- (iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

⁴The conditions set forth in this paragraph are intended to set maximum standards. It would, thus, not be contrary to the harmonization to be achieved by the model law if a State retained even less onerous conditions.

- (v) the award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, that award was made; or
 - (b) if the court finds that:
 - (i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of this State; or
 - (ii) the recognition or enforcement of the award would be contrary to the public policy of this State.
- (2) If an application for setting aside or suspension of an award has been made to a court referred to in paragraph (1)(a)(v) of this article, the court where recognition or enforcement is sought may, if it considers it proper, adjourn its decision and may also, on the application of the party claiming recognition or enforcement of the award, order the other party to provide appropriate security.

Material 2

For more information contact the:
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WIPO ARBITRATION AND MEDIATION CENTER



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WORLD
INTELLECTUAL
PROPERTY
ORGANIZATION

Material 3

(Translation)
(draft)

Dispute Resolution Organization Specialized in
Industrial Property Causes

ARBITRATION CENTER FOR INDUSTRIAL PROPERTY
(GUIDEBOOK)

Japan Federation of Bar Associations [Logo]
&
Japan Patent Attorneys Association [Logo]

April, 1998

Arbitration Center for Industrial Property
Jointly Operated by Japan Federation of Bar Associations
and Japan Patent Attorneys Association

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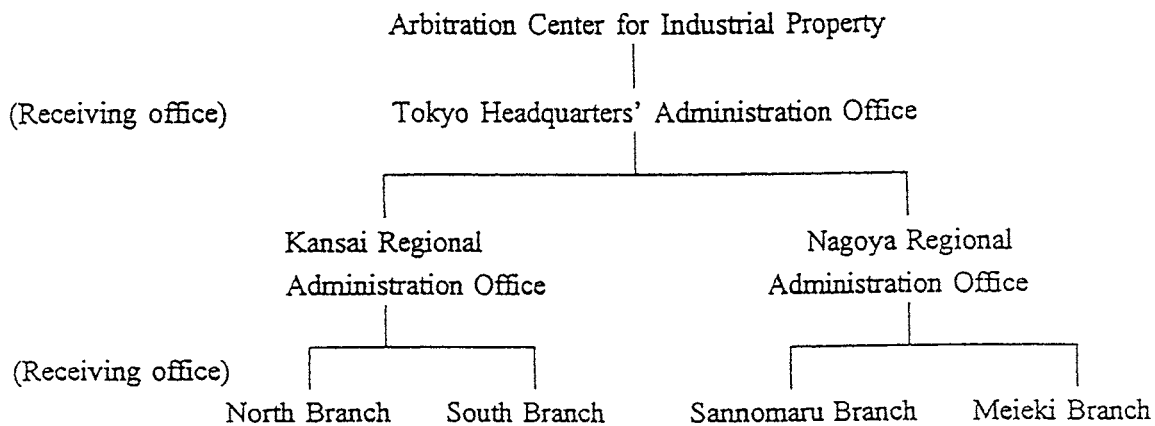
I. Arbitration Center for Industrial Property

1. History and Organization

Both Japan Federation of Bar Associations (JFBA) and Japan Patent Attorneys Association (JPAA) have reached an agreement to open the Arbitration Center for Industrial Property to be jointly operated by the JFBA and JPAA in April 1998, after over two years' discussion and preparation between them for the establishment of the dispute resolution organization whose mission is to settle disputes with respect to industrial property controversies.

The Arbitration Center for Industrial Property comprises the Tokyo Headquarters' Administration Office and two regional administration offices, one in Kansai (Osaka) and the other in Nagoya, as well as receiving offices in Tokyo, Osaka and Nagoya. Receiving offices accept filings of cases and provide various services to a filing party (claimant) and the other party (respondent) for their convenience.

(Chart)



2. What is Arbitration?

An arbitration can be defined as (1) a means by which a dispute can be resolved by referring a dispute to one or more impartial third persons, or arbitrator(s), whose award is final and binding; and (2) as a complementary process between "litigation in the court", an authoritative dispute resolution by the state sovereignty, and an "amicable settlement", a voluntary dispute resolution based upon the mutual agreement between the parties. Accordingly, the parties can exercise their discretion in referring their dispute to arbitrators and submitting themselves to the award rendered by accepting it, and abandon their "right to submit to the court" (Article 800 of the Law concerning Procedure for General Pressing Notice and Arbitration Procedure).

Unlike the litigation procedure, an arbitration procedure is confidential. Hearings are conducted quickly, and appeals from the award are not allowed, and therefore arbitration is expected to be a prompt and practical way to resolve disputes.

Especially in the industrial property area, subject matter is intangible, such as inventions, ideas, designs, and trademarks, and due to the fact that the subject matter is intangible, it tends to be difficult to specify the scope of rights and to identify allegedly infringing products

("I-go item"). Under such circumstances, the resolution of the disputes requires high specialty and expertise which otherwise would not be required in ordinary civil procedure and it often happens that parties both prefer the gray but reasonable resolution through private and confidential procedures.

Arbitration is perceived as the most appropriate means for dispute resolution in the area of industrial property disputes. And even if the parties have not reached an arbitration agreement in advance, after they examine the contents of disputes carefully in mediation procedures, they thereafter may reach an arbitration agreement and convert it to arbitration.

3. What is Mediation?

Mediation is a process in which a neutral mediator, who is appointed by the parties, assists the parties in reaching their own settlement, and, under that system, the resolution of the dispute rests with the disputants in their own discretion.

Although the opinion or decision of the mediator does not have any binding force on the parties, once the parties agree on the mediator's opinion or decision, it shall become a settlement contract which, in turn binds the parties. The mediation, like arbitration, is also perceived as the most suitable means for dispute resolution in the area of industrial property disputes.

4. Mission of the Center

The Arbitration Center for Industrial Property jointly operated by JFBA and JPAA shall provide a forum for dispute resolution in the area of industrial property disputes, staffed by attorneys experienced in a broad-range of dispute resolution and expert patent attorneys with expertise in particular areas of industrial property, collectively using their respective professional knowledge and experience.

This Center has a roster of candidate arbitrators (mediators) selected from practicing attorneys-at-law, patent attorneys and trained experts organized by particular subject matters of industrial property. The Center shall appoint a panel of three arbitrators, which comprises at least one attorney-at-law and one patent attorney (or in case of a mediation, two to three mediators), and furthermore, may appoint an assistant for the arbitrators to conduct detailed research and review, as necessary. Thus, the Center makes the best efforts to render awards that are worth the trust of the general public.

5. Types of Disputes Resolved by the Center

The Arbitration Center for Industrial Property will accept any filing relating to industrial property disputes, regardless of the claim amount and type of controversy, in principle. The services of the Center are available for any case that has a relation with industrial property rights.

If the administration committee deems it proper to refer the case to another arbitration organization, the Center also will introduce an appropriate arbitration organization.

For instance, following cases are suitable for arbitration at the Arbitration Center for Industrial Property:

(i) If the parties cannot institute judicial action directly because it would involve subtle problems as to whether the subject product falls within the scope of right:

- (ii) If the party prefers to avoid conflicts paying a small royalty for a patent license even if the validity of the patent is questionable;
- (iii) If the differences are centered around the royalty payable or the scope of the licensed products, but not the validity of a patent license agreement itself;
- (iv) If there are discrepancies as to which party is entitled to a patent where it involves an invention by an employee or invention discovered during the course of joint research and development;
- (v) If the parties wish to confidentially resolve a dispute relating to industrial property rights or parties wish to resolve a dispute without disclosing know-how and other business information to other parties;
- (vi) If there are discrepancies as to whether trademark infringement occurs, where the descriptive notice explaining the function of the products are similar to the registered trademark, between the manufacturer and the holder of the trademark;
- (vii) If there are discrepancies as to whether the design or trademark is confusingly similar; or
- (viii) If a Japanese corporation wants to avoid litigation against another Japanese corporation in a foreign country and to settle the dispute without having to file a litigation where it allegedly infringes the foreign patent in the country that is a signatory to Convention on the Recognition and Enforcement of Foreign Arbitral Award (the New York Convention) etc., or other bilateral treaty.

II. Mediation and Arbitration Procedure

We anticipate that quite a few submissions will be made to the Arbitration Center for Industrial Property directly with an arbitration agreement in advance. In such cases, the proceedings for mediation and arbitration shall be conducted in compliance with the procedural flow in the Industrial Property Arbitration Center as follows:

1. Filing Procedure

- (i) A party, as claimant, files a Submission to Mediation and Arbitration with the Arbitration Center for Industrial Property at its receiving office.
- (ii) The submission may be made by a party or its representative.
An attorney-at-law and any other eligible person authorized to act as representative by law, as an attorney-in-fact, or a patent attorney to assist the principal or agent, as assistant, will participate in the procedure.
- (iii) The Administration Committee will review the contents of the Submission to Mediation and Arbitration filed with the Center and if it is admitted officially, the Secretariat will notify the other party or parties (the "respondent") with a date of hearing, etc.
- (iv) If there is no arbitration agreement in advance, and the respondent refuses to submit it to the procedure, the Center cannot initiate a mediation or arbitration procedure. In that case, the Center can request an acceptance through its Secretariat and scheduled arbitrators. If the respondent still refuses the request, it will be impossible to continue the procedure and the submission will be dismissed or withdrawn.
- (v) The arbitrators (or mediators) shall be selected by the Administration Committee of the

Center from the roster of proposed arbitrators (or mediators) prepared by the Center. Each party may designate one arbitrator (or mediator) from a prepared roster of proposed arbitrators (or mediators) if he/she desires so. And in an exceptional case, he/she may further appoint another person than the candidate arbitrators (or mediators) nominated in the roster. If both parties designate an arbitrator (or mediator), the third arbitrator shall be designated by the Administration Committee of this Center to pursue the fairness of the procedure.

2. Mediation or Arbitration Procedure

- (i) If there is an arbitration agreement in advance, the arbitrator will designate a date of arbitration session and the hearing will be held at the Bar Association Building or the Patent Attorneys Association Building or such other place the Center so designates.
- (ii) If there is not an arbitration agreement in advance (practically in many cases), the mediator shall designate a date of mediation session, and the mediation conference will be held at the Bar Association Building or the Patent Attorneys Association Building or such other place the Center so designates.
- (iii) The arbitrator or mediator may prepare for the mediation hearing as necessary, and prepare the necessary arrangements including, but not limited to, the identification of the issues, supplementation thereof and production of evidentiary documents.

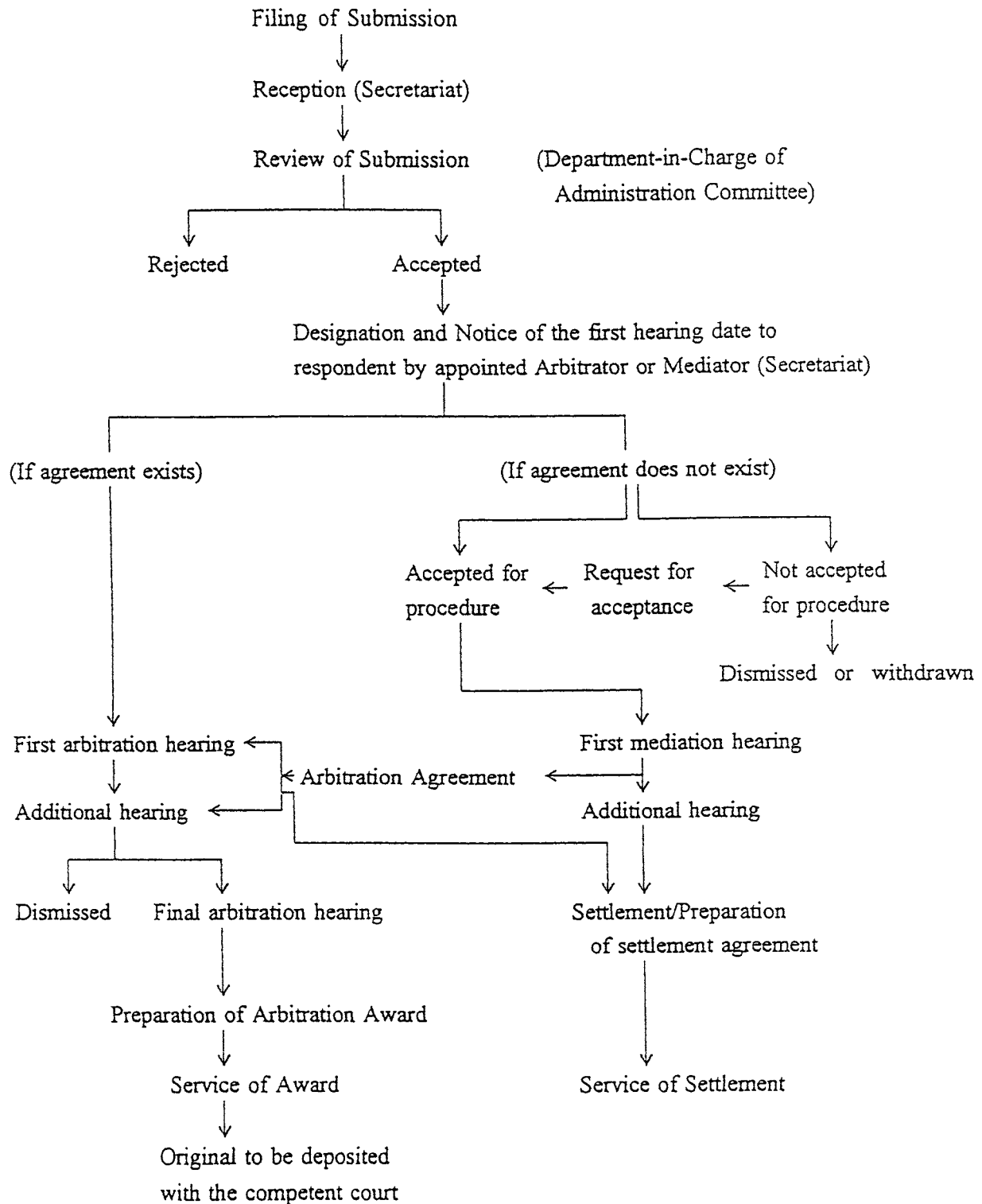
3. Conclusion of Mediation or Arbitration Procedure

- (i) When the parties reach an amicable settlement during mediation, they should reduce the agreed-upon terms to a settlement agreement and the mediation will be terminated. The settlement agreement itself, however, does not grant a party the status of a judgment creditor, and if it is desirable to confer upon such status, the mediation procedure may be converted into the arbitration procedure temporarily at that stage of agreement, and the procedure will be concluded by rendering the award upon settlement in compliance with mutual accord.
- (ii) The arbitration procedure shall be concluded by an award of the arbitrators. In this case, the award shall be recorded and originals of the arbitration award shall be delivered to the parties and an original copy of the award shall be deposited with the Tokyo District Court.

The arbitration award shall be given the same effect as a final judgment rendered by the court (Article 800 of Law concerning Procedure for General Pressing Notice and Arbitration Procedure), and execution thereto may be made after obtaining an enforcement judgment against the defaulting party (Article 802 of Law concerning Procedure for General Pressing Notice and Arbitration Procedure). Furthermore, although an appeal is not allowed in principle, a motion for cancellation of an award shall be allowed in exceptional circumstances under strict requirements (Article 801 of Law concerning Procedure for General Pressing Notice and Arbitration Procedure).

- (iii) When the claimant withdraws the submission to arbitration, the arbitration procedure shall be terminated.

4. Flow Chart of Arbitration Procedure



III. Fees

The principal fees payable to the Arbitration Center for Industrial Property include the following filing fees: review fees, hearing fees and award fees, and they will be applied to arbitrator compensation and administrative costs of the Center.

1. Filing fees: ¥50,000

A fixed amount of filing fee is payable in full by filing party (claimant) when a claim is filed. Half of the filing fee shall be refunded if the other party (respondent) refuses the submission and the procedure is ended.

2. Review fees

- (i) Patent or utility model case: ¥200,000
- (ii) Other than (i) above: ¥100,000
- (iii) Additional review fees may be charged to a claimant and/or respondent if the case is complex.

The review fee is payable in full when a claim is filed. Whole or part of the fee may be refunded if the case is settled or withdrawn before the review takes place or the case is easy.

3. Hearing fees: ¥30,000/per hearing

For each day of the hearing, a hearing fee of ¥30,000 is payable evenly by a claimant and respondent (¥15,000 from each) in principle.

4. Award fees

	<u>Amount of Award</u>	<u>Award Fees (%)</u>
(i)	Up to 3 million yen	10%
(ii)	Above 3 million yen to 100 million yen	3%
(iii)	In excess of 100 million yen	1.5%

The whole amount of award fees payable is obtained by aggregating (i), (ii) and (iii) above, if necessary. The portion of the award fee payable by a claimant and respondent is subject to allocation by the arbitrator in the award.

5. Other Notes

Other actual costs and expenses may be charged to the parties. Exemption system is also available.

IV. Other Regulations

1. PROCEDURE RULES OF THE ARBITRATION CENTER FOR INDUSTRIAL PROPERTY

CHAPTER 1. GENERAL CONDITIONS

Article 1. (Purpose)

These Rules set forth necessary matters concerning the procedures for mediation and arbitration conducted by the Arbitration Center for Industrial Property (hereinafter referred to as "the Center").

Article 2. (Consent to Mediation/Agreement upon Arbitration)

If the parties consent to submit to mediation by the Center or agree to submit to arbitration by the Center, these Rules shall be deemed to govern the mediation or arbitration procedure between the parties.

Article 3. (Responsibility of Mediators/Arbitrators)

Mediators and arbitrators shall independently examine and impartially and expeditiously handle the case in accordance with these Rules.

Article 4. (Non-disclosure/Confidentiality)

1. Mediation sessions and arbitration proceedings at the Center shall not be open to the public.
2. The mediation procedure and arbitration procedure in the Center shall not be open to the public, and neither the mediators, arbitrators, assistants to mediators, assistants to arbitrators nor the staff of the Secretariat shall disclose the existence, content, or results of any mediation or arbitration. This shall apply to these persons even after resigning their office. Provided however, that this shall not be applicable where the Center discloses information regarding an arbitration or mediation for research purposes in a form not identifying the name of any party, specific contents of any pending cases, or other details, or where the Center obtains consent from both parties in respect of disclosure.

Article 5. (Roster)

The Center shall prepare a roster of candidate mediators/arbitrators (hereinafter referred to as the "Roster") from which mediators or arbitrators shall be selected.

Article 6. (Mediation Tribunal)

1. The mediation at the Center shall be conducted by a panel of two mediators comprising one Bengoshi and one Benrishi.
2. Notwithstanding the preceding provision, the mediation shall be conducted by a panel of three mediators, at least one of whom shall be a Bengoshi and at least one of whom shall be a Benrishi, if a case falls within one of the following cases:
 - (1) Where both parties express such an intention;
 - (2) Where the mediation panel comprising two mediators deems it necessary, and both parties consent thereto; or

(3) Where the Administration Committee of the Center (hereinafter referred to as the "Committee") deems it appropriate.

Article 7. (Arbitration Tribunal)

Arbitration at the Center shall be conducted by a panel of three arbitrators, at least one of whom shall be a Bengoshi and at least one of whom shall be a Benrishi.

Article 8. (Panel)

1. If a case is tried by three mediators or three arbitrators, such mediation or arbitration shall be conducted by the Panel consisting of these mediators/arbitrators.
2. If a case is tried by the Panel, the mediators or the arbitrators shall elect a Chairman of the Panel from among themselves; provided, however, that in case the parties designate mediators or arbitrators pursuant to the proviso of paragraph 2 of Article 9, the person elected by the Committee shall serve as Chairman.
3. The direction of the procedure for the hearing shall be conducted by the Chairman of the Panel.
4. Decisions on matters relating to the arbitration procedure and award shall be made by a majority of all members of the Panel after discussion.

Article 9. (Selection of Arbitrators/ Mediators)

1. If a mediation is conducted by two mediators, the Committee shall select the mediators from the candidate mediators/arbitrators (hereinafter referred to as "Candidates") registered in the Roster; provided, however, that if the parties desire to appoint mediators by themselves, they may designate mediators from the candidates upon mutual consent.
2. If the mediation is conducted by the three mediators Panel, or the arbitration is conducted by the three arbitrators Panel, the Committee shall designate them from the candidates; provided, however, that if the parties desire to appoint a mediator or arbitrator by themselves, each party shall designate one mediator or one arbitrator, and the remaining one shall be designated by the Committee from among the Candidates.
3. Notwithstanding the preceding two paragraphs, if the parties desire to designate a mediator or arbitrator from a source other than the Candidates, or in other extraordinary cases, the Committee may elect a special mediator or special arbitrator it deems appropriate to serve as mediator or arbitrator.

Article 10. (Resignation or Removal of Mediators/Arbitrators)

1. A mediator or arbitrator may, for justifiable cause, resign from office by obtaining approval from the Committee.
2. The parties may move to the Committee to remove a mediator or arbitrator upon mutual consent.
3. If it receives the motion set forth in the preceding paragraph, the Committee may remove such mediator or arbitrator.
4. If a vacancy for a mediator or an arbitrator occurs due to death, resignation or other reasons, a substitute mediator or arbitrator shall be elected pursuant to the preceding Article.

Article 11. (Appointment of Assistant, and his / her Duties)

1. Arbitrators and mediators may appoint an assistant from the candidate assistants registered in a roster of candidate assistants; provided, however, that arbitrators or mediators may designate a person not registered in the roster of candidate assistants if necessary under special circumstances.
2. The assistant for mediators or the assistant for arbitrators shall perform the following duties under the instruction of mediators or arbitrators:
 - (1) Attend mediation hearings or arbitration hearings, or their preliminary hearings;
 - (2) Research matters (facts, prior arts, laws and regulations, precedents and prior decisions, etc.)
;
 - (3) Present opinions to the mediators or arbitrators; and
 - (4) Handle other matters that mediators or arbitrators deem necessary.

Article 12. (Hearing, Place, Appearance of Parties)

1. The hearings shall consist of a mediation hearing, arbitration hearing and preliminary hearing.
2. With the appearance of both parties hearings will be held at the Benrishi's or Benrishi's Building, or other place where the Center may designate.
3. Mediators or arbitrators may hold hearings at other places which they deem appropriate for site inspection or which they deem otherwise necessary.
4. Mediators or arbitrators may proceed with hearings, in the absence of party or its representative who has, with due notice, failed to appear.
5. The Center shall notify the parties of the date, time and place of the hearing at least seven (7) days prior to the hearing date, unless special circumstances exist.

Article 13 (Preliminary Hearing)

1. Mediators or Arbitrators may hold preliminary hearings to clarify and supplement claims, produce evidentiary documents and make other necessary preparation.
2. Preliminary hearings may be held by one mediator or one arbitrator.
3. Preliminary hearings can be held in the presence of only one party. They can also be held in the presence of only interested persons.

Article 14 (Service of Documents, etc.)

1. Documents relating to mediation or arbitration, except for delivery upon receipt certificates or seals of receipt by the parties, shall be served by the Center to the addresses of the parties or places which parties specifically designate.
2. Service prescribed in the preceding paragraph may be made in the manner provided for in the Code of Civil Procedure.
3. The original settlement agreement or original arbitration award can be served in any of the following manners to both parties;
 - (1) Registered mail with certified receipt;
 - (2) Personal delivery to the parties; or
 - (3) Service in the manner prescribed in the Code of Civil Procedure.

4. For notices of hearings and notices of matters necessary for other proceedings, the Center may notify parties orally, in writing or through other methods it deems appropriate.

Article 15. (Secretariat)

Office work relating to mediation and arbitration shall be performed by the Secretariat of the Center.

Article 16. (Request or Demand)

1. A claimant filing submission for a mediation or arbitration shall file with the Center a request for mediation or demand for arbitration, describing the following matters:

- (1) Names and addresses of the parties;
- (2) Name or address of the attorney if the party retains an attorney;
- (3) Names or address of the assistant if the party retains an assistant;
- (4) Gist of the claim; and
- (5) Grounds for claim and evidence.

If the party is a legal entity, it must attach a document certifying authorization for the representative or power of attorney when this submission is filed by an attorney.

2. If there is an arbitration agreement executed between parties, the arbitration agreement shall be attached to the demand for arbitration prescribed in the preceding paragraph.

3. The attorney shall be Bengoshi or other person authorized by law to act on behalf of the party.

4. The assistant shall be Benrishi or other person authorized by law to act as an assistant.

5. If there are evidentiary documents that support the grounds for the claim, the claimant shall submit copies of such evidentiary documents as soon as possible.

6. The number of copies of submissions and evidentiary documents to be submitted shall be set forth by the Center or arbitrators.

Article 17. (Reception or Rejection of Submission)

1. If a submission complies with the requirements prescribed in the preceding Article, the Center shall receive it.

2. After receipt of a submission, the Center shall promptly appoint mediators or arbitrators pursuant to the provisions of Article 9 and notify both parties of the names of mediators or arbitrators, a summary of the mediation procedure or arbitration procedure, the date and place of the first hearing and other necessary matters.

3. If the Center decides that it is improper to proceed with the mediation procedure or arbitration procedure after receipt of submission pursuant to paragraph 1 of this Article, the Center may reject it.

Article 18. (Research)

Mediators or arbitrators conduct research on matters such as prosecution history, prior arts, laws and regulations, precedents and prior decisions.

Article 19. (Protective Procedure for Confidential Information)

1. Either party may request the mediators or the arbitrators to keep a certain part of evidence

confidential from the other party before production of such evidence is produced in the mediation procedure or arbitration procedure. In this case, the mediators or the arbitrators shall not disclose such evidence to the other party.

2. If the mediators or the arbitrators receive the above-mentioned request, they shall determine whether to approve or deny such request after hearing the opinion of the other party.

3. If the mediators or the arbitrators deem it necessary to rule on the above-mentioned request, they may ask the moving party to explain the content of evidence and necessity for confidentiality, and may also ask the Committee to appoint an assistant to determine its necessity upon consent of the moving party.

4. If the mediators or the arbitrators render a decision pursuant to paragraph 2 of this Article, they shall notify both parties of it.

5. If the mediators or the arbitrators determine that the evidence should not be confidential, the moving party may withdraw production of such evidentiary materials.

6. Mediators or the arbitrators shall not divulge evidence that has been classified as confidential pursuant to paragraph 2 of this Article; provided, however, that the arbitrators may quote such evidence in the arbitration award where it is necessary to quote confidential information and if the moving party consents to it.

Article 20 (Experiment)

1. Either of the parties may notify the other party of the fact that a specific experiment was conducted for the purpose of establishing grounds for the claim. The notice shall specify the purpose of the experiment, outline of the experiment, methods, results and conclusion.

2. In cases of experimentation, the other party may ask the experimenting party to conduct all or part of the same experiment in its presence.

3. Mediators or arbitrators may require one of the parties to conduct experiments again in their presence if they deem it necessary.

Article 21 (Inspection)

1. Mediators or arbitrators may inspect machines, facilities, production processes, samples, films, materials, products, other methods, etc. if they deem it necessary.

2. During such inspections, the parties shall cooperate so that mediators or arbitrators may smoothly perform their inspection.

Article 22 (Translation, Interpretation)

1. Mediators or arbitrators can ask parties to attach a translation of documents prepared in a foreign language.

2. Mediators or Arbitrators may, when they deem it necessary, ask a third party to translate or interpret documents prepared in a foreign language after consultation with the parties.

Article 23 (Expert Opinion)

Mediators or arbitrators may, when they deem it necessary, entrust a third party to produce expert opinion after consultation with the parties.

Article 24. (Interested Person)

Mediators or arbitrators may permit any interested person to attend the mediation proceedings or arbitration proceedings.

CHAPTER 2. MEDIATION PROCEDURE

Article 25. (Initiation of Mediation)

Where there is no arbitration agreement between the parties, mediation can be initiated; provided, however, that even if there is an arbitration agreement, the parties may initiate mediation by mutual consent.

Article 26. (Procedure for Preparation)

The mediators may ask any party to identify and supplement the issues, to produce evidentiary documents or make other necessary preparations outside the hearing.

Article 27. (Official Record of Hearing in Mediation)

1. The mediators shall prepare an official record of each mediation hearing or preliminary hearing, and sign and seal it.
2. The official record of a hearing discussed in the preceding paragraph shall include the type of hearing, date, place, names of the parties present and outline of procedure.

Article 28. (Dispute Resolution by Amicable Settlement)

1. When a settlement contract is executed between the parties in the course of the mediation, both parties shall reduce the settlement to a written contract, and the mediators shall sign and seal it as witnesses of execution of the settlement contract.
2. The settlement contract shall set forth the contents of a settlement and the allocation of costs for settlement fees etc. .

Article 29. (Conversion to Arbitration Procedure)

1. The mediators may ask and confirm whether both parties intend to convert the mediation to an arbitration procedure through execution of an arbitration agreement in the course of mediation proceedings.
2. In the course of mediation, if both parties execute an arbitration agreement and submit an arbitration agreement to the mediators, the mediation procedure shall be converted into an arbitration procedure.
3. If a settlement contract is agreed upon during mediation, and if both parties want to reduce the settlement contract's content to an order in the arbitration award by submitting an arbitration agreement, the mediation shall convert the procedure into an arbitration.
4. In the cases of the preceding two paragraphs, the claimant need not submit a demand for arbitration, and the records kept in the course of the mediation proceedings shall be automatically converted to records for arbitration proceedings.

5. In the cases of paragraphs 2 and 3 of this Article, the mediators in the mediation shall become arbitrators in the arbitration; provided, however, that if both parties move to remove all or some of the mediators upon mutual consent, the Committee shall remove said mediator or mediators and designate a new arbitrator or arbitrators for arbitration.

6. In the case of the main body of the preceding paragraph, if the mediation was conducted by two mediators, the Committee shall designate one additional arbitrator.

7. The methods for election of arbitrators in the cases of the proviso in paragraph 5 and the preceding paragraph, shall be subject to paragraphs 2 and 3 of Article 9.

CHAPTER 3. ARBITRATION PROCEDURE

Article 30 (Commencement of Arbitration)

1. The arbitration shall commence upon submission of an arbitration agreement by the parties.

2. The arbitration shall be conducted pursuant to these Rules.

3. Matters that are not provided for in these Rules shall be subject to the Law concerning Procedure for General Pressing Notice and Arbitration Procedure (Law No 29, 1890), and matters that are not provided for in the Law shall be subject to the order of the arbitrators.

Article 31. (Submission of Answer, etc.)

1. The Center may request the respondent to submit an written answer by the first hearing date.

2. The written answer shall include the following matters:

(1) Names of the parties;

(2) Docket No. ;

(3) Gist of answer; and

(4) The reason for the answer and its evidence

3. Paragraphs 1, 3 and 4 of Article 16 shall respectively apply to the attorney and assistant of the respondent, paragraph 5 of the same Article shall apply to the submission of evidentiary documents, paragraph 6 of the same Article shall apply to the number of copies of written answers and evidentiary documents to be submitted and Article 26 shall apply *mutatis mutandis* to the preparation in the arbitration proceedings.

Article 32 (Hearing)

1. The arbitrators can interview either party individually or with the other party present.

2. The arbitrators shall examine the evidence in the arbitration hearing, and require the witnesses or experts, etc. to appear upon the request of either party or in their sole discretion, and may interview the witnesses or experts, etc. or conduct other investigations.

Article 33. (Changes of Claim)

If the claimant wants to modify a claim, it shall be made with the other party's consent and the arbitrators' approval.

Article 34. (Counterclaim)

1. The respondent may bring counterclaims relating to the main case prior the closing of the hearing.
2. The counterclaim referenced in the preceding paragraph shall be consolidated and examined with the case, except when special circumstances exist.
3. The provisions of Article 16, paragraphs 1 and 3 of Article 17, Article 3 and the preceding Article shall apply mutatis mutandis to the counterclaim.

Article 35. (Compulsory Dismissal of Arbitration)

When the arbitrators discover that the arbitration agreement executed by the parties is null and void, or violable, they shall suspend the arbitration procedure without determining an award, and dismiss the arbitration filing.

Article 36. (Voluntary Dismissal of Arbitration)

The arbitrators may suspend the arbitration or dismiss the arbitration filing without determining the merit of the case if one of the followings occurs;

- (1) Either party fails to appear at the hearing without justifiable reason;
- (2) Either party fails to obey the instructions of the arbitrators; or
- (3) Any arbitration fee or expense payable for the arbitration is not paid by either party on the designated date of its payment.

Article 37 (Official Record, etc. at Arbitration Procedure)

1. The arbitrators shall prepare an official record for each of the arbitration hearings or preliminary hearings, and sign and seal it.
2. The official record shall include the type, date, time or place of hearing, names of attendants, outline of proceedings, outline of hearing and investigation of evidence.
3. When the statements of interested persons are recorded or videotaped, said tape shall be kept in custody for two years after the closing of the case.

Article 38 (Settlement and Recommendation of Settlement)

1. The parties may resolve their dispute by amicable settlement even after arbitration was initiated.
2. The arbitrators may try to resolve all or part of a dispute by amicable settlement in the course of arbitration proceedings at any stage.

Article 39 (Closing and Reopening)

1. The arbitrators shall declare the hearing to be closed at the time the arbitrators believe that the arbitration decision and award should be rendered.
2. The arbitrators may reopen the hearing if they deem it necessary even if the arbitrators have already declared its closing.

Article 40 (Arbitration Award)

1. The arbitrators shall prepare the original and certified copies of the award, and sign and seal them. The award shall be written in Japanese.

2. The award set forth in the preceding paragraph shall include the following matters:
 - (1) Names and addresses of the parties;
 - (2) If an attorney or assistant exists, his/her name and address;
 - (3) Arbitrators' order;
 - (4) Allocation of costs including, but not limited to, award fees, research fees which each party shall bear.
 - (5) Reason for the award, unless the parties have agreed in advance that this is not necessary; and
 - (6) Date of award.
3. The arbitrators shall deposit the original award attached to the certification of service with the competent court.

Article 41 (Amicable Settlement and Preparation of the Award)

1. If, under arbitration procedure, the parties reach a settlement, both parties shall prepare a settlement contract in writing; provided that, the arbitrators may reduce all or part of the agreed upon terms of settlement to the award upon mutual consent, of the parties.
2. Article 28 shall apply mutatis mutandis to the settlement contract set forth in the preceding paragraph, and the preceding Article shall apply to the award.

CHAPTER 4. WITHDRAWAL AND CLOSING OF CASE

Article 42 (Withdrawal)

1. The claimant may, at any time, withdraw his submission in a mediation procedure.
2. The respondent may, at any time, withdraw his counterclaim in a mediation procedure.
3. The claimant may withdraw his submission of arbitration with consent of the respondent before a hearing is declared to be closed in the arbitration proceedings.
4. The respondent may withdraw his counterclaim with the consent of the claimant before a hearing is declared to be closed in the arbitration proceedings.

Article 43 (Closing of Mediation Procedure)

If one of the followings occurs, the mediation procedure shall be closed:

- (1) Where it is acknowledged that the respondent has no intention to submit to the mediation;
- (2) Where the submission is rejected under the provisions of paragraph 3 of Article 17;
- (3) Where it is clear that there is no possibility for settlement;
- (4) Where a settlement agreement is executed between the parties; or
- (5) Where the dispute is converted to an arbitration procedure under the provisions of Article 29.

Article 44. (Termination of Arbitration Procedure)

If one of the followings occurs, the arbitration procedure shall be terminated:

- (1) Where the submission is rejected pursuant to the provisions of paragraph 3 of Article 17, Article 35 or Article 36;
- (2) Where a settlement agreement is executed between the parties; or
- (3) Where the arbitrators render an arbitration award.

CHAPTER 5. COSTS

Article 45 (Fees)

1. The claimant shall pay the filing fees at the time of submission in accordance with the Rule of Arbitration Fees (hereinafter referred to as the "Rule of Arbitration Fees") provided for separately.
2. The parties shall pay the hearing fees and award fees in accordance with the provisions of the Rule of Arbitration Fees in addition to the fees provided for in the preceding paragraph.

Article 46 (Research Fees)

When mediators or arbitrators research under the provisions of Article 18, the parties shall pay the research fees in accordance with the Rule of Arbitration Fees.

Article 47 (Expert Testimony Fees, etc.)

When a translator or an interpreter is hired, under the provisions of paragraph 2 of Article 22, or when an examination under the provisions of Article 23 the expert opinion is trusted, the parties shall pay costs therefore in accordance with the Rule of Arbitration Fees.

Article 48 (Actual Expenses)

The parties shall pay actual expenses in accordance with the provisions of the Rule of Arbitration Fees in addition to the costs provided for in the preceding three Articles.

CHAPTER 6 SUPPLEMENTARY PROVISIONS

Article 49 (Fact Finding Arbitration Contract)

The provisions of these Rules, unless contrary to their nature, shall apply to the fact-finding arbitration contract (arbitration contract solely for the purpose of fact-finding and the parties shall agree to abide by the fact-finding rendered by a third party regarding the dispute).

Article 50. (Adaptation and Supplementation of the Agreement)

The provisions of these Rules, unless contrary to their nature, shall apply to the adaptation and supplementation of the agreement (where, in accordance with a change of grounds for bargaining, the parties cause third parties to adapt or supplement the existing terms, which are deemed insufficient to cover such change upon agreement of the parties, and to integrate it into a part of the existing agreement).

Schedule: This Rule shall come into force on April 1, 1998.

(Arbitration Center 317)

2. Rules of Arbitration Fees

Article 1 (Contents of arbitration fees)

Arbitration fees shall consist of filing fees, research fees, hearing fees and award fees.

Article 2 (Filing fees)

1. The filing fee of ¥50,000 is payable by a filing party (the "Claimant") to the Arbitration Center for Industrial Property(hereinafter referred to as the "Arbitration Center") at the time it files its claim.
2. The filing fee is non-refundable by the Arbitration Center; provided, however, that half of the filing fee shall be refunded if the case is ended due to a refusal to appear by the other party (the "Respondent"), except in the case where a final award is rendered notwithstanding a default.

Article 3 (Review fees)

1. In addition to the filing fee set forth in the preceding Article, the review fee is payable by a Claimant to the Arbitration Center at the time it files its claim as follows:
 - (i) The claim filed relates to patent or utility model: ¥200,000
 - (ii) Other than (i) above: ¥100,000
2. The review fee is non-refundable by the Arbitration Center; provided, however, that half or all of the review fee shall be refunded in the following cases:
 - (1) If the proceeding is closed before a mediator or arbitrator (hereinafter collectively referred to as the "Arbitrator") is appointed: Whole amount
Provided that, after the appointment of an Arbitrator, the Arbitrator may order to refund all or part of the research fee before the first hearing if the proceeding is closed without a hearing:
Half amount
 - (2) If the proceeding is closed due to the other party's failure to appear at the hearing (except where the final arbitration award is rendered notwithstanding a default), or the arbitration procedure is not commenced due to its refusal to submit to the Arbitration Center:
Half amount
 - (3) If the case is not difficult and the Arbitrator decides that a refund of the fee is appropriate:
Half amount
3. An Arbitrator may decide that an additional review fee is payable by the Claimant or the Respondent to the Arbitration Center if the case is large or complex.

Article 4 (Hearing fees)

1. For each day of the mediation conference, arbitration hearing, settlement conference and preliminary hearing, a hearing fee of ¥15,000 is payable by both the Claimant and the Respondent, respectively to the Arbitration Center on or before the day thereof.
2. If either the Claimant or the Respondent moves to the Arbitration Center to bear the hearing fees of the other party, and the other party does not object to it, the moving party may pay to the Arbitration Center the other party's fees and the preceding paragraph shall apply mutatis mutandis to this case.

Article 5 (Award fees)

1. The award fee of the following amount is payable, subject to the allocation prescribed in the subparagraph 3 of this Article, by a Claimant and a Respondent jointly to the Arbitration Center if the final arbitration award is rendered or the settlement is reached. The payable award fee is the sum of the products (if any) of the economic profit stipulated in the arbitration award or settlement contract as a liquidated amount (hereinafter referred to as the "Amount of Award") and the Award Fees, as determined by the following table, provided that any amount less than ¥1,000 shall be rounded off.

	<u>Amount of Award</u>	<u>Award Fees (%)</u>
(i)	Up to 3 million yen	10%
(ii)	Above 3 million yen to 100 million yen	3%
(iii)	In excess of 100 million yen	1.5%

2. If injunctive relief was rendered with respect to manufacturing, sales, or import, etc., or the amount of award was not specified, or the face amount of award was exceedingly large, or the amount of award cannot be converted into a monetary amount, the Arbitration Center may, after consulting with the arbitrator, order the following figure to be the amount of the award taking proper account of the type of the case, the status of the parties, the circumstances under which the claim was filed, and other conditions; provided, however, that where an injunction of manufacturing, sales, or import, etc. was issued and where the amount of interest calculated pursuant to the formula adopted by the Tokyo District Court with respect to the injunctive relief clearly exceeds ¥100 million yen, this calculated amount shall be an amount of award thereto.

- (1) ¥1 million
- (2) ¥5 million
- (3) ¥10 million
- (4) ¥30 million
- (5) ¥100 million

3. The Arbitrator shall determine the allocation of the award fees between the parties at the time the arbitration award is rendered or settlement is reached, and shall notify both parties and reduce that allocation to the arbitration award or settlement agreement.

4. The award fees shall be payable prior to the service of an arbitration award or a settlement agreement.

Article 6 (Other costs)

1. For the costs and expenses relating to stenography, interpreting and translating, opinion, daily allowance for witness, the travel expense of the Arbitrator when he is required to travel to necessary places other than the Center offices, accommodation and lodging fees and any other disbursements, the Arbitrator shall provisionally decide the allocation of costs when the fees are incurred, and each party shall pay that to the Arbitration Center in accordance with the allocation.

2. The Arbitrator may change the amount and allocation of these costs at the time of closing of the proceedings.

Article 7 (Consumption tax)

The amount provided for in this Rule shall not include the consumption tax levied upon the services rendered by the Arbitration Center under Consumption Tax Law (Law 108, 1988).

Article 8 (Reduction of and release from fees)

The Arbitration Center may, after consulting with the Arbitrator, reduce or release all or part of the arbitration fees, taking account of the type of the case and its background, the status of the party, the circumstances under which the arbitration was filed and other related conditions.

Supplementary provision:

This Rule shall be effective as from April 1, 1998.

3. Forms for the Arbitration Center for Industrial Property

[Back Cover]

Industrial Property Arbitration Center

Jointly Operated by Japan Federation of Bar Associations and Japan Patent Attorneys Association

Tokyo Headquarters:

4-2, Kasumigaseki 3-chome, Chiyoda-ku, Tokyo 100-0013
c/o Patent Attorneys Association Building
Tel:03-3500-3793 Fax:03-3500-3839

Kansai Regional Office:

6-8, Nishitenman 4-chome, Kita-ku, Osaka 530-0047
c/o Osaka Bar Association Building
Tel:06-364-0861 Fax:06-364-5069

Nagoya Regional Office:

4-2, Sannomaru 1-chome, Naka-ku, Aichi, Nagoya 460-0001
Tel: 052-203-1651 Fax:052-204-1690

Receiving Offices:

[Tokyo] Headquarters of Industrial Property Arbitration Centers

4-2, Kasumigaseki 3-chome, Chiyoda-ku, Tokyo 100-0013
c/o Patent Attorneys Association Building

[Osaka] Kansai Regional Office of Industrial Property Arbitration Center, North Branch

6-8, Nishitenman 4-chome, Kita-ku, Osaka 530-0047
c/o Osaka Bar Association's Building
Tel:06-364-0861 Fax:06-364-5069

[Osaka] Kansai Regional Office of Industrial Property Arbitration Center, South Branch

2-7, Reijin-cho, Tennoji-ku, Osaka 543-0061, Kansai Patent Information Center
c/o Osaka Branch of Patent Attorneys Association
Tel:06-775-8207 Fax:06-775-5133

[Nagoya] Nagoya Regional Office of Industrial Property Arbitration Center, Sannomaru Branch

4-2, Sannomaru 1-chome, Naka-ku, Nagoya, Aichi 460-0001
c/o Nagoya Bar Association's Building
Tel:052-203-1651 Fax:052-204-1690

[Nagoya] Nagoya Regional Office of Industrial Property Arbitration Center, Meeki Branch

Nakamura Building 9F, 4-12, Nakamura-ku 4-chome, Nakamura-ku,
Nagoya, Aichi 460-0002
c/o Nagoya Branch of Patent Attorneys Association
Tel:052-581-5881 Fax:052-561-5727

For the outlines of the Industrial Property Arbitration Center, please refer to the following home pages of Japan Federation of Bar Associations and Japan Patent Attorneys Association, respectively:

Japan Federation of Bar Associations: <http://www.nichibenren.or.jp>

Japan Patent Attorneys Association: <http://www.jpaa.or.jp>

Material 4

**THE JAPAN COMMERCIAL ARBITRATION
ASSOCIATION
COMMERCIAL ARBITRATION RULES**

As Amended and Effective on January 1, 2008

**CHAPTER I
General Provisions**

Rule 1. Purpose

The purpose of these Rules shall be to provide for such matters as are necessary for arbitration at the Japan Commercial Arbitration Association (hereinafter the "Association").

Rule 2. Definitions

1. "Basic Date" under these Rules shall be the date after the lapse of three (3) weeks from the date on which the Association sends a notice of the request for arbitration provided for in Rule 15, Paragraph 1; provided that, if the respondent proves that it received such notice after such date, the date on which the respondent actually received such notice shall be the Basic Date.
2. Notwithstanding the provisions of the preceding paragraph, if the Association sends the notice of the request for arbitration by means provided for in Rule 15, Paragraph 2, the "Basic Date" under these Rules shall be the date of the expected time for arrival of such notice.
3. "Party" under these Rules shall be a claimant and/or respondent. Multiple claimants or respondents shall be deemed to be one party for purposes of the appointment of arbitrators.

Rule 3. Application of these Rules

1. These Rules shall apply where the parties have agreed to submit their dispute to arbitration under the Rules of the Association, or simply to arbitration at the Association (hereinafter the "arbitration agreement").
2. If the parties have entered into an arbitration agreement, these Rules shall be deemed incorporated into such agreement; provided that the parties may agree differently from the provisions of these Rules subject to the consent of the arbitral tribunal.

Rule 4. Interpretation of these Rules

If any question arises concerning the interpretation of these Rules, the Association's interpretation shall prevail; provided that the interpretation of an arbitral tribunal shall prevail over that of the Association in an arbitration case before such tribunal.

Rule 5. Arbitration Agreement

1. The arbitration agreement shall be in writing, such as in the form of a document signed

by all the parties, letters or telegrams exchanged between the parties (including those sent by facsimile device or other communication device for physically separated parties which provides the recipient with a written record of the transmitted content), or other documents.

2. When a written contract refers to a document that contains an arbitration clause and the reference is such as to make that clause part of the contract, the arbitration agreement shall be in writing.
3. When an arbitration agreement is made by way of recordation prepared electronically, magnetically, or by any other method incapable of recognition by human perception used for data-processing by a computer recording its content (hereinafter "electromagnetic records"), the arbitration agreement shall be in writing.
4. When the claimant submits a written request for arbitration containing the contents of an arbitration agreement, and a written answer submitted in response by the respondent does not contain anything to dispute it, the arbitration agreement shall be in writing.

Rule 6. Arbitral Tribunal

1. Arbitration under these Rules shall be conducted by an arbitral tribunal composed of one or more arbitrators who have been appointed pursuant to the provisions of Rules 23 through 26, 31, 45 (including the application *mutatis mutandis* of the provisions of Rule 44, Paragraph 2), and Rule 63.
2. The arbitral tribunal shall be established on the date when all the arbitrators have been appointed.
3. If the arbitral tribunal is composed of more than one arbitrator, the arbitrators shall agree upon and appoint a presiding arbitrator from among themselves.

Rule 7. Decision of Arbitral Tribunal

1. If the number of arbitrators is more than one, decisions of the arbitral tribunal, including the arbitral award, shall be made by a majority of votes of the arbitrators.
2. If the voting of the arbitral tribunal results in a tie, the presiding arbitrator shall cast the deciding vote.

Rule 8. Secretariat

1. Secretariat work with respect to arbitration under these Rules shall be conducted by the Secretariat of the Association.
2. The Secretariat of the Association shall, at the request of the arbitral tribunal or either party, make tape recordings and arrange for interpreting, making a stenographic transcript and providing a hearing room and the like as necessary for conducting the arbitral proceedings.

Rule 9. Panel of Arbitrators

The Association shall prepare and maintain a panel of arbitrators to facilitate the appointment of arbitrators.

Rule 10. Representation and Assistance

A party may be represented or assisted by any person of its choice in the proceedings under these Rules.

Rule 11. Language

1. Unless otherwise agreed by the parties, the arbitral tribunal shall determine, without delay, the language or languages to be used in arbitral proceedings. The arbitral tribunal shall, in so determining, take into consideration whether interpreting or translating will be required and how the cost thereof should be allocated.
2. The arbitral tribunal may request a party to attach to any documentary evidence its translation into the language or languages to be used in arbitral proceedings.
3. Correspondence by the party or the arbitrator with the Association shall be conducted in Japanese or English.

Rule 12. Period of Time of Proceedings

1. The parties may, by written agreement, extend any period of time provided for in these Rules, except for the period of time provided for in Rule 2, Paragraph 1, Rule 18, Paragraph 1 and Rule 19, Paragraph 1. In the event of such an extension, the parties shall, without delay, notify the arbitral tribunal (or the Association if the arbitral tribunal has not been established) thereof.
2. The arbitral tribunal may, if deemed necessary, extend any period of time provided for in these Rules (including a period of time determined by the arbitral tribunal) except for the period of time provided for in Rule 65. In the event of such an extension, the arbitral tribunal shall, without delay, notify the parties thereof.
3. The Association may determine the period of time concerning the proceedings under these Rules before the establishment of the arbitral tribunal.

Rule 13. Exclusion of Liability

Neither the arbitrators, nor the Association, nor the officers and staff of the Association shall be liable to any person for any act or omission in connection with the arbitration unless such act or omission is shown to constitute willful or gross negligence.

CHAPTER II

Commencement of Arbitration

Rule 14. Request for Arbitration

1. To request the initiation of arbitral proceedings, the claimant shall submit to the Association a written request for arbitration setting forth the following:
 - (1) a demand that the dispute be referred to arbitration under these Rules;
 - (2) a reference to the arbitration agreement that is invoked;
 - (3) the full personal or corporate names of the parties and their addresses;
 - (4) if the claimant is represented by an agent, the name and address of such agent;
 - (5) the contact information (the place for delivery of documents, telephone number,

- facsimile number and email address) of the claimant or its agent;
- (6) the relief or remedy claimed;
 - (7) a summary of the dispute; and
 - (8) the basis for the claim and the manner or method of proof.
- 2. If the claimant is represented by an agent in the arbitral proceedings, such agent shall submit a power of attorney to the Association together with the written request for arbitration.
 - 3. The claimant shall, when it requests the initiation of arbitral proceedings, pay the request fee and the administrative fee provided for in the Arbitration Fee Regulations of the Association. If the claimant fails to pay such request fee and/or administrative fee, the Association may treat the request for arbitration as if it had not been made and return the written request for arbitration to the claimant with notification to such effect.
 - 4. Arbitral proceedings shall be deemed to be initiated on the date on which the written request for arbitration has been submitted to the Association.

Rule 15. Notice of Request for Arbitration

- 1. The Association, upon confirmation that the request for arbitration has been made in conformity with the provisions of Paragraphs 1 through 3 of the preceding Rule, shall notify, without delay, the respondent of the request for arbitration. A copy of the written request for arbitration shall be attached to such notice.
- 2. If none of the respondent's domicile, habitual residence, place of business, office or the place stipulated by the respondent as the place of delivery of documents from the claimant (hereinafter the "place of delivery") can be found after making a reasonable inquiry by the claimant, the Association may notify the respondent of the request for arbitration to the respondent's last-known domicile, habitual residence, place of business or the place of delivery by registered mail or any other means by which the attempt to deliver it can be certified.

Rule 16. Continuation of Arbitral Proceedings before Establishment of Arbitral Tribunal

The Association may proceed to constitute the arbitral tribunal even if the respondent raises objections concerning the existence or validity of the arbitration agreement before the establishment of the arbitral tribunal. If the Association proceeds with the proceedings, and the arbitral tribunal is established, the arbitral tribunal shall make a determination on the alleged existence or validity pursuant to the provisions of Rule 33, Paragraph 1.

Rule 17. Request for Separation of Arbitral Proceedings

- 1. If a request for arbitration against multiple respondents is submitted and any respondent submits a written request for separation of arbitral proceedings within three (3) weeks from the Basic Date and prior to the establishment of the arbitral tribunal, the claimant shall submit a new request for arbitration against each such respondent and the other respondent(s).
- 2. All newly submitted requests for arbitration under the preceding paragraph shall be deemed to have been submitted on the date on which the initial request for arbitration was submitted to the Association; provided that the Basic Date shall be determined

based on the newly submitted requests for arbitration.

3. The provisions of Paragraph 1 shall not preclude the application of Rule 44.

Rule 18. Answer

1. The respondent shall, within four (4) weeks from the Basic Date, submit to the Association a written answer setting forth the following:
 - (1) the full personal or corporate names of the parties and their addresses;
 - (2) if the respondent is represented by an agent, the name and address of such agent;
 - (3) the contact information (the place for delivery of documents, telephone number, facsimile number and email address) of the respondent or its agent;
 - (4) confirmation or denial of the claims;
 - (5) a summary of the dispute; and
 - (6) the basis for the answer and the manner or method of proof.
2. If the respondent is represented by an agent in the arbitral proceedings, such agent shall submit a power of attorney to the Association together with the written answer.
3. Subsequent to submission of the written answer, the Association shall send, without delay, a copy thereof to the other party or parties and, if an arbitrator has, or arbitrators have, been appointed, to such arbitrator or arbitrators.
4. If the written answer contains a counterclaim, the provisions of the following Rule shall apply to such counterclaim.

Rule 19. Counterclaims

1. The respondent may, only within four (4) weeks from the Basic Date, submit a counterclaim that is related to the claimant's claim(s) and covered by the same arbitration agreement. The arbitral tribunal shall examine any such counterclaim(s) together with the claimant's claim(s).
2. The provisions of Rules 14, 15 and 18 shall apply *mutatis mutandis* to any counterclaim provided for in the preceding paragraph.

Rule 20. Amendments to Claims or Counterclaims

1. The claimant (including counterclaimant) may, to the extent that the claim and counterclaim are covered by the same arbitration agreement, amend or supplement its claim (which shall hereinafter include a counterclaim for purposes of this Rule) by submitting a written request for amendment to the Association; provided that, after the establishment of the arbitral tribunal, such claimant or counterclaimant shall submit a written application for approval of such amendment to the arbitral tribunal and obtain its approval thereof.
2. The arbitral tribunal shall hear the other party's opinion before making a determination on the request for approval provided for in the preceding paragraph.
3. The arbitral tribunal may deny approval as provided for in Paragraph 1 if it considers it inappropriate to approve such amendment in view of the substantial delay in conducting the arbitral proceedings, or the prejudice to the other party that such amendment will cause, or any other circumstances.
4. The provisions of Rules 18 or 19 shall apply *mutatis mutandis* to an answer to or counterclaim with respect to an amended claim; provided that such answer or counterclaim shall be submitted within three (3) weeks from the date on which the

Association or the arbitral tribunal sends written notice of such amendment to such other party.

Rule 21. Number of Copies of Documents to be Submitted

The number of copies of documents to be submitted pursuant to the provisions of Rule 14, Paragraph 1 and Rule 18, Paragraph 1 (including the application *mutatis mutandis* of such provisions under Rule 19, Paragraph 2 and Paragraph 4 of the preceding Rule) and the provisions of Paragraph 1 of the preceding Rule shall be equal to the number of arbitrators (three (3) if not yet determined) and the other party or parties plus one (1); provided that one copy of a power of attorney shall suffice.

Rule 22. Withdrawal of Request for Arbitration

1. The claimant may, before the establishment of the arbitral tribunal, withdraw its request for arbitration by submitting a written withdrawal of request for arbitration to the Association.
2. After the establishment of the arbitral tribunal, the claimant may withdraw its request for arbitration by submitting a written withdrawal of request for arbitration to the arbitral tribunal and obtaining its consent thereto.
3. If the claimant submits the withdrawal as provided for in the preceding paragraph, the arbitral tribunal shall, upon hearing the respondent's opinion, give its consent to the withdrawal of request for arbitration unless the respondent objects thereto and the arbitral tribunal recognizes a legitimate interest on the respondent's part in obtaining a resolution of the dispute of the arbitral proceedings.
4. The arbitral tribunal shall terminate arbitral proceedings if the request for arbitration is duly withdrawn pursuant to the preceding paragraphs.

CHAPTER III

Arbitral Tribunal

Rule 23. Appointment of Arbitrators

1. The arbitrator(s) shall be appointed pursuant to the agreement of the parties.
2. If no agreement exists between the parties concerning the appointment of arbitrators, the arbitrator(s) shall be appointed pursuant to the following Rule 24 through Rule 26.

Rule 24. Number of Arbitrators

1. If the parties fail to notify the Association within three (3) weeks from the Basic Date of their agreement with respect to the number of arbitrators, such number shall be one (1).
2. Either party may, within three (3) weeks from the Basic Date, notify the Association of the request that such number shall be three (3). If the party notifies the Association of such request, the number of arbitrators shall be three (3) if the Association, taking into consideration the amount in dispute, the complexity of the case and other circumstances, considers it appropriate and notifies the parties to that effect.

Rule 25. Appointment of Arbitrator - Single Arbitrator

1. If the number of arbitrators is one (1) under the provisions of the preceding Rule, the parties shall agree upon and appoint a single arbitrator within two (2) weeks from the time limit provided for in Rule 24, Paragraph 1.
2. If the parties fail to submit to the Association a notice of the appointment of an arbitrator pursuant to Rule 27 within the period of time provided for in the preceding paragraph, the Association shall appoint such arbitrator.
3. If the Association is to appoint an arbitrator pursuant to the provisions of the preceding paragraph, the Association shall give consideration to a request submitted by either party that the Association shall appoint as such arbitrator a person of a different nationality from those of the parties.

Rule 26. Appointment of Arbitrators - Three Arbitrators

1. If the number of arbitrators is fixed at three (3) pursuant to Rule 24, Paragraph 2, each party shall appoint one (1) arbitrator within three (3) weeks from the date on which the Association notifies the parties in accordance with Rule 24, Paragraph 2.
2. If either party fails to submit to the Association a notice of the appointment of an arbitrator pursuant to Rule 27 within the period of time provided for in the preceding paragraph, the Association shall appoint such arbitrator.
3. The arbitrators appointed by the parties, or pursuant to the provisions of the preceding paragraph, shall agree upon and appoint the third arbitrator within three (3) weeks from the date on which the Association notifies the arbitrators to the effect that the two arbitrators have been appointed.
4. If the arbitrators fail to submit to the Association the notice of the appointment of the third arbitrator pursuant to Rule 27 within the period of time provided for in the preceding paragraph, the Association shall appoint such arbitrator.
5. If the Association is to make the appointment under the provisions of the preceding paragraph, the provisions of Paragraph 3 of the preceding Rule shall apply *mutatis mutandis*.

Rule 27. Notice of Appointment of Arbitrator

1. Upon appointment of an arbitrator by a party or the arbitrators, such party or arbitrators shall, without delay, submit to the Association a written notice of appointment of arbitrator setting forth such arbitrator's name, address, contact information (telephone number, facsimile number and email address) and occupation, together with such arbitrator's written acceptance of appointment. The Association shall, without delay, send a copy of such notice to the other party and the arbitrator(s) already appointed if a party makes the appointment and to the parties if arbitrators further make the appointment, respectively.
2. Upon appointment of an arbitrator by the Association, it shall, without delay, notify the parties and the arbitrator(s) already appointed of such arbitrator's name, address, contact information (telephone number, facsimile number and email address) and occupation.

Rule 28. Impartiality and Independence of Arbitrators

1. Arbitrators shall be, and remain at all times, impartial and independent.
2. When a person is approached in connection with his or her possible appointment as an arbitrator, he or she shall fully disclose to that person any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence.
3. When a person is appointed as an arbitrator, he or she shall, without delay, submit to the Association his or her written undertaking to disclose any and all circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence, or to declare that there are no such circumstances. The Association shall, without delay, send a copy of such undertaking to the parties.
4. An arbitrator, during the course of the arbitral proceedings, shall without delay disclose in writing any and all such circumstances to the parties and the Association unless they have already been informed of the circumstances by the arbitrator.

Rule 29. Challenge of Arbitrators

1. An arbitrator may be challenged by a party if circumstances exist that give rise to justifiable doubts as to the impartiality or independence of the arbitrator.
2. A party may challenge an arbitrator appointed by it, or in whose appointment it has participated by way of recommendation or any similar acts, only for reasons of which it becomes aware after the appointment has been made.
3. A party who intends to challenge an arbitrator shall, within two (2) weeks from the date of receipt of the notice of the appointment of the arbitrator or the date when it became aware of any circumstance provided for in Paragraph 1, submit a written request for the challenge to the Association.
4. If the request under the preceding paragraph is made, the Association shall, without delay, give notice to the other party and the arbitrators to that effect along with a copy of such request.
5. The Association shall, after hearing the opinions of the parties and the arbitrators and consulting with the Association's Committee for the Review of Challenges to Arbitrators, make a decision on the challenge.

Rule 30. Removal of Arbitrator

The Association may remove any arbitrator who fails to perform his or her duties or unduly delays in the performance of his or her duties, or is legally or actually unable to perform his or her duties.

Rule 31. Replacement of Arbitrator

1. If an arbitrator resigns or dies, the Association shall, without delay, notify the parties and the remaining arbitrator(s) thereof.
2. Unless otherwise agreed by the parties, if the arbitrator who resigns or dies is one appointed by a party or parties or the remaining arbitrators, such party or parties or remaining arbitrators shall appoint a substitute arbitrator within three (3) weeks from the date on which such party or parties or such arbitrators receive the notice provided for in the preceding paragraph. If the arbitrator who resigns or dies is one appointed by the Association, the Association shall appoint a substitute arbitrator within three (3) weeks from the date on which it learns of such resignation or death.
3. If such party or parties or arbitrators fails or fail to submit to the Association the notice

of the appointment of a substitute arbitrator pursuant to Rule 27 within the period of time provided for in the preceding paragraph, the Association shall appoint such substitute arbitrator.

4. The provisions of the preceding two paragraphs shall apply *mutatis mutandis* to the appointment of a substitute arbitrator in case of the decision made by the Association that grounds for challenge exist if an arbitrator is challenged as provided for in Rule 29 and in case of removal provided for in the preceding Rule.

CHAPTER IV

Arbitral Proceedings

Section 1. Examination Proceedings

Rule 32. Supervision of Examination Proceedings

1. The examination proceedings, including hearings, shall be conducted under the supervision of the arbitral tribunal.
2. The arbitral tribunal shall treat the parties equally and give each party sufficient opportunity to state and prove its case and present a defense against the other party's case.
3. The arbitral tribunal may proceed with the arbitral proceedings even if either party fails to submit its arguments or to apply to present its evidence.
4. The arbitral tribunal shall make efforts towards the expedited resolution of the dispute.
5. The arbitral tribunal shall, by consultation with the parties, make a schedule of arbitral proceedings as soon as the arbitral tribunal is established.
6. A party shall send any documents to be submitted in the arbitral proceedings to the arbitrators, the other party and the Association and the arbitral tribunal shall send the Association a copy of any communication which is sent to the parties.
7. The submission of the documents by the party provided for in the preceding paragraph may be made by way of electromagnetic record or facsimile if the arbitral tribunal considers it appropriate.

Rule 33. Competence of Arbitral Tribunal to Decide Jurisdiction

1. The arbitral tribunal may decide challenges made regarding the existence or validity of an arbitration agreement or its own jurisdiction.
2. The arbitral tribunal shall decide to terminate arbitral proceedings if it considers it has no arbitral jurisdiction.

Rule 34. Hearings

1. The date and place of hearings shall be decided by the arbitral tribunal upon consultation with the parties. If a hearing lasts more than one (1) day, it shall be held on consecutive days, to the extent possible.
2. After the date and place of hearings have been decided, the arbitral tribunal shall, without delay, notify the parties thereof. One notice shall suffice even if hearings are held on consecutive days.
3. Oral arguments and examination of evidence shall occur at hearings.

4. The date of a hearing shall be changed at the request of both parties. In the event that one of the parties requests that the date of a hearing be changed, the arbitral tribunal may change such date only if it determines that there are unavoidable circumstances.
5. The request provided for in the preceding paragraph shall be made in writing, unless made at a hearing.

Rule 35. Appearance by the Parties at Hearings

1. Hearings shall in principle be held in the presence of both parties.
2. If one or both parties fails to appear without good cause, hearings may be held in its or their absence.
3. If one of the parties fails to appear, hearings and other examination proceedings may be conducted based on the allegations and proof of the party who has appeared.

Rule 36. Submission of Written Statements

1. Each party shall, within the period of time determined by the arbitral tribunal, submit to the arbitral tribunal written statements setting forth such party's case on the law and the facts (hereinafter the "written statements").
2. The arbitral tribunal shall confirm the receipt of the written statements submitted by each party.

Rule 37. Application to Present Evidence and Examination of Evidence

1. Each party shall have the burden of proving the facts relied on to support such party's claims or defenses.
2. The arbitral tribunal may, when it deems it necessary, examine evidence that a party has not applied to present.
3. Such examination of evidence may be made other than at a hearing. If the arbitral tribunal decides to examine evidence other than at a hearing, the parties shall be given the opportunity to be present.
4. A party may request the arbitral tribunal to order the other party to produce documents which it possesses.
5. If the request under the preceding paragraph is made, the arbitral tribunal may, after hearing the other party's opinion, order the production provided for in the preceding paragraph if it considers it necessary to the examination proceedings, unless it determines there are legally justified reasons for the party to refuse the production.

Rule 38. Appointment of Experts by Arbitral Tribunal

1. The arbitral tribunal may appoint one or more experts to advise with respect to any necessary issues and to report the findings in writing or orally.
2. If a party so requests, the arbitral tribunal shall, after delivery of the report provided for in the preceding paragraph, give an opportunity to the parties to put questions to the expert in a hearing.

Rule 39. Assignment of Arbitrator's Authority

The arbitral tribunal may, when it deems it necessary and after obtaining the

consent of the parties, cause one or more of the arbitrators constituting the arbitral tribunal to proceed with a part of the proceedings.

Rule 40. Closed Proceedings; Obligation of Confidentiality

1. Arbitral proceedings, and records thereof, shall be closed to the public.
2. The arbitrators, the officers and staff of the Association, the parties and their representatives or assistants shall not disclose facts related to arbitration cases or facts learned through arbitration cases except where disclosure is required by law or required in court proceedings.

Rule 41. Rules Applicable to Substance of Dispute

1. The arbitral tribunal shall decide the dispute in accordance with such rules of law as are agreed by the parties as applicable to the substance of the dispute.
2. Failing agreement provided for in the preceding paragraph, the arbitral tribunal shall apply the law of the country or state to which the dispute in the arbitral proceedings is most closely connected.
3. Notwithstanding the provisions contained in the preceding two paragraphs, the arbitral tribunal shall decide *ex aequo et bono* only if the parties have expressly requested it to do so.

Rule 42. Place of Arbitration

1. Unless otherwise agreed by the parties, the place of arbitration shall be the place of business of the Association where the claimant submitted the written request for arbitration provided for in Rule 14, Paragraph 1.
2. Notwithstanding the place of arbitration determined in accordance with the provisions of the preceding paragraph, the arbitral tribunal may carry out the arbitral proceedings at any place it considers appropriate.

Rule 43. Participation in Proceedings

1. Any interested person who is not a party to a particular arbitration may, with the consent of all the parties to such arbitration, participate in such arbitration as a claimant or be allowed to participate therein as a respondent.
2. If the participation in the arbitration provided for in the preceding paragraph occurs before the establishment of the arbitral tribunal, the arbitrators shall be appointed subject to the provisions of Rule 45 and, if such participation occurs after the establishment of the arbitral tribunal, the composition thereof shall not be affected.
3. Notwithstanding that the consent provided for in Paragraph 1 has been given, the arbitral tribunal may deny participation in the arbitration if the arbitral tribunal determines that such participation will delay the arbitral proceedings or for any other proper reason.
4. The provisions of Rule 14 shall apply *mutatis mutandis* to an application for participation in the arbitration; provided that the administrative fee mentioned in Rule 14, Paragraph 3 shall be repaid if such participation is denied.

Rule 44. Examination of Multiple Requests for Arbitration

in the Same Proceedings

1. If the Association or the arbitral tribunal determines that it is necessary to consolidate multiple requests for arbitration that contain claims that are essentially and mutually related, the arbitral tribunal, after obtaining the written consent of all the relevant parties, may examine such cases together in the same proceedings; provided that, if multiple requests for arbitration arise out of the same arbitration agreement, no consent of the parties is necessary.
2. If it is determined, pursuant to the provisions of the preceding paragraph, that multiple requests for arbitration are to be disposed of in the same proceedings, the provisions of Paragraph 2 of the preceding Rule shall apply *mutatis mutandis* to the appointment of arbitrators.

Rule 45. Appointment of Arbitrators where Third Party Participates in Proceedings

1. If, prior to the establishment of an arbitral tribunal, a third party participates or is allowed to participate in arbitral proceedings under the provisions of Rule 43, the claimant, the respondent and such third party shall agree and appoint one or more arbitrators.
2. If the number of arbitrators has not been agreed upon or the appointment of the number of arbitrators fixed by the agreement provided for in the preceding paragraph has not been completed within three (3) weeks from the date on which such third party has participated in arbitral proceedings, the Association shall appoint an appropriate number of arbitrator(s) or the number of arbitrators agreed upon, respectively.

Rule 46. Interlocutory Award

The arbitral tribunal may, when it deems it appropriate, make an interlocutory award to decide a dispute arising during the course of the arbitral proceedings. The provisions of Rule 54, Paragraph 1 and Rule 55, Paragraphs 1 and 2 shall apply *mutatis mutandis* to such interlocutory award; provided that the statement of a reason for the interlocutory award may be dispensed with.

Rule 47. Settlement of Dispute by the Arbitral Tribunal

An arbitral tribunal may attempt to settle the dispute in the arbitral proceedings if all of the parties consent, orally or in writing, thereto.

Rule 48. Interim Measures of Protection

1. The arbitral tribunal may, at the request of a party, order any party to take such interim measures of protection as the arbitral tribunal may consider necessary in respect of the subject matter of the dispute.
2. The arbitral tribunal may order any party to provide appropriate security in connection with such measures as prescribed in the preceding paragraph.

Rule 49. Conclusion and Reopening of Examination Proceedings

1. The arbitral tribunal may decide to conclude the examination upon determining that the proceedings have matured enough for the arbitral tribunal to render an arbitral award. If such decision is made other than at a hearing, an appropriate period of time for advance notice shall be provided.
2. The arbitral tribunal may, if it deems it necessary, reopen the examination. An examination shall, in principle, not be reopened after the lapse of three (3) weeks from the date of conclusion of the examination proceedings.

Rule 50. Termination of Arbitral Proceedings

1. The arbitral proceedings are terminated at the time when the arbitral award, or the decision to terminate the arbitral proceedings, has been made.
2. The arbitral tribunal shall decide to terminate arbitral proceedings, other than as provided for in Rule 22, Paragraph 4 or Rule 33, Paragraph 2, if the arbitral tribunal finds that the continuation of the arbitral proceedings has become unnecessary or that the continuation of the arbitral proceedings has become impossible.
3. The mandate of the arbitral tribunal terminates at the time when the arbitral proceedings have been terminated, subject to the provisions of Rules 56 through 58.
4. The provisions of Rule 54, Paragraph 1, Paragraph 3, Paragraph 4 and Paragraph 5 and Rule 55 shall apply *mutatis mutandis* to the decision under this Rule.

Rule 51. Right to Object

A party who knows or ought to know that the arbitral proceedings have not been conducted properly and who fails to object without delay, shall be deemed to have waived its right to object; provided that no party shall be deemed to have waived any right that it cannot waive.

Rule 52. Examination Proceedings only on Documents

1. The parties may, at any time, by written agreement, request examination based only on documents. If the parties make such a request, the proceedings already conducted shall remain valid.
2. If it is a violation of the spirit of the provisions of these Rules to apply them to examination proceedings based only on documents, the arbitral tribunal's determination shall prevail.

Section 2. Arbitral Award

Rule 53. Time of Arbitral Award

1. Once the arbitral tribunal has determined that the proceedings have matured enough for it to render an arbitral award and the examination has been concluded, the arbitral tribunal shall make an arbitral award within five (5) weeks from the date of such conclusion; provided that the arbitral tribunal may, if it deems it necessary in view of the complexities of the case or for any other reason, extend such period of time to an appropriate period of not more than eight (8) weeks.
2. The arbitral tribunal shall, upon conclusion of the examination pursuant to the preceding paragraph, notify the parties of the period of time during which it shall make

an arbitral award.

Rule 54. Arbitral Award

1. The arbitral award shall state the following and bear the signature of each arbitrator; provided that the statement of Item (4) below shall be omitted if the parties have agreed that no statement is necessary, and in the case provided for in the following paragraph, and the reason for such omission shall be set forth in the arbitral award:
 - (1) the full personal or corporate names of the parties and their addresses;
 - (2) if a party is represented by an agent, the name and address of such agent;
 - (3) the text of the award;
 - (4) the reason for the award;
 - (5) the date of the award; and
 - (6) the place of arbitration.
2. The arbitral tribunal may, at the request of the parties reaching a settlement during the course of the arbitral proceedings, set forth the contents of any settlement reached in its arbitral award. The arbitral tribunal shall state to that effect in the arbitral award.
3. The arbitral tribunal shall set forth in the text of its arbitral award the total amount and the allocation of the administrative fee, the arbitrators' remuneration and the necessary expenses incurred during the proceedings.
4. If one party should repay to the other based on the allocation described in the preceding paragraph, the arbitral tribunal shall set forth in the text of its arbitral award the order that that party shall repay such amount to the other party.
5. If there is more than one arbitrator and an arbitrator fails to sign the arbitral award, the arbitral tribunal shall set forth the reasons for such failure in the arbitral award.
6. The arbitral award shall be final and binding upon the parties.

Rule 55. Service of Arbitral Award

1. A copy of the arbitral award shall be lodged with the Association.
2. The Association shall serve a copy of the arbitral award signed by the arbitrators on each party by hand delivery, by delivery-certified registered mail, or by any other method proving receipt.
3. Service under the preceding paragraph shall occur after the arbitrators' remuneration and the necessary expenses incurred during the proceedings have been fully paid to the Association.

Rule 56. Correction of Arbitral Award

The arbitral tribunal may upon request by a party, or on its own authority, correct any errors in computation, clerical errors, or any other errors of a similar nature.

Rule 57. Interpretation of Arbitral Award by Tribunal

A party may request the arbitral tribunal to give an interpretation of a specific part of the arbitral award.

Rule 58. Additional Arbitral Award

A party may request the arbitral tribunal to make an additional arbitral award as to claims presented in the arbitral proceedings but omitted from the arbitral award.

CHAPTER V

Expedited Procedures

Rule 59. Application of Expedited Procedures

1. In any case where the amount and economic value of the claimant's claim are not more than ¥20,000,000, arbitration shall be conducted under the provisions set forth in this Chapter; provided that the provisions set forth in this Chapter shall not apply to any of the following cases:
 - (1) if the parties notify the Association, within two (2) weeks from the Basic Date, of their agreement that they shall not submit their dispute to the Expedited Procedures;
 - (2) if the parties notify the Association, within two (2) weeks from the Basic Date, of their agreement that the number of arbitrators shall be more than one (1); or
 - (3) if a counterclaim is submitted pursuant to the provisions set forth in Rule 61 and the amount and/or economic value of such counterclaim exceeds ¥20,000,000.
2. The amount of interest and other legal fruits, compensation for damages, penalty for breach of contract and expenses incidental to a principal claim shall not be included in either the amount or the economic value of the claim provided for in the preceding paragraph.
3. Where the economic value of a claim cannot be calculated, or its calculation is extremely difficult, or where there is a dispute between the parties concerning such economic value, the economic value provided for in Paragraph 1 shall be deemed to exceed ¥20,000,000.

Rule 60. Provisions applied to Expedited Procedures

1. Expedited Procedures shall be conducted as provided for in Rules 61 through 67.
2. Matters not provided for in this Chapter shall be governed *mutatis mutandis* by the provisions of the other Chapters of these Rules.

Rule 61. Time Limit of Counterclaims

If the amount and economic value of the claimant's claim provided for in Rule 59 are not more than ¥20,000,000, the respondent may, only within two (2) weeks from the Basic Date, submit its counterclaim(s) as provided for in Rule 19.

Rule 62. Prohibition against Amendments to Claims or Counterclaims

Neither the claimant nor the counterclaimant may amend or supplement its claims or counterclaims.

Rule 63. Appointment of Arbitrators

1. The arbitral tribunal shall consist of a single arbitrator.

2. The parties shall agree upon and appoint an arbitrator within four (4) weeks from the Basic Date.
3. If the parties fail to submit to the Association the notice of the appointment of an arbitrator under Rule 27 within the period of time provided for in the preceding paragraph, the Association shall appoint such arbitrator.
4. If the Association is to appoint an arbitrator pursuant to the provisions of the preceding paragraph, the Association shall give consideration to a request submitted by either party that the Association shall appoint as such arbitrator a person of a different nationality from those of the parties.
5. The provisions of Rules 23 through 26 and Rule 45 shall not apply to Expedited Procedures.

Rule 64. Restriction against Hearings

The arbitral tribunal may hold a hearing for one (1) day only; provided that an additional one (1) day may be permitted if unavoidable.

Rule 65. Time Limit of Arbitral Award

1. The arbitral tribunal shall make an arbitral award within three (3) months after the establishment of the arbitral tribunal.
2. Notwithstanding the provisions of the preceding paragraph, the Association may extend such time limit if the arbitrator and all the parties so agree, or if the Association determines that the arbitrator is unable to make an arbitral award within the time limit as a result of his or her mental and/or physical difficulties, or other reason for which the arbitrator is incapable to perform the arbitrator's duties; provided that, in either case, the extension of the time limit by the Association shall be limited to a maximum of an additional three (3) months.

Rule 66. Exclusion of Application of Provisions concerning Participation in Proceedings and Consolidated Examination

The provisions of Rules 43 and 44 shall not apply to Expedited Procedures.

Rule 67. Replacement of Words

If the purview of Rule 2, Paragraph 1 and Rule 17, Paragraph 1 applies, the words "three (3) weeks" provided for in Rule 2, Paragraph 1 and in Rule 17, Paragraph 1 shall be replaced by the words "one (1) week" and "four (4) weeks," respectively.

CHAPTER VI

Supplementary Rules

Rule 68. Obligation to Pay Fees, etc.

The parties shall be jointly and severally liable for payment to the Association of the fees provided for in the Arbitration Fee Regulations, the arbitrators' remuneration and the necessary expenses incurred during the proceedings.

Rule 69. Allocation of Fees and Expenses

The parties shall bear, in the manner provided below, the fees provided for in the Arbitration Fee Regulations and the necessary expenses incurred during the proceedings:

- (1) the request fee shall be borne by the party requesting the initiation of arbitral proceedings; and
- (2) the administrative fee and the necessary expenses incurred during the proceedings shall be borne subject to the allocation determined by the arbitral tribunal and set forth in the arbitral award.

Rule 70. Allocation of Remuneration for Arbitrators

The parties shall bear equally the cost of the remuneration fixed by the Association for the arbitrators; provided that the arbitral tribunal may, in view of the circumstances, allocate such cost in any other manner.

Rule 71. Payment to the Association

1. The parties shall pay to the Association, in the manner and within the period of time determined by the Association, a sum of money fixed by it to cover the arbitrators' remuneration and necessary expenses incurred during the proceedings.
2. If a party fails to make payment as provided for in the preceding paragraph, the Association may request the arbitral tribunal to suspend or terminate the arbitral proceedings unless the other party makes such payment on behalf of the first party.
3. If, subsequent to termination of the arbitral proceedings, the total sum of money paid under the provisions of Paragraph 1 and the administrative fee exceeds the total sum of the administrative fee, the arbitrators' remuneration and the necessary expenses incurred during the proceedings and paid by the parties to the Association determined by the arbitral tribunal under the provisions of Rule 54, Paragraph 3, the Association shall refund the difference to either or both of the parties.

Rule 72. Costs incurred by a Party

Unless otherwise agreed by the parties, the arbitral tribunal may include as part of the necessary expenses incurred during the proceedings all or part of the legal representation fees and expenses incurred by the legal representative of a party to pursue the proceedings.

Supplementary Provisions

(Effective as of October 1, 1992)

1. These Rules shall come into effect on October 1, 1992.
2. The Commercial Arbitration Rules, as amended on June 1, 1991 (hereinafter the "Former Rules"), are hereby repealed.
3. Any arbitral proceedings initiated before these Rules come into effect shall be governed by the Former Rules; provided that subsequent proceedings may, upon agreement of the parties, be conducted pursuant to these Rules. In the event of such an agreement between the parties, the proceedings that already have been conducted

pursuant to the Former Rules shall remain valid.

Supplementary Provisions

(Effective as of October 1, 1997)

1. These Rules shall come into effect on October 1, 1997.
2. Any arbitral proceedings initiated before these Rules come into effect shall be governed by the former Rules; provided that subsequent proceedings may, upon agreement of the parties, be conducted pursuant to these Rules. In the event of such an agreement between the parties, the proceedings that already have been conducted pursuant to the former Rules shall remain valid.

Supplementary Provisions

(Effective as of March 1, 2004)

1. These Rules shall come into effect on March 1, 2004.
2. Any arbitral proceedings initiated before these Rules come into effect shall be governed by the former Rules; provided that subsequent proceedings may, upon agreement of the parties, be conducted pursuant to these Rules. In the event of such an agreement between the parties, the proceedings that already have been conducted pursuant to the former Rules shall remain valid.

Supplementary Provisions

(Effective as of July 1, 2006)

1. These Rules shall come into effect on July 1, 2006.
2. Any arbitral proceedings initiated before these Rules come into effect shall be governed by the former Rules; provided that subsequent proceedings may, upon agreement of the parties, be conducted pursuant to these Rules. In the event of such an agreement between the parties, the proceedings that already have been conducted pursuant to the former Rules shall remain valid.

Supplementary Provisions

(Effective as of January 1, 2008)

1. These Rules shall come into effect on January 1, 2008.
2. Any arbitral proceedings initiated before these Rules come into effect shall be governed by the former Rules; provided that subsequent proceedings may, upon agreement of the parties, be conducted pursuant to these Rules. In the event of such an agreement between the parties, the proceedings that already have been conducted pursuant to the former Rules shall remain valid.

Material 5

Arbitration Law

(Law No.138 of 2003)

Translated by The Arbitration Law Follow-up Research Group

Preface

March 2004

Secretariat of the Office for Promotion of Justice System Reform

In order to assist in promoting the wide utilization of the Japanese Arbitration Law (Law No. 138 of 2003; enforced on 1 March 2004), an English translation of the Arbitration Law has been compiled by the Arbitration Law Follow-up Research Group below, which has been established within the Secretariat of the Office for Promotion of Justice System Reform.

This English translation may be cited, reproduced or reprinted as needed.

Although the translation was administrated with particular care to accuracy, we do not guarantee that there are no discrepancies in the delicate nuances between the Japanese and English or unforeseeable errors. As such, the English translation should only be used as a reference. For issues regarding the interpretation etc. of the Arbitration Law, please ensure to refer to the original Japanese text.

The Arbitration Law Follow-up Research Group

(titles omitted; in order of Japanese syllabary)

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(total of six members)

Arbitration Law

(Law No.138 of 2003)

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Chapter I: General Provisions

Article 1. (Purpose)

Arbitral proceedings where the place of arbitration is in the territory of Japan and court proceedings in connection with arbitral proceedings shall, in addition to the provisions of other laws, follow those of this Law.

Article 2. (Definitions)

- (1) For the purposes of this Law, “arbitration agreement” shall mean an agreement by the parties to submit to one or more arbitrators the resolution of all or certain civil disputes which have arisen or which may arise in respect of a defined legal relationship (whether contractual or not) and to abide by their award (hereinafter referred to as “arbitral award”).
- (2) For the purposes of this Law, “arbitral tribunal” shall mean a sole arbitrator or a panel of two or more arbitrators, who, based on an arbitration agreement, conduct proceedings and make an arbitral award in respect of civil disputes subject thereto.
- (3) For the purposes of this Law, “written statement” shall mean a document that a party prepares and submits to an arbitral tribunal in arbitral proceedings and which states the case of that party.

Article 3. (Scope of Application)

- (1) The provisions of Chapters II through VII and Chapters IX and X, except the provisions specified in the following paragraph and article 8, apply only if the place of arbitration is in the territory of Japan.
- (2) The provisions of article 14, paragraph (1) and article 15 apply when the place of arbitration is in or outside the territory of Japan, or when the place of arbitration is not designated.
- (3) The provisions of Chapter VIII apply when the place of arbitration is in or outside the territory of Japan.

Article 4. (Court Intervention)

With respect to arbitral proceedings, no court shall intervene except where so provided in this Law.

Article 5. (Court Jurisdiction)

- (1) Only the following courts have jurisdiction over cases concerning court proceedings based on the provisions of this Law:
 - (i) the district court designated by the agreement of the parties;
 - (ii) the district court having jurisdiction over the place of arbitration (only when the designated place of arbitration falls within the jurisdiction of a single district court); or
 - (iii) the district court having jurisdiction over the general forum of the counterparty in the relevant case.
- (2) In the event that two or more courts have jurisdiction based on the provisions of this Law, the court to which the request was first made shall have jurisdiction.
- (3) The court shall, upon determining that the whole or a part of a case concerning court proceedings based on the provisions of this Law does not fall under its jurisdiction, upon request or by its own authority, transfer such case to a court with jurisdiction.

Article 6. (Voluntary Oral Hearing)

Any decision concerning court proceedings based on the provisions of this Law may be made without an oral hearing.

Article 7. (Appeal against Court Decision)

Any party with an interest affected by the decision concerning court proceedings based on the provisions of this Law may, only if specifically provided for by this Law, file an immediate appeal against the decision within the peremptory term of two weeks from the day on which notice is given.

Article 8. (Court Intervention in the Event that the Place of Arbitration Has Not Been Designated)

- (1) Even if the place of arbitration has not been designated, each of the court applications cited in the following items may be made when there is a possibility that the place of arbitration will be in the territory of Japan and the applicant or counterparty's general forum (excluding designations based on the last address) is in the territory of Japan. In such case, according to the classifications cited in the respective items, the respective provisions shall apply:
 - (i) an article 16, paragraph (3) application: same article;
 - (ii) an article 17, paragraphs (2) through (5) application: same article;
 - (iii) an article 19, paragraph (4) application: articles 18 and 19; or
 - (iv) an article 20 application: same article.
- (2) Notwithstanding the provisions of article 5, paragraph (1), only the district courts having jurisdiction over the general forum described in the preceding paragraph have jurisdiction over the case relating to the applications cited in each of the items in the preceding paragraph.

Article 9. (Reading of Case Records Relating to Court Proceedings)

A party with an interest in any court proceedings based on the provisions of this Law may request any of the following from the court clerk:

- (i) a reading of or a copy of the case records;
- (ii) a copy of the records produced by electronic, magnetic or any other means unrecognizable by natural sensory function in the case records;
- (iii) the delivery of an authenticated copy, transcript or extract thereof; or
- (iv) the delivery of a certificate regarding matters relating to the case.

Article 10. (Application of the Code of Civil Procedure to Court Proceedings)

Except as otherwise provided, the provisions of the Code of Civil Procedure [Law No. 109 of 1996] shall apply to any court proceedings based on the provisions of this Law.

Article 11. (Supreme Court Rules)

In addition to those provided by this Law, particulars necessary in relation to court proceedings based on the provisions of this Law shall be as prescribed by the Rules of the Supreme Court.

Article 12. (Written Notice)

- (1) Unless otherwise agreed by the parties, when notice in arbitral proceedings is given in writing, it is deemed to have been given at the time it is delivered to the addressee personally, or, at the time it is delivered to the addressee's domicile, habitual residence, place of business, office or delivery address (which hereafter in this article means the place stipulated by the addressee as the place for delivery of documents from the sender).
- (2) With respect to a written notice in arbitral proceedings, where it is possible for the notice to be delivered to the addressee's domicile, habitual residence, place of business, office or delivery address, whereas it is difficult for the sender to obtain materials to certify that the delivery has been made, if the court considers it necessary, it may upon request of the sender decide to serve the notice itself. The provisions of article 104 and articles 110 through 113 of the Code of Civil Procedure shall not apply with respect to service in such an event.
- (3) The provisions of the preceding paragraph shall not apply in the event the parties have agreed that the service described in the same paragraph shall not be made.
- (4) The case concerning the request described in paragraph (2) shall be, notwithstanding the provisions of article 5, paragraph(1), subject only to the jurisdiction of the courts cited in items (i) and (ii) of the same paragraph and the district court with jurisdiction over the addressee's domicile, habitual residence, place of business, office or delivery address.
- (5) When notice in arbitral proceedings is given in writing, if none of the addressee's domicile, habitual residence, place of business, office or delivery address can be found after making a reasonable inquiry, unless otherwise agreed by the parties, it will suffice if the sender sends its notice to the addressee's last-known domicile, habitual residence, place of business, office or delivery address by registered letter or any other means by which the attempt to deliver it can be certified. In such case, a written notice is deemed to have been given at the normally expected time of its arrival.
- (6) The provisions of paragraph (1) and the preceding paragraph shall not apply to

notices in court proceedings based on the provisions of this Law.

Chapter II: Arbitration Agreement

Article 13. (Effect of Arbitration Agreement)

- (1) Unless otherwise provided by law, an arbitration agreement shall be valid only when its subject matter is a civil dispute that may be resolved by settlement between the parties (excluding that of divorce or separation).
- (2) The arbitration agreement shall be in the form of a document signed by all the parties, letters or telegrams exchanged between the parties (including those sent by facsimile device or other communication device for parties at a distance which provides the recipient with a written record of the transmitted content), or other written instrument.
- (3) When a written contract refers to a document that contains an arbitration clause and the reference is such as to make that clause part of the contract, the arbitration agreement shall be in writing.
- (4) When an arbitration agreement is made by way of electromagnetic record (records produced by electronic, magnetic or any other means unrecognizable by natural sensory function and used for data-processing by a computer) recording its content, the arbitration agreement shall be in writing.
- (5) When the parties to the arbitral proceedings exchange written statements in which the existence of an arbitration agreement is alleged by one party and not denied by another, the arbitration agreement shall be in writing.
- (6) Even if in a particular contract containing an arbitration agreement, any or all of the contractual provisions, excluding the arbitration agreement, are found to be null and void, cancelled or for other reasons invalid, the validity of the arbitration agreement shall not necessarily be affected.

Article 14. (Arbitration Agreement and Substantive Claim before Court)

- (1) A court before which an action is brought in respect of a civil dispute which is the subject of an arbitration agreement shall, if the defendant so requests, dismiss the action. Provided, this shall not apply in the following instances:
 - (i) when the arbitration agreement is null and void, cancelled, or for other reasons invalid;
 - (ii) when arbitration proceedings are inoperative or incapable of being performed based on the arbitration agreement; or
 - (iii) when the request is made by the defendant subsequent to the presentation of its statement in the oral hearing or in the preparations for argument proceedings on the substance of the dispute.
- (2) An arbitral tribunal may commence or continue arbitral proceedings and make an arbitral award even while the action referred to in the preceding paragraph is pending before the court.

Article 15. (Arbitration Agreement and Interim Measures by Court)

It is not incompatible with an arbitration agreement for a party to request, before or during arbitral proceedings, from a court an interim measure of protection and for a court to grant such measure in respect of any civil dispute which is the subject of the

arbitration agreement.

Chapter III: Arbitrator

Article 16. (Number of Arbitrators)

- (1) The parties are free to determine the number of arbitrators.
- (2) Failing such determination as provided for in the preceding paragraph, when there are two parties in an arbitration, the number of arbitrators shall be three.
- (3) Failing such determination as provided for in paragraph (1), when there are three or more parties in an arbitration, the court shall determine the number of arbitrators upon request of a party.

Article 17. (Appointment of Arbitrators)

- (1) The parties are free to agree on a procedure of appointing the arbitrators. Provided, this shall not apply to the provisions of paragraphs (5) and (6).
- (2) Failing such agreement as provided for in the preceding paragraph, when there are two parties in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator. In such case, if a party fails to appoint an arbitrator within thirty days of a request to do so by the other party who has appointed an arbitrator, the appointment shall be made by the court upon the request of that party, or if the two arbitrators appointed by the parties fail to agree on the third arbitrator within thirty days of their appointment, upon the request of a party.
- (3) Failing such agreement as provided in paragraph (1) or any agreement on the appointment of arbitrators between the parties, when there are two parties in an arbitration with a sole arbitrator, the court shall appoint an arbitrator upon the request of a party.
- (4) Failing such agreement as provided for in paragraph (1) when there are three or more parties, the court shall appoint arbitrators upon the request of a party.
- (5) Where, under an appointment procedure for arbitrators agreed upon by the parties as provided for in paragraph (1), arbitrators cannot be appointed due to a failure to act as requested under such procedure or for any other reason, a party may request of the court the appointment of arbitrators.
- (6) The court, in appointing arbitrators based on the provisions contained in paragraphs (2) through (5), shall have due regard to the following items:
 - (i) the qualifications required of the arbitrators by the agreement of the parties;
 - (ii) the impartiality and independence of the appointees; and
 - (iii) in the case of a sole arbitrator or in the case where the two arbitrators appointed by the parties are to appoint the third arbitrator, whether or not it would be appropriate to appoint an arbitrator of a nationality other than those of the parties.

Article 18. (Grounds for Challenge)

- (1) A party may challenge an arbitrator:
 - (i) if it does not possess the qualifications agreed to by the parties; or
 - (ii) if circumstances exist that give rise to justifiable doubts as to its impartiality or independence.
- (2) A party who appointed an arbitrator, or made recommendations with respect to the

appointment of an arbitrator, or participated in any similar acts, may challenge that arbitrator only for reasons of which it becomes aware after the appointment has been made.

- (3) When a person is approached in connection with its possible appointment as an arbitrator, it shall fully disclose any circumstances likely to give rise to justifiable doubts as to its impartiality or independence.
- (4) An arbitrator, during the course of arbitral proceedings, shall without delay disclose any circumstances likely to give rise to justifiable doubts as to its impartiality or independence (unless the parties have already been informed of them by the arbitrator).

Article 19. (Challenge Procedure)

- (1) The parties are free to agree on a procedure for challenging an arbitrator. Provided, this shall not apply to the provisions of paragraph (4).
- (2) Failing an agreement as provided for in the preceding paragraph, upon request of a party, the arbitral tribunal shall decide on the challenge.
- (3) A party who intends to make a request as provided for in the preceding paragraph shall, within fifteen days of the later of either the day on which it became aware of the constitution of the arbitral tribunal or the day on which it became aware of any circumstance referred to in any item of paragraph (1) of the preceding article, send a written request describing the reasons for the challenge to the arbitral tribunal. In such case, the arbitral tribunal shall decide that grounds for challenge exist when it finds that grounds for challenge exist with respect to the arbitrator.
- (4) If a challenge of the arbitrator under the procedure for challenge prescribed in the preceding three paragraphs is not successful, the challenging party may request within thirty days after having received notice of the decision rejecting the challenge, the court to decide on the challenge. In such case, the court shall decide that grounds for challenge exist when it finds that grounds for challenge exist with respect to the arbitrator.
- (5) While a case relating to a challenge as prescribed in paragraph (4) is pending before the court, the arbitral tribunal may commence or continue the arbitral proceedings and make an arbitral award.

Article 20. (Request for Removal)

Any party may request the court to decide on the removal of an arbitrator if any of the following grounds exist. In such case, if the court finds that the grounds for the request exist, it shall decide to remove the said arbitrator:

- (i) if the arbitrator becomes de jure or de facto unable to perform its functions; or
- (ii) for reasons other than those in the preceding item, if the arbitrator fails to act without undue delay.

Article 21. (Termination of an Arbitrator's Mandate)

- (1) An arbitrator's mandate shall terminate upon the occurrence of any of the following:
 - (i) the death of an arbitrator;
 - (ii) the resignation of an arbitrator;
 - (iii) the removal of an arbitrator upon the agreement of the parties;
 - (iv) a decision that grounds for challenge exist under the procedure for challenge

- described in the provisions of article 19, paragraphs (1) through (4); or
- (v) a decision to remove an arbitrator based on the provisions of the preceding article.
- (2) If, during the course of procedure for challenge under the provisions of article 19, paragraphs (1) through (4), or removal proceedings under the provisions of the preceding article, an arbitrator withdraws from its office or is removed upon the agreement of the parties, this alone does not imply the existence of any ground referred to in the items in article 18, paragraph (1) or the items in the preceding article with respect to the arbitrator.

Article 22. (Appointment of Substitute Arbitrator)

Unless otherwise agreed by the parties, where the mandate of an arbitrator terminates under any of the grounds described in each item of paragraph (1) of the preceding article, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

Chapter IV: Special Jurisdiction of Arbitral Tribunal

Article 23. (Competence of Arbitral Tribunal to Rule on its Jurisdiction)

- (1) The arbitral tribunal may rule on assertions made in respect of the existence or validity of an arbitration agreement or its own jurisdiction (which hereafter in this article means its authority to conduct arbitral proceedings and to make arbitral awards).
- (2) A plea that the arbitral tribunal does not have jurisdiction shall be raised promptly in the case where the grounds for the assertion arise during the course of arbitral proceedings, or in other cases before the time at which the first written statement on the substance of the dispute is submitted to the arbitral tribunal (including the time at which initial assertions on the substance of the dispute are presented orally at an oral hearing). Provided, the arbitral tribunal may admit a later plea if it considers the delay justified.
- (3) A party may raise the plea prescribed in the preceding paragraph even if it has appointed an arbitrator, or made recommendations with respect to the appointment of an arbitrator, or participated in any similar acts.
- (4) The arbitral tribunal shall give the following ruling or arbitral award, as the case may be, on a plea raised in accordance with paragraph (2):
- (i) a preliminary independent ruling or an arbitral award, when it considers it has jurisdiction; or
 - (ii) a ruling to terminate arbitral proceedings, when it considers it has no jurisdiction.
- (5) If the arbitral tribunal gives a preliminary independent ruling that it has jurisdiction, any party may, within thirty days of receipt of notice of such ruling, request the court to decide the matter. In such an event, while such a request is pending before the court, the arbitral tribunal may continue the arbitral proceedings and make an arbitral award.

Article 24. (Interim Measures of Protection)

- (1) Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order any party to take such interim measure of protection as the arbitral tribunal may consider necessary in respect of the subject matter of the dispute.

- (2) The arbitral tribunal may order any party to provide appropriate security in connection with such measure as prescribed in the preceding paragraph.

Chapter V: Commencement and Conduct of Arbitral Proceedings

Article 25. (Equal Treatment of Parties)

- (1) The parties shall be treated with equality in the arbitral proceedings.
- (2) Each party shall be given a full opportunity of presenting its case in the arbitral proceedings.

Article 26. (Rules of Procedure)

- (1) The parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the arbitral proceedings. Provided, it shall not violate the provisions of this Law relating to public policy.
- (2) Failing such agreement as prescribed in the preceding paragraph, the arbitral tribunal may, subject to the provisions of this Law, conduct the arbitral proceedings in such manner as it considers appropriate.
- (3) Failing such agreement as prescribed in paragraph (1), the power conferred upon the arbitral tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

Article 27. (Waiver of Right to Object)

Unless otherwise agreed by the parties, as to arbitral proceedings, a party who knows that any provision of this Law or any arbitral proceedings rules agreed upon by the parties (to the extent that none of these relate to public policy) has not been complied with and yet fails to state its objection to such non-compliance without delay (if a time limit by which objections should be made is provided for, within such period of time), shall be deemed to have waived its right to object.

Article 28. (Place of Arbitration)

- (1) The parties are free to agree on the place of arbitration.
- (2) Failing such agreement as prescribed in the preceding paragraph, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.
- (3) Notwithstanding the place of arbitration determined in accordance with the provisions of the preceding two paragraphs, the arbitral tribunal may, unless otherwise agreed by the parties, carry out the following procedures at any place it considers appropriate:
 - (i) consultation among the members of the arbitral tribunal;
 - (ii) hearing of parties, experts or witnesses; and
 - (iii) inspection of goods, other property or documents.

Article 29. (Commencement of Arbitral Proceedings and Interruption of Limitation)

- (1) Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular civil dispute commence on the date on which one party gave the other party notice to refer that dispute to the arbitral proceedings.
- (2) A claim made in arbitral proceedings shall give rise to an interruption of limitation.

Provided, this shall not apply where the arbitral proceedings have been terminated for a reason other than the issuance of an arbitral award.

Article 30. (Language)

- (1) The parties are free to agree on the language or languages to be used in the arbitral proceedings and the proceedings to be conducted using that language or those languages.
- (2) Failing such agreement as prescribed in the preceding paragraph, the arbitral tribunal shall determine the language or languages to be used in the arbitral proceedings and the proceedings to be conducted using that language or those languages.
- (3) Failing any designation of proceedings to be conducted using the designated language or languages in the agreement prescribed in paragraph (1) or the determination prescribed in the preceding paragraph, the proceedings to be conducted using such language or languages are as follows:
 - (i) any oral proceedings;
 - (ii) any statement or notice in writing by a party; or
 - (iii) any ruling (including an arbitral award) or notice in writing by the arbitral tribunal.
- (4) The arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the language or languages designated in the agreement as prescribed in paragraph (1) or the determination prescribed in paragraph (2) (where designation has been made as to the language or languages to be used for translation, such language or languages).

Article 31. (Time Restrictions on Parties' Statements)

- (1) Within the period of time determined by the arbitral tribunal, the claimant (which hereinafter means the party that carried out the act to commence the arbitral proceedings) shall state the relief or remedy sought, the facts supporting its claim and the points at issue. In such case, the claimant may submit all documentary evidence it considers to be relevant or may add a reference to the documentary evidence or other evidence it will submit.
- (2) Within the period of time determined by the arbitral tribunal, the respondent (which hereinafter means any party to the arbitral proceedings other than the claimant) shall state its defense in respect of the particulars stated according to the provisions of the preceding paragraph. In such case, the provisions of the latter part of the same paragraph shall apply.
- (3) Any party may amend or supplement its statement during the course of the arbitral proceedings. Provided, the arbitral tribunal may refuse to allow such amendment or supplementation if made in delay.
- (4) The preceding three paragraphs shall not apply when otherwise agreed by the parties.

Article 32. (Procedure of the Hearing)

- (1) The arbitral tribunal may hold oral hearings for the presentation of evidence or for oral argument by the parties. Provided, where a party makes an application for holding oral hearings, including the request in article 34, paragraph (3), the arbitral

tribunal shall hold such oral hearings at an appropriate stage of the arbitral proceedings.

- (2) The preceding paragraph shall not apply when otherwise agreed by the parties.
- (3) When holding oral hearings for the purposes of oral argument or inspection of goods, other property or documents, the arbitral tribunal shall give sufficient advance notice to the parties of the time and place for such hearings.
- (4) A party who supplied written statements, documentary evidence or any other records to the arbitral tribunal shall take necessary measures to ensure that the other party will be aware of their contents.
- (5) The arbitral tribunal shall take necessary measures to ensure that all parties will be aware of the contents of any expert report or other evidence on which the arbitral tribunal may rely in making an arbitral award or other rulings.

Article 33. (Default of a Party)

- (1) If the claimant violates the provisions of article 31, paragraph (1), the arbitral tribunal shall make a ruling to terminate the arbitral proceedings. Provided, this shall not apply in the case where there is sufficient cause for the violation.
- (2) If the respondent violates the provisions of article 31, paragraph (2), the arbitral tribunal shall continue the arbitral proceedings without treating such violation in itself as an admission of the claimant's allegations.
- (3) If any party fails to appear at an oral hearing or to produce documentary evidence, the arbitral tribunal may make the arbitral award on the evidence before it that has been collected up until such time. Provided, this shall not apply in the case where there is sufficient cause with respect to the failure to appear at an oral hearing or to produce documentary evidence.
- (4) The preceding three paragraphs shall not apply when otherwise agreed by the parties.

Article 34. (Expert Appointed by Arbitral Tribunal)

- (1) The arbitral tribunal may appoint one or more experts to appraise any necessary issues and to report their findings in writing or orally.
- (2) In the case of the preceding paragraph, the arbitral tribunal may require a party to do the following acts:
 - (i) give the expert any relevant information; or
 - (ii) produce, or provide access to, any relevant documents, goods or other property to the expert for inspection.
- (3) If a party so requests or if the arbitral tribunal considers it necessary, the expert shall, after delivery of its report described in paragraph (1), participate in an oral hearing.
- (4) A party may carry out the following acts in the oral hearing described in the preceding paragraph:
 - (i) put questions to the expert; or
 - (ii) have experts whom it has personally appointed to testify on the points at issue.
- (5) Each of the preceding paragraphs shall not apply when otherwise agreed by the parties.

Article 35. (Court Assistance in Taking Evidence)

- (1) The arbitral tribunal or a party may apply to a court for assistance in taking evidence

by any means that the arbitral tribunal considers necessary as entrustment of investigation, examination of witnesses, expert testimony, investigation of documentary evidence (excluding documents that the parties may produce in person) or inspection (excluding that of objects the parties may produce in person) prescribed in the Code of Civil Procedure. Provided, this shall not apply in the case where the parties have agreed not to apply for all or some of these means.

- (2) In making the application described in the preceding paragraph, the party shall obtain the approval of the arbitral tribunal.
- (3) Notwithstanding the provisions of article 5, paragraph (1), only the following courts have jurisdiction over cases relating to the application described in paragraph (1):
 - (i) the court described in article 5, paragraph (1), item (ii);
 - (ii) the district court having jurisdiction over the domicile or place of residence of the person to be examined or the person holding the relevant documents, or the location of the object for inspection; or
 - (iii) the district court having jurisdiction over the general forum of the applicant or the counterparty (only if there is no court described in the preceding two items).
- (4) An immediate appeal may be made against the decision regarding the application in paragraph (1).
- (5) When the court carries out the examination of evidence based on the application in paragraph (1), the arbitrators may peruse the documents, inspect the objects and, with the approval of the presiding judge, put questions to the witness or expert (as prescribed in article 213 of the Code of Civil Procedure).
- (6) The court clerk shall enter in the record the matters concerning the examination of evidence carried out by the court following the application prescribed in paragraph (1).

Chapter VI: Arbitral Award and Termination of Arbitral Proceedings

Article 36 (Substantive Law to be Applied in Arbitral Award)

- (1) The arbitral tribunal shall decide the dispute in accordance with such rules of law as are agreed by the parties as applicable to the substance of the dispute. In such case, any designation of the law or legal system of a given State shall be construed, unless otherwise expressed, as directly referring to the substantive law of that State and not to its conflict of laws rules.
- (2) Failing agreement as provided in the preceding paragraph, the arbitral tribunal shall apply the substantive law of the State with which the civil dispute subject to the arbitral proceedings is most closely connected.
- (3) Notwithstanding the provisions prescribed in the preceding two paragraphs, the arbitral tribunal shall decide *ex aequo et bono* only if the parties have expressly authorized it to do so.
- (4) Where there is a contract relating to the civil dispute subject to the arbitral proceedings, the arbitral tribunal shall decide in accordance with the terms of such contract and shall take into account the usages, if any, that may apply to the civil dispute.

Article 37. (Proceedings by Panel of Arbitrators)

- (1) An arbitral tribunal with more than one arbitrator shall elect a presiding arbitrator from among all its members.

- (2) Any decision of the arbitral tribunal shall be made by a majority of all its members.
- (3) Notwithstanding the provisions prescribed in the preceding paragraph, procedural matters in arbitral proceedings may be decided by the presiding arbitrator, if so authorized by the parties or all other members of the arbitral tribunal.
- (4) The provisions of the preceding three paragraphs shall not apply when otherwise agreed by the parties.

Article 38. (Settlement)

- (1) If, during arbitral proceedings, the parties settle the civil dispute subject to the arbitral proceedings and the parties so request, the arbitral tribunal may make a ruling on agreed terms.
- (2) The ruling as provided for in the preceding paragraph shall have the same effect as an arbitral award.
- (3) The ruling as provided for in paragraph (1) shall be made in writing in accordance with paragraphs (1) and (3) of the following article and shall state that it is an arbitral award.
- (4) An arbitral tribunal or one or more arbitrators designated by it may attempt to settle the civil dispute subject to the arbitral proceedings, if consented to by the parties.
- (5) Unless otherwise agreed by the parties, the consent provided for in the preceding paragraph or its withdrawal shall be made in writing.

Article 39. (Arbitral Award)

- (1) The arbitral award shall be made in writing and shall be signed by the arbitrators who made it. Provided, in arbitral proceedings with more than one arbitrator, the signatures of the majority of all members of the arbitral tribunal shall suffice, if the reason for any omitted signature is stated.
- (2) The arbitral award shall state the reasons upon which it is based. Provided, this shall not apply when otherwise agreed by the parties.
- (3) The arbitral award shall state its date and place of arbitration.
- (4) The arbitral award shall be deemed to have been made at the place of arbitration.
- (5) After the arbitral award is made, the arbitral tribunal shall notify each party of the arbitral award by sending a copy of the arbitral award signed by the arbitrators.
- (6) The proviso of paragraph (1) shall apply to the copy of the arbitral award described in the preceding paragraph.

Article 40. (Termination of Arbitral Proceedings)

- (1) The arbitral proceedings are terminated by the arbitral award or by a ruling to terminate the arbitral proceedings.
- (2) Other than rulings based on the provisions of article 23, paragraph (4), item (ii) or article 33, paragraph (1), the arbitral tribunal shall issue a ruling to terminate arbitral proceedings in the case where any of the following grounds exists:
 - (i) the claimant withdraws its claim. Provided, this shall not apply in the event that the respondent objects thereto and the arbitral tribunal recognizes a legitimate interest on its part in obtaining a settlement of the civil dispute subject to the arbitral proceedings;
 - (ii) the parties agree to on termination of the arbitral proceedings;
 - (iii) the parties settle the civil dispute subject to the arbitral proceedings (excluding the

- case where a ruling under article 38, paragraph (1) is issued); or
- (iv) other than the instances in the preceding three items, the arbitral tribunal finds that the continuation of the arbitral proceedings has become unnecessary or impossible.
- (3) The mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings. Provided, the acts prescribed in the provisions of articles 41 through 43 may be made.

Article 41. (Correction of Arbitral Award)

- (1) The arbitral tribunal may upon request of a party or by its own authority correct any errors in computation, any clerical or typographical errors or any errors of similar nature in the arbitral award.
- (2) Unless otherwise agreed by the parties, the request described in the preceding paragraph shall be made within thirty days of the receipt of the notice of the arbitral award.
- (3) When making the request described in paragraph (1), a party shall issue advance or simultaneous notice to the other party stating the content of the request.
- (4) The arbitral tribunal shall make a ruling with respect to the request described in paragraph (1) within thirty days of such request.
- (5) The arbitral tribunal may extend, if it considers it necessary, the period of time provided for in the preceding paragraph.
- (6) The provisions of article 39 shall apply to any ruling to correct the arbitral award or any ruling to dismiss the request in paragraph (1).

Article 42. (Interpretation of Arbitral Award by Arbitral Tribunal)

- (1) A party may request the arbitral tribunal to give an interpretation of a specific part of the arbitral award.
- (2) The request described in the preceding paragraph may be made only if so agreed by the parties.
- (3) The provisions of paragraphs (2) and (3) of the preceding article shall apply to the request described in paragraph (1) and the provisions of article 39 and paragraphs (4) and (5) of the preceding article shall apply to any rulings made with respect to the request described in paragraph (1).

Article 43. (Additional Arbitral Award)

- (1) Unless otherwise agreed by the parties, a party may request the arbitral tribunal to make an arbitral award as to claims presented in the arbitral proceedings but omitted from the arbitral award. In such case, the provisions of article 41, paragraphs (2) and (3) shall apply.
- (2) The arbitral tribunal shall make a ruling with respect to the request described in the preceding paragraph within sixty days of such request. In such case, the provisions of article 41, paragraph (5) shall apply.
- (3) The provisions of article 39 shall apply to the ruling described in the preceding paragraph.

Chapter VII: Setting Aside of Arbitral Award

Article 44.

- (1) A party may apply to a court to set aside the arbitral award when any of the following grounds are present:
 - (i) the arbitration agreement is not valid due to limits to a party's capacity;
 - (ii) the arbitration agreement is not valid for a reason other than limits to a party's capacity under the law to which the parties have agreed to subject it (or failing any indication thereon, under the law of Japan);
 - (iii) the party making the application was not given notice as required by the provisions of the laws of Japan (or where the parties have otherwise reached an agreement on matters concerning the provisions of the law that do not relate to the public policy, such agreement) in the proceedings to appoint arbitrators or in the arbitral proceedings;
 - (iv) the party making the application was unable to present its case in the arbitral proceedings;
 - (v) the arbitral award contains decisions on matters beyond the scope of the arbitration agreement or the claims in the arbitral proceedings;
 - (vi) the composition of the arbitral tribunal or the arbitral proceedings were not in accordance with the provisions of the laws of Japan (or where the parties have otherwise reached an agreement on matters concerning the provisions of the law that do not relate to the public policy, such agreement);
 - (vii) the claims in the arbitral proceedings relate to a dispute that cannot constitute the subject of an arbitration agreement under the laws of Japan; or
 - (viii) the content of the arbitral award is in conflict with the public policy or good morals of Japan.
- (2) The application described in the preceding paragraph may not be made after three months have elapsed from the date on which the party making the application had received the notice by the sending of a copy of the arbitral award (including the document constituting the ruling of the arbitral tribunal described in the provisions of articles 41 through 43), or after an enforcement decision under article 46 has become final and conclusive.
- (3) Even where the case for application described in paragraph (1) falls within its jurisdiction, a court may, upon request or by its own authority, if it finds it appropriate, transfer all or a part of said case to another competent court.
- (4) An immediate appeal may be filed against a decision made under the provisions of article 5, paragraph (3) or the preceding paragraph regarding the case for application described in paragraph (1).
- (5) A court may not make a decision with respect to the application described in paragraph (1), unless and until an oral hearing or oral proceeding at which the parties can attend was held.
- (6) Where an application is made under paragraph (1), an arbitral award may be set aside by the court in the event that it finds any of the grounds described in each of the items under the same paragraph to be present (with respect to the grounds described in items (i) through (vi) of the same paragraph, this shall be limited to where the party making the application has proved the existence of such grounds).
- (7) Where the ground described in paragraph (1), item (v) is present, and where the part relating to matters prescribed in the same item can be separated from the arbitral award, only that part of the arbitral award may be set aside by the court.

- (8) An immediate appeal may be filed against the decision regarding the application in paragraph (1).

Chapter VIII: Recognition and Enforcement Decision of Arbitral Award

Article 45. (Recognition of Arbitral Award)

- (1) An arbitral award (irrespective of whether or not the place of arbitration is in the territory of Japan; this shall apply throughout this chapter) shall have the same effect as a final and conclusive judgment. Provided, an enforcement based on the arbitral award shall be subject to an enforcement decision pursuant to the provisions of the following article.
- (2) The provisions of the preceding paragraph do not apply in the case where any of the following grounds are present (with respect to the grounds described in items (i) through (vii), this shall be limited to where either of the parties has proven the existence of the ground in question):
- (i) the arbitration agreement is not valid due to limits to a party's capacity;
 - (ii) the arbitration agreement is not valid for a reason other than limits to a party's capacity under the law to which the parties have agreed to subject it (or failing any indication thereon, the law of the country under which the place of arbitration falls);
 - (iii) a party was not given notice as required by the provisions of the law of the country under which the place of arbitration falls (or where the parties have otherwise reached an agreement on matters concerning the provisions of the law that do not relate to public policy, such agreement) in the proceedings to appoint arbitrators or in the arbitral proceedings;
 - (iv) a party was unable to present its case in the arbitral proceedings;
 - (v) the arbitral award contains decisions on matters beyond the scope of the arbitration agreement or the claims in the arbitral proceedings;
 - (vi) the composition of an arbitral tribunal or the arbitral proceedings were not in accordance with the provisions of the law of the country under which the place of arbitration falls (or where the parties have otherwise reached an agreement on matters concerning the provisions of the law that do not relate to public policy, such agreement);
 - (vii) according to the law of the country under which the place of arbitration falls (or where the law of a country other than the country under which the place of arbitration falls was applied to the arbitral proceedings, such country), the arbitral award has not yet become binding, or the arbitral award has been set aside or suspended by a court of such country;
 - (viii) the claims in the arbitral proceedings relate to a dispute that cannot constitute the subject of an arbitration agreement under the laws of Japan; or
 - (ix) the content of the arbitral award would be contrary to the public policy or good morals of Japan.
- (3) Where the ground described in item (v) of the preceding paragraph is present, and where the part relating to matters described in the same item can be separated from the arbitral award, said part and any other parts in the arbitral award shall be deemed separate independent arbitral awards and the provisions of the preceding paragraph shall apply accordingly.

Article 46. (Enforcement Decision of Arbitral Award)

- (1) A party seeking enforcement based on the arbitral award may apply to a court for an enforcement decision (which hereinafter means a decision authorizing enforcement based on an arbitral award) against the debtor as counterparty.
- (2) The party making the application described in the preceding paragraph shall supply a copy of the arbitral award, a document certifying that the content of said copy is identical to the arbitral award, and a Japanese translation of the arbitral award (except where made in Japanese).
- (3) If an application for setting aside or suspension of an arbitral award has been made to the court as described in paragraph (2), item (vii) of the preceding article, the court where the application described in paragraph (1) has been made may, if it considers it necessary, suspend proceedings relating to the application described in paragraph (1). In such case, the court may, upon request of the party who made the application described in the same paragraph, order the other party to provide security.
- (4) The case for application described in paragraph (1) shall be, notwithstanding the provisions of article 5, paragraph (1), subject only to the jurisdiction of the courts cited in each of the items of the same paragraph and a district court with jurisdiction over the location of the object of the claim or the debtor's seizable assets.
- (5) Even where the case for application described in paragraph (1) falls within its jurisdiction, a court may, upon request or by its own authority, if it finds it appropriate, transfer all or a part of said case to another competent court.
- (6) An immediate appeal may be filed against a decision made under the provisions of article 5, paragraph (3) or the preceding paragraph regarding the case for application described in paragraph (1).
- (7) The court shall, except where it dismisses the application described in paragraph (1) pursuant to the provisions of the following paragraph or paragraph (9), issue an enforcement decision.
- (8) The court may dismiss the application described in paragraph (1) only when it finds any of the grounds described in each of the items under paragraph (2) of the preceding article present (with respect to the grounds described in items (i) through (vii) of the same paragraph, this shall be limited to where the counterparty has proved the existence of the ground in question).
- (9) The provisions of paragraph (3) of the preceding article shall apply with respect to the application of the provisions of the preceding paragraph in the event that the ground described in paragraph (2), item (v) of the same article is present.
- (10) The provisions of article 44, paragraphs (5) and (8) shall apply with respect to decisions regarding the application described in paragraph (1).

Chapter IX: Miscellaneous

Article 47. (Remuneration of Arbitrators)

- (1) The arbitrators may receive remuneration in accordance with the agreement of the parties.
- (2) Failing an agreement as described in the preceding paragraph, the arbitral tribunal shall determine the remuneration of the arbitrators. In such case, the remuneration shall be for an appropriate amount.

Article 48. (Deposit for the Costs of the Arbitral Proceedings)

- (1) Unless otherwise agreed by the parties, the arbitral tribunal may order that the parties deposit an amount determined by the arbitral tribunal as the roughly estimated amount for costs of the arbitral proceedings within the appropriate period of time determined by the arbitral tribunal.
- (2) Where such deposits, as ordered under the provisions of the preceding paragraph, have not been made, unless otherwise agreed by the parties, the arbitral tribunal may suspend or terminate the arbitral proceedings.

Article 49. (Apportionment of the Costs of the Arbitral Proceedings)

- (1) The costs disbursed by the parties with respect to the arbitral proceedings shall be apportioned between the parties in accordance with the agreement of the parties.
- (2) Failing an agreement as described in the preceding paragraph, each party shall bear the costs it has disbursed with respect to the arbitral proceedings.
- (3) In accordance with the agreement of the parties, if any, the arbitral tribunal may, in an arbitral award or in an independent ruling, determine the apportionment between the parties of the costs disbursed by the parties with respect to the arbitral proceedings and the amount that one party should reimburse to the other party based thereon.
- (4) If the matters described in the preceding paragraph have been determined in an independent ruling, such ruling shall have the same effect as an arbitral award.
- (5) The provisions of article 39 shall apply to the ruling described in the preceding paragraph.

Chapter X: Penalties

Article 50. (Acceptance of Bribe; Acceptance with Request; Acceptance in Advance of Assumption of Office)

- (1) An arbitrator who accepts, demands or promises to accept a bribe in relation to its duty shall be punished by imprisonment with labor for not more than five years. In such case, when the arbitrator agrees to do an act in response to a request, imprisonment with labor for not more than seven years shall be imposed.
- (2) When a person to be appointed an arbitrator accepts, demands or promises to accept a bribe in relation to the duty to assume with agreement to do an act in response to a request, imprisonment with labor for not more than five years shall be imposed in the event of appointment.

Article 51. (Bribe to Third Person)

When an arbitrator with agreement to do an act in response to a request, causes a bribe in relation to its duty to be given to a third person or demands or promises such bribe to be given to a third person, imprisonment with labor for not more than five years shall be imposed.

Article 52. (Aggravated Acceptance; Acceptance after Resignation of Office)

- (1) When an arbitrator commits a crime described in the preceding two articles and consequently acts illegally or refrains from acting in the exercise of its duty, imprisonment with labor for a definite term of not less than one year shall be imposed.
- (2) The provisions of the preceding paragraph shall apply when an arbitrator accepts,

demands or promises to accept a bribe, or cause a bribe to be given to a third person or demands or promises a bribe to be given to a third person, in relation to having acted illegally or refrained from acting in the exercise of its duty.

- (3) When a person who was an arbitrator accepts, demands or promises to accept a bribe in relation to having acted illegally or refrained from acting in the exercise of its duty during its tenure as an arbitrator with agreement thereof in response to a request, imprisonment with labor for not more than five years shall be imposed.

Article 53. (Confiscation and Collection of Equivalent Value)

A bribe accepted by an offender or by a third person with such knowledge shall be confiscated. When the whole or a part of the bribe cannot be confiscated, a sum of money equivalent thereto shall be collected.

Article 54. (Giving a Bribe)

A person who gives, offers or promises to give a bribe as provided for in articles 50 through 52 shall be punished by imprisonment with labor for not more than three years or a fine of not more than two million five hundred thousand yen.

Article 55. (Crimes Committed outside Japan)

- (1) The provisions of articles 50 through 53 shall apply to an offender who commits any of the crimes described in articles 50 through 52 outside Japan.
- (2) The crime described in the preceding article shall be treated in the same manner as provided in article 2 of the Criminal Code [Law No. 45 of 1907].

Supplementary Provisions

Article 1. (Date of Enforcement)

This Law shall come into force from the date which shall be fixed by a Cabinet Order no later than nine months from the date of the promulgation of this Law.

Article 2. (Transitory Measures Relating to Form of Arbitration Agreement)

The existing Law shall apply to the form for arbitration agreements which have been made prior to the enforcement of this Law.

Article 3. (Exception Relating to Arbitration Agreements Concluded between Consumers and Businesses)

- (1) For the time being until otherwise enacted, any arbitration agreements (excluding arbitration agreements described in the following article; hereafter in this article referred to as the “consumer arbitration agreement”) concluded between consumers (which hereafter in this article shall mean consumers as described in article 2, paragraph (1) of the Consumer Contract Act [Law No. 61 of 2000]) and businesses (which hereafter in this article shall mean businesses as described in article 2, paragraph (2) of the same law) subsequent to the enforcement of this Law, the subject of which constitutes civil disputes that may arise between them in the future, shall follow the provisions described in paragraphs (2) through (7).
- (2) A consumer may cancel a consumer arbitration agreement. Provided, this shall not apply in the event that the consumer is a claimant in arbitral proceedings based on the

consumer arbitration agreement.

- (3) In the case where a business is the claimant in arbitral proceedings based on a consumer arbitration agreement, following the constitution of an arbitral tribunal the business shall request without delay that an oral hearing be conducted under the provisions of article 32, paragraph (1). In such case the arbitral tribunal shall make a ruling to carry out the oral hearing and notify the parties of the date, time and place therefor.
- (4) The arbitral tribunal shall carry out the oral hearing described in the preceding paragraph prior to any other proceedings in the arbitral proceedings.
- (5) Notice to the party who is a consumer based on the provisions of paragraph (3) shall be made by the sending of a document stating the following matters. In such case, the arbitral tribunal shall make every effort to use as simple an expression as possible with respect to matters described in items (ii) through (v):
 - (i) date, time and place of the oral hearing;
 - (ii) that in the case where an arbitration agreement exists, the arbitral award with respect to the civil dispute constituting its subject shall have the same effect as a final and conclusive judgment of the court;
 - (iii) that in the case where an arbitration agreement exists, any suit filed with the court in respect of the civil dispute constituting its subject will be dismissed irrespective of the timing when the suit is filed before or after the arbitral award;
 - (iv) that the consumer may cancel the consumer arbitration agreement; and
 - (v) that in the event that the party who is the consumer fails to appear on the date of the oral hearing described in item (i), said party shall be deemed to have cancelled the consumer arbitration agreement.
- (6) On the day of the oral hearing described in paragraph (3), the arbitral tribunal shall explain the matters described in items (ii) through (iv) of the preceding paragraph orally to the party who is a consumer. In such case, where the party does not express an intent to waive its right of cancellation described in paragraph (2), said party shall be deemed to have cancelled the consumer arbitration agreement.
- (7) In the event that the party who is a consumer fails to appear on the date of the oral hearing described in paragraph (3), said party shall be deemed to have cancelled the consumer arbitration agreement.

Article 4. (Exception Relating to Arbitration Agreements Concerning Individual Labor-related Disputes)

For the time being until otherwise enacted, any arbitration agreements concluded following the enforcement of this Law, the subject of which constitutes individual labor-related disputes (which means individual labor-related disputes as described in article 1 of the Law on Promoting the Resolution of Individual Labor Disputes [Law No.112 of 2001]) that may arise in the future, shall be null and void.

Article 5. (Transitional Measures Relating to Arbitral Proceedings)

Arbitral proceedings commenced prior to the enforcement of this Law and proceedings conducted by a court relating to such arbitral proceedings (excluding proceedings commenced after the issuance of an arbitral award) shall follow the existing Law.

Article 6. (Transitional Measures Relating to Lawsuits for the Challenge against

Arbitrators)

In addition to the provisions in the preceding article, the existing Law shall apply to suits for challenges against arbitrators brought prior to the enforcement of this Law.

Article 7. (Transitional Measures Relating to the Request for the Challenge against Arbitrators to the Arbitral Tribunal)

In addition to the provisions of the preceding two articles, with respect to the request of the provisions of article 19, paragraph (3) in the case where the parties, prior to the enforcement of this Law, were aware of the fact that an arbitral tribunal had been formed and of the existence of any of the grounds referred to in any of the items of article 18, paragraph (1) for any arbitrator, the words “the later of either the day on which it became aware of the constitution of the arbitral tribunal or the day on which it became aware of any circumstance referred to in any item of paragraph (1) of the preceding article” in article 19, paragraph (3) shall be read as “the date on which this Law came into force”.

Article 8. (Transitional Measures Relating to the Force and Effect of Arbitral Awards)

In the case where an arbitral award had been issued prior to the enforcement of this Law, its deposit to a court, its force and effect, suits to set it aside, and enforcement based thereon, shall follow the existing Law.

Articles 9 through 22 [Omitted]

Material 6

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The Act on Promotion of Use of Alternative Dispute Resolution (Act No. 151 of 2004)

Chapter 1 General Provisions

Article 1 (Purpose)

Owing to the changes in the social and economic climate at home and abroad, alternative dispute resolution (procedures for resolution of a civil dispute between parties who seek, with the involvement of a fair third party, a resolution without using litigation; the same shall apply hereinafter) has become an important means of achieving prompt dispute resolution based on the specialized expertise of a third party and in accordance with the actual facts of the dispute. Bearing such in mind, the purpose of the Act on Promotion of Use of Alternative Dispute Resolution is to provide for the basic concepts of the Act and for the responsibilities of the government and other entities; and to establish a certification system and set special rules on nullification of prescription and other matters so as to make alternative dispute resolution procedures easier to utilize, thereby enabling parties to a dispute to choose the most suitable method for resolving a dispute with the aim of appropriate realization of the rights and interests of the people.

Article 2 (Definitions)

In this Act, the terms set forth in the following items shall have the meanings as defined in the respective items:

(i) Private dispute resolution procedures shall refer to alternative dispute resolution procedures by which a private business, at the request of both parties to a civil dispute for which settlement is sought, arranges settlement under a contract with the parties to the dispute, excluding alternative dispute resolution carried out by persons designated by law as dispute resolution services under the law, in accordance with a Cabinet Order;

(ii) Dispute resolution providers shall refer to persons who arrange settlement through private dispute resolution procedures;

(iii) Certified dispute resolution procedures shall refer to private dispute resolution procedures to be carried out as the services certified under Article 5;

(iv) Certified dispute resolution business operators shall refer to persons who carry out the services of certified dispute resolution under Article 5.

Article 3 (Basic Principles)

(1) Alternative dispute resolution procedures shall, as legal procedures for settling disputes, be executed in a fair and appropriate manner while respecting the voluntary efforts of the parties to the dispute for dispute resolution, and be aimed at achieving prompt dispute resolution based on specialized expertise and in accordance with the actual facts of the dispute.

(2) Persons involved in the alternative dispute resolution procedures shall, in compliance with the basic concepts set forth in the preceding paragraph, strive to cooperate and collaborate with one another.

Article 4 (Responsibilities of the Government)

(1) The government shall, with the objective of promoting the use of alternative dispute resolution, research and analyze the trends, use, and other matters of alternative dispute resolution procedures at home and abroad, provide relevant information, and take other necessary measures, thereby endeavoring to familiarize the public with alternative dispute resolution.

(2) Local public entities shall, bearing in mind that the widespread use of alternative dispute resolution will contribute to improvement in social well-being, endeavor to provide information on alternative dispute resolution procedures and take other necessary measures while sharing appropriate roles with the government.

Chapter 2 Certified Dispute Resolution Services

Section 1 Certification of Private Dispute Resolution Services

Article 5 (Certification of Private Dispute Resolution Services)

Persons who carry out private dispute resolution services on regular basis 1 (including unincorporated entities for which a representative or administrator is appointed) may obtain certification by the Minister of Justice for their services.

Article 6 (Certification Standards)

The Minister of Justice shall grant certification for private dispute resolution services that are carried out by a person who has applied for certification under the preceding paragraph (hereinafter referred to as the "applicant"), if the Minister recognizes the services referred to in the application as satisfying the certification standards and the applicant as having necessary knowledge and skills as well as a financial base for carrying out the services. The certification standards are that the applicant:

(i) Defines with his or her specialized expertise the scope of disputes for which settlement will be arranged;

(ii) Is capable of selecting the appropriate person as dispute resolution provider to arrange settlement for each individual private dispute resolution procedure with respect to the scope of disputes given under the preceding item;

(iii) Establishes a method for selecting dispute resolution providers and a method for excluding dispute resolution providers who are interested parties of a party to a dispute or have any other causes which may harm the fair execution of private dispute resolution procedures;

(iv) In cases where the applicant intends to carry out the services of private dispute resolution for disputes in which the applicant's substantial controllers (persons who substantially have control over the applicant's business or have a major impact on the applicant's business through ownership of shares in the applicant, financing to the applicant or any other causes, as provided for by a Ministry of Justice Ordinance; the same shall apply hereinafter in this item) or the applicant's subsidiaries (persons whose business is substantially controlled by the applicant through the ownership of shares or any other causes, as provided for by a Ministry of Justice Ordinance; the same shall apply hereinafter in this item) are involved as the parties concerned, has adopted measures to prevent the substantial controllers or the applicant from exercising undue influence on the dispute resolution providers;

(v) In cases where the dispute resolution provider is not qualified as an attorney (excluding cases where the dispute resolution provider who provides the dispute resolution prescribed in Article 3, Paragraph 1, Item 7 of the Judicial Scriveners Act (Act No. 197 of 1950) is qualified as the judicial scrivener prescribed in Paragraph 2 of the said article), has taken measures to ensure an attorney is available for consultation when

specialized knowledge on the interpretation and application of laws and regulations is required in the process of providing private dispute resolution;

(vi) Establishes an appropriate method for giving notification when executing private dispute resolution procedures;

(vii) Establishes a standard operation process from the commencement to the termination of executing private dispute resolution procedures;

(viii) Establishes requirements and methods of operation to be satisfied or observed by the party to a dispute making a request for execution of private dispute resolution procedures;

(ix) Establishes procedures to promptly notify, upon receiving a request made by one party to a dispute under the preceding item, the other party to the dispute of the request and to confirm whether the other party, in response, also wishes to request use of private dispute resolution;

(x) Establishes methods for storing, returning or otherwise handling materials submitted through private dispute resolution;

(xi) Establishes a method for preserving in an appropriate manner suited to the nature of the information, the communications of the parties to a dispute or other third parties that are contained in opinions stated or materials submitted or presented through private dispute resolution procedures; the same shall apply to such communications as prescribed in the dispute resolution procedure records prescribed in Article 16;

(xii) Establishes requirements and modes of operation for the parties to a dispute to terminate the private dispute resolution procedures;

(xiii) Stipulates that when the dispute resolution provider considers it impossible to arrange settlement between the parties to a dispute through private dispute resolution, the dispute resolution provider shall promptly terminate the private dispute resolution procedures and notify the parties to the dispute to that effect;

(xiv) Establishes measures to assure the confidentiality of communications that the applicant (the directors of the applicant if it is a juridical person, or the representative or manager appointed for the applicant if it is an entity that is not a juridical person and that has a representative or administrator), and the applicant's representatives, employees, and other staff as well as dispute resolution providers come to have knowledge of in connection with the services of private dispute resolution;

(xv) Establishes such amount of any fees or expenses payable to the applicant (including the dispute resolution providers), such methods of calculation and payment, and such other necessary matters that are not extremely unreasonable;

(xvi) Establishes a system for the handling of complaints on the applicant's private dispute resolution services.

Article 7 (Reasons for Disqualification)

Notwithstanding the provisions of the preceding article, a person who falls under any of the following items shall not be eligible to obtain the certification under Article 5:

- (i) An adult ward or a person under curatorship;
- (ii) A minor who does not have legal capacity equivalent to a major in connection with the services of private dispute resolution;
- (iii) A person who was declared bankrupt and has yet to have his rights restored;
- (iv) A person who was sentenced to imprisonment or a severer punishment and 5 years have not yet elapsed from the date of the completion of execution of the sentence or the date when the sentence becomes no more executable;
- (v) A person who was sentenced to a fine for violating the provisions of this Act or the Practicing Attorneys Act (Act No. 205 of 1949) and 5 years have not yet elapsed from the date of having paid the fine or having ceased to be liable to pay the fine;
- (vi) A person whose certification was rescinded in accordance with Article 23, Paragraph 1 or 2 but 5 years have not yet elapsed from the date of rescission;
- (vii) In cases where certification of a certified dispute resolution business operator that is a juridical person (or an unincorporated entity for which a representative or administrator is appointed; the same shall apply hereinafter in Item 9; Article 8, Paragraph 2, Item 1; Article 13, Paragraph 1, Item 3; and Article 17, Paragraph 3) was rescinded in accordance with Article 23, Paragraph 1 or 2, and the person was the director of a certified dispute resolution business (or the representative or manager appointed for an unincorporated entity; the same shall apply hereinafter in Item 9) at a date within 60 days before the date of the rescission and 5 years have not yet elapsed since the date of rescission;
- (viii) A person who is an organized crime group member prescribed in Article 2, Item 6 of the Act to Prevent Unjust Acts by Organized Crime Group Members (Act No. 77 of 1991) or a person for whom 5 years have not yet elapsed from the date the person ceased to be an organized crime group member (hereinafter collectively referred to as "organized crime group member");
- (ix) A juridical person that has as a director or as an employee provided for by a Cabinet Order a person who falls under any of the preceding items;
- (x) An individual who has as an employee provided for by a Cabinet Order a person who falls under any of Items 1 to 8;

(xi) A person who is likely to have an organized crime group member engage in the services of private dispute resolution or act as an assistant for such services;

(xii) A person whose business activities are controlled by an organized crime group member.

Article 8 (Application for Certification)

(1) An application for the certification under Article 5 shall be made, as provided for by a Ministry of Justice Ordinance, by submitting an application form that states the following matters to the Minister of Justice:

(i) The name and address of the applicant, the name of the representative of the applicant that is a juridical person (or the representative or administrator appointed for the applicant that is an unincorporated entity);

(ii) The location of the office where the services of private dispute resolution are to be carried out;

(iii) Other matters as provided for by a Ministry of Justice Ordinance.

(2) The following documents shall be attached to the application form under the preceding paragraph:

(i) Documents that state the articles of incorporation and other basic conditions of the applicant that is a juridical person;

(ii) Documents that state the contents and the method of provision of the services of private dispute resolution relating to the application;

(iii) Business reports or business plans on the services of private dispute resolution relating to the application;

(iv) The applicant's inventory list, balance sheets, income and expenditure statements or profit and loss statements, and other documents to verify that the applicant has the necessary financial base for carrying out the services of private dispute resolution relating to the application, as provided for by a Ministry of Justice Ordinance;

(v) Other documents as provided for by a Ministry of Justice Ordinance.

(3) The applicant applying for the certification under Article 5 shall pay fees to the amount calculated with due consideration to actual costs as provided for by a Cabinet Order.

Article 9 (Hearing of Opinions on Certification)

(1) The Minister of Justice shall, when disposing an application for the certification under Article 5 or making a decision on an objection to the outcome of the application, consult in advance, where the applicant is a juridical person established directly under laws or a juridical person established by a special act of establishment under special laws, with the minister who has jurisdiction over the applicant, or where the applicant

was established with permission or approval, with the minister who granted the permission or approval or with the National Public Safety Commission.

(2) The Minister of Justice shall, before granting the certification under Article 5, hear the opinions of the Director-General of the National Police Agency as to whether or not the applicant falls under Items 8 to 12 of Article 7 (limited to Item 8 where the applicant falls under Item 9 or 10).

(3) The Minister of Justice shall, when disposing an application under Paragraph 1 or making a decision on certification, hear the opinions of the certification examiners prescribed in Paragraph 1 of the following article, as provided for by a Ministry of Justice Ordinance.

Article 10 (Certification Examiners)

(1) A number of certification examiners shall, based on their specialized knowledge and experience, be appointed to offer their opinions to the Minister of Justice on applications for the certification under Article 5 and on objections to the outcome of such applications, applications for certification of the changes under Article 12, Paragraph 1 and objections to the outcome of such applications, and rescission of certifications in accordance with Article 23, Paragraph 2 and objections to such rescissions.

(2) Certification examiners may attend the proceedings in which a petitioner or intervener states his opinions in accordance with the proviso of Article 25, Paragraph 1 of the Administrative Appeal Act (Act No. 160 of 1962), as applied *mutatis mutandis* under Article 48 of the said act, and may directly ask such person questions.

(3) Certification examiners shall be appointed by the Minister of Justice from persons with specialized knowledge and experience in the area of private dispute resolution.

(4) Certification examiners shall hold their office for two years and may be reappointed.

(5) Certification examiners shall work on a part-time basis.

Article 11 (Public Notice of Certification)

(1) When the Minister of Justice has granted the certification under Article 5, the Minister shall publish the name and address of the certified dispute resolution business operator in an official gazette.

(2) The certified dispute resolution business operator shall, in order to provide correct information for those who are using or intend to use certified dispute resolution procedures, as provided for by a Ministry of Justice Ordinance, post a clearly viewable notice of the fact that it is a certified dispute resolution business operator and matters relating to the contents of the services of certified dispute resolution and the provision method thereof as provided for by a Ministry of Justice Ordinance, in the office where the certified dispute resolution procedures are to be carried out.

(3) Those other than certified dispute resolution business operators shall not use, in their name, letters that would induce a false belief that they are a certified dispute resolution business operator, or present an indication in connection with their services that would induce a false belief that they are a certified dispute resolution business operator.

Article 12 (Certification of Changes)

(1) Certified dispute resolution business operators shall obtain certification of changes from the Ministry of Justice for any changes in the contents of the services of certified dispute resolution or the method of provision of services thereof; provided, however, that this shall not apply to minor changes as provided for by a Ministry of Justice Ordinance.

(2) Those who seek to obtain certification of the changes under the preceding paragraph shall, as provided for by a Ministry of Justice Ordinance, submit an application form that states the matters to be changed to the Minister of Justice.

(3) The application form under the preceding paragraph shall be submitted with documents attached that state the contents of the services after the change and the provision method thereof and other documents as provided for by a Ministry of Justice Ordinance.

(4) The provisions of Article 6, Article 8, Paragraph 3, and Paragraph 1 of the preceding article shall apply mutatis mutandis to the certification of changes under Paragraph 1, and the provisions of Article 9, Paragraphs 1 and 3 shall apply mutatis mutandis to cases where an application for certification of the changes under Paragraph 1 is being considered and where a decision is to be made on an objection to such outcome.

Article 13 (Notification of Changes)

(1) Certified dispute resolution business operators shall, as provided for by a Ministry of Justice Ordinance, notify without delay the Minister of Justice of any of the following changes:

(i) Changes in the name or address;

(ii) Minor changes as provided for by a Ministry of Justice Ordinance in the contents of the services of certified dispute resolution or the provision method thereof, as prescribed for in the proviso of Paragraph 1 of the preceding article;

(iii) Changes in the articles of incorporation, financial contributions, or other basic conditions (except for the changes set forth in the preceding two items) where the certified dispute resolution business operator is a juridical person;

(iv) Changes in other matters as provided for by a Ministry of Justice Ordinance.

(2) Upon receiving notification of any changes set forth in Item 1 of the preceding paragraph in accordance with the said paragraph, the Minister of Justice shall publish the change in an official gazette.

Section II Services of Certified Dispute Resolution Business Operators

Article 14 (Obligation of Explanation)

Certified dispute resolution business operators shall, prior to conclusion of a contract for execution of certified dispute resolution procedures, give the parties to a dispute an explanation of the following matters, as provided for by a Ministry of Justice Ordinance, by providing them with documents that state these matters or electromagnetic records (any record which is produced by electronic, magnetic or any other means unrecognizable by natural perceptive senses and is used for data-processing by a computer) that contain these matters:

- (i) Matters concerning the selection of a dispute resolution provider;
- (ii) Matters concerning any fees or expenses payable by the parties to a dispute;
- (iii) Standard operation process from the commencement to the termination of executing the certified dispute resolution procedures as prescribed in Article 6, Item 7;
- (iv) Other matters as provided for by a Ministry of Justice Ordinance.

Article 15 (Prohibition of the Use of Organized Crime Group Members)

Certified dispute resolution business operators shall not have organized crime group members engage in services or act as assistants for such services.

Article 16 (Preparation and Preservation of Procedure Operation Records)

Certified dispute resolution business operators shall, as provided for by a Ministry of Justice Ordinance, prepare and preserve procedure operation records that describe the following matters regarding the certified dispute resolution procedure provided:

- (i) The date of conclusion of the contract with the parties to the dispute for the execution of certified dispute resolution procedures;
- (ii) The names of the parties to the dispute or their representatives;
- (iii) The name of the dispute resolution provider;
- (iv) The particulars of the certified dispute resolution procedure followed;
- (v) The results of the certified dispute resolution procedure (including reasons for the termination of the certified dispute resolution procedure and the date of termination);
- (vi) Other matters as provided for by a Ministry of Justice Ordinance that are necessary for clarifying the contents of the certified dispute resolution procedure carried out.

Article 17 (Notification of Merger)

(1) Certified dispute resolution business operators shall, as provided for by a Ministry of Justice Ordinance, notify the Minister of Justice prior to conducting any of the following acts:

(i) Merger by which the certified dispute resolution business operator will be extinguished (or any acts equivalent to an administrator in the case of a certified dispute resolution business operator that is an unincorporated entity for which a representative or manager is appointed; the same shall apply hereinafter in Paragraph 3);

(ii) Transfer of all or part of the business or operation² of the certified dispute resolution services;

(iii) Division of the certified dispute resolution business operator to share it with a juridical person and to succeed all or part of its management or work of certified dispute resolution services to the incorporated entity;

(iv) Abolition of the services of certified dispute resolution.

(2) The Ministry of Justice shall publish any of the notifications under the preceding paragraph in an official gazette.

(3) Those who have conducted any of the acts set forth in the items of Paragraph 1 (the incorporated entity that continues to exist after a merger or the juridical person that is established by a merger in relation to the act set forth in Item 1 of the said paragraph) shall, if such act was conducted during the period of provision of the certified dispute resolution procedure, notify within two weeks from the date on which such act was conducted the parties to the dispute of the fact that the act was conducted and that the certification has become invalid in accordance with Article 19.

Article 18 (Notification of Dissolution)

(1) Where certified dispute resolution business operators are dissolved due to causes other than bankruptcy or merger (or any acts equivalent to a merger in the case of a certified dispute resolution business operator that is an unincorporated entity for which a representative or administrator is appointed; the same shall apply hereinafter), the liquidator (or the representative or manager appointed for the certified dispute resolution business operator that is an unincorporated entity; the same shall apply hereinafter in the next paragraph) shall notify the Minister of Justice of the dissolution within a month from the date of the dissolution.

(2) The liquidator under the preceding paragraph shall, if the certified dispute resolution business operator was dissolved during the period of provision of the certified dispute resolution procedure, notify within two weeks from the date of the dissolution the parties to the dispute of the

fact that the certified resolution business was dissolved and that the certification has become invalid in accordance with the next article.

(3) The provisions of Paragraph 2 of the preceding article shall apply *mutatis mutandis* to the notification under Paragraph 1.

Article 19 (Invalidation of Certification)

The certification under Article 5 shall become invalid in the following cases:

(i) Where the certified dispute resolution business operator conducts any of the acts set forth in the items of Article 17, Paragraph 1;

(ii) Where the certified dispute resolution business operator is dissolved as prescribed in Paragraph 1 of the preceding article;

(iii) In the event of the death of the certified dispute resolution business operator.

Section III Reports

Article 20 (Submission of Business Reports)

Certified dispute resolution business operators shall, as provided for by a Ministry of Justice Ordinance, prepare and submit to the Minister of Justice a business report, inventory list, balance sheet, and income and expenditure statements or profit and loss statements for each business year within three months after the end of the business year.

Article 21 (Report and Inspection)

(1) Where there are reasonable grounds to suspect that a certified dispute resolution business operator falls under any of the items of Article 23, Paragraph 1 or 2, the Minister of Justice may, to the extent necessary to ensure appropriate operation of the services of certified dispute resolution and as provided for by a Ministry of Justice Ordinance, request the certified dispute resolution business operator to report necessary information on the state of operation of the services, or direct ministry officials to visit the office of the certified dispute resolution business operator, inspect the state of operation of the services or books, documents and other articles, or ask questions of the persons concerned.

(2) Officials who conduct on-site inspection in accordance with the preceding paragraph shall carry identification on their person and present it when requested by the business year.

(3) The authority to conduct on-site inspection in accordance with Paragraph 1 shall not be interpreted as being granted for the purpose of criminal investigation.

Article 22 (Recommendation)

(1) Where there are reasonable grounds to suspect that a certified dispute resolution business operator falls under any of the items of Paragraph 2 of the next article, the Minister of Justice may issue a recommendation that the certified dispute resolution business operator should take

necessary measures for the services of certified dispute resolution within a designated period, if the Minister considers such recommendation necessary for ensuring appropriate operation of the services.

(2) If the certified dispute resolution business operator to which a recommendation was issued in accordance with the preceding paragraph fails to take such measures as required in the recommendation without justifiable reason, the Minister of Justice may order the certified dispute resolution business operator to take such measures as required in the recommendation.

Article 23 (Rescission of Certification)

(1) The Ministry of Justice shall rescind certification in the following cases:

(i) The certified dispute resolution business operator has come to fall under any of the items of Article 7 (except for Item 6);

(ii) The certified dispute resolution business operator has obtained the certification under Article 5 or the certification of change under Article 12, Paragraph 1, by deception or other wrongful means;

(iii) The certified dispute resolution business operator has failed to comply with the order under Paragraph 2 of the preceding article without justifiable reason.

(2) The Ministry of Justice may rescind certification in any of the following cases:

(i) The contents of the services of certified dispute resolution and the operation method thereof no longer satisfy the standards set forth in any of the items of Article 6;

(ii) The certified dispute resolution business operator no longer has the necessary knowledge or skills or financial base for carrying out the services of certified dispute resolution;

(iii) The certified dispute resolution business operator is in violation of any of the provisions of this Act.

(3) When rescinding certification in accordance with the preceding two paragraphs, the Minister of Justice may hear the opinions of the Director-General of the National Police Agency regarding whether or not the certified dispute resolution business operator falls under Items 8 to 12 of Article 7 (limited to Item 8 where the applicant falls under Item 9 or 10) or whether or not the certified dispute resolution business operator is in violation of Article 15.

(4) Upon rescinding certification in accordance with Paragraph 1 or 2, the Minister of Justice shall publish the rescission in an official gazette.

(5) Those whose certification was rescinded in accordance with Paragraph 1 or 2 shall, if the certification was rescinded during the period of execution of the certified dispute resolution procedure, notify within two

weeks of the date of rescission the parties to the dispute of such rescission.

(6) The provisions of Article 9, Paragraphs 1 and 3 shall apply *mutatis mutandis* to cases where certification has been rescinded in accordance with Paragraph 2 and where a decision is made on an objection to such rescission. Article 24 (Due Consideration to the Nature of Private Dispute Resolution Services)

The Minister of Justice shall, when requesting a report or directing ministry officials to conduct an inspection or ask questions in accordance with Article 21, Paragraph 1, or when making a recommendation or giving an order in accordance with Article 22, give due consideration to the fact that private dispute resolution procedures are based on a relationship of mutual trust between the parties to a dispute and the party carrying out the services of private dispute resolution, that the voluntary efforts of the parties to a dispute for dispute resolution should be respected, and to other elements of the nature of private dispute resolution services.

Chapter 3 Special Rules on the Use of Certified Dispute Resolution Procedures

Article 25 (Nullification of Prescription)

(1) Where the dispute resolution provider has terminated the certified dispute resolution procedure on the grounds that it is impossible to arrange settlement between the parties to a dispute through certified dispute resolution, if the party to the dispute that made the request for certified dispute resolution brings a suit, within one month from the date of being notified of the termination, for the demand disputed in the certified dispute resolution procedure, prescription shall be nullified as if the suit had been brought on the date on which the demand was made through the certified dispute resolution procedure.

(2) The provision of the preceding paragraph shall also apply in cases where the certification under Article 5 becomes invalid in accordance with Article 19 during the period when the certified dispute resolution procedure was being carried out for a dispute, and the party to the dispute that made the request for certified dispute resolution brings a suit for the demand disputed through the certified dispute resolution procedure, within one month from the date on which the party received the notification under Article 17, Paragraph 3, or Article 18, Paragraph 2, or became aware of a fact that falls under any of the items of Article 19, whichever comes earlier (or the date on which the party became aware of the death of the certified dispute resolution business operator in cases where the cause of invalidation of the certification under Article 5 is the death of the certified dispute resolution business operator).

(3) The provision of Paragraph 1 shall also apply in cases where the certification under Article 5 was rescinded in accordance with Article 23, Paragraph 1 or 2, during the period when the certified dispute resolution procedure was being carried out for a dispute, and the party to the dispute that made the request for certified dispute resolution brings a suit for the demand disputed through the certified dispute resolution procedure, within one month from the date on which the party received the notification under Paragraph 5 of the said article or became aware of the rescission, whichever comes earlier.

Article 26 (Suspension of Legal Proceedings)

(1) Where a lawsuit is pending between the parties to a civil dispute which may be settled, the court in charge of the case may, upon the joint request of the parties to the dispute, make a decision that the legal proceedings shall be suspended for a period of not more than four months, in any of the following cases:

(i) A certified dispute resolution procedure is being carried out for the dispute between the parties to the dispute;

(ii) In addition to the case prescribed in the preceding item, the parties to the dispute have reached an agreement to achieve a resolution of the dispute through certified dispute resolution.

(2) The court of the suit may at any time rescind the decision under the preceding paragraph.

(3) An appeal may not be made against a decision to dismiss the request under Paragraph 1 and a decision to rescind the suspension decision under Paragraph 1 in accordance with the preceding paragraph.

Article 27 (Special Provisions on Use of Certified Dispute Resolution Procedures Before Conciliation)

Where a party to a dispute has brought a suit in respect of a case prescribed in Article 24-2, Paragraph 1 of the Act on Conciliation of Civil Affairs (Act No. 222 of 1951) or a case prescribed in Article 18, Paragraph 1, of the Act on Adjudication of Domestic Relations (Act No. 152 of 1947) (except for a case prescribed in Article 23 of the said act), if the party, prior to bringing the suit, made a request for certified dispute resolution for the dispute and the certified dispute resolution procedure was terminated on the grounds that it was impossible to arrange settlement between the parties to the dispute through certified dispute resolution, the provisions of Article 24-2 of the Act on Conciliation of Civil Affairs or Article 18 of the Act on Adjudication of Domestic Relations shall not apply. In such case, the court in charge of the case may refer the case to conciliation ex officio if the court considers it appropriate to do so.

Chapter 4 Miscellaneous Provisions

Article 28 (Fees)

Certified dispute resolution business operators (including dispute resolution providers engaged in certified dispute resolution) may receive fees for carrying out the services of certified dispute resolution as provided under a contract concluded with the parties to the dispute or with other parties.

Article 29 (Request for Cooperation)

The Minister of Justice may make inquiries to or request cooperation from government agencies, public entities, and other parties, if the Minister considers it necessary for the enforcement of this Act.

第三十条 (法務大臣への意見)

Article 30 (Opinions to the Minister of Justice)

The Director-General of the National Police Agency may offer his opinions to the Minister of Justice when he considers it necessary to take appropriate measures against a certified dispute resolution business operator on the grounds that there is reason to suspect that the certified dispute resolution business operator falls under any of Items 8 to 12 of Article 7 (limited to Item 8 where the applicant falls under Item 9 or 10) or is in violation of Article 15.

Article 31 (Disclosure of Information on the Services of Certified Dispute Resolution)

In order to provide the public with information on the services of certified dispute resolution, the Minister of Justice may, as provided for by a Ministry of Justice Ordinance, disclose through the Internet or other means the name and address of certified dispute resolution business operators, the location of the office where the services are being carried out, and the contents of the services and the operation method thereof, as provided for by a Ministry of Justice Ordinance.

Chapter 5 Penal Provisions

Article 32

(1) A person who has obtained the certification under Article 5 or the certification of change under Article 12, Paragraph 1, by deception or other wrongful means shall be punished with imprisonment with work for not more than 2 years or a fine of not more than 1 million yen, or both.

(2) A person who has, in violation of Article 15, had an organized crime group member engage in the services of certified dispute resolution or act as an assistant for such services shall be punished with imprisonment with work for not more than 1 year or a fine of not more than 1 million yen, or both (cumulative imposition).

(3) A person who falls under any of the following items shall be punished with a fine of not more than 1 million yen:

(i) A person who has submitted the application form under Article 8, Paragraph 1, or the documents set forth in the items of Paragraph 2 of the said article or the application form under Article 12, Paragraph 2, or the documents set forth in the items of Paragraph 3 of the said article, containing false statements;

(ii) A person who has violated Article 11, Paragraph 3.

Article 33

(1) Where the representative or administrator of a juridical person (or an unincorporated entity for which a representative or administrator is appointed; the same shall apply hereinafter in this paragraph), or an agent or employee³ of a juridical person or an individual has committed, in connection with the services of the juridical person or the individual, any of the acts of violation set forth in the paragraphs of the preceding article, the person who has committed the act shall be punished and the juridical person or the individual shall also be punished with a fine prescribed in the relevant paragraphs.

(2) Where the provisions of the preceding paragraphs shall apply to an unincorporated entity, the representative or administrator of the unincorporated entity shall represent the entity, and provisions relating to criminal proceedings where a juridical person stands as a defendant or suspect shall apply *mutatis mutandis*.

Article 34

(1) A person who falls under any of the following items shall be punished with a civil fine of not more than 500,000 yen:

(i) A person who has failed to post the notice under Article 11, Paragraph 2, or has posted a false notice;

(ii) A person who has failed to make the notification under Article 13, Paragraph 1, Article 17, Paragraph 1, or Article 18, Paragraph 1, or has made a false notification;

(iii) A person who has, in violation of Article 16, failed to prepare procedure operation records, prepared false procedure operation records, or failed to preserve procedure operation records;

(iv) A person who has failed to make the notification under Article 17, Paragraph 3, Article 18, Paragraph 2, or Article 23, Paragraph 5, or has made a false notification;

(v) A person who has, in violation of Article 20, failed to submit a business report, inventory list, balance sheet, or income and expenditure statements or profit and loss statements, or has submitted any of these documents containing false statements;

(vi) A person who has failed to report the information under Article 21, Paragraph 1, or has reported false information;

(vii) A person who has violated an order under Article 22, Paragraph 2.

(2) A certified dispute resolution business operator (the representative or administrator of the certified dispute resolution business operator that is a juridical person or the representative or administrator appointed for the certified dispute resolution business operator that is an unincorporated entity), or representative or employee of the certified dispute resolution business operator who has refused, prevented, or avoided the inspection prescribed in Article 21, Paragraph 1, shall be punished with a civil fine of not more than 500,000 yen.

Supplementary Provisions

Article 1 (Date of Enforcement)

This Act shall come into force as from the date specified by a Cabinet Order within 30 months from the date of promulgation.

Article 2 (Review)

The government shall review the status of the enforcement of this Act when five years have passed after it has entered into force, and shall take necessary measures based on the results as required.

Article 3 (Partial Revision of the Act on Comprehensive Legal Aid)

The Act on Comprehensive Legal Aid (Act No. 74 of 2004) shall be partially revised as follows:

In Article 7, "alternative dispute resolution under law" shall be revised as "alternative dispute resolution procedures (alternative dispute resolution procedures prescribed in Article 1 of the Act on Promotion of Use of Alternative Dispute Resolution Procedures (Act No. 151 of 2004); the same shall apply hereinafter in Article 30, Paragraph 1, Item 6 and Article 32, Paragraph 3);"

In Article 30, Paragraph 1, Item 6 and Article 32, Paragraph 3, "alternative dispute resolution under law" shall be revised as "alternative dispute resolution procedures."

Article 4 (Partial Revision of the Ministry of Justice Establishment Act)

The Ministry of Justice Establishment Act (Act No. 93 of 1999) shall be partially revised as follows.

The following item shall be added following Item 25 of Article 4:

Item 25-2 Affairs relating to certification of private dispute resolution services under the Act on Promotion of Use of Alternative Dispute Resolution (Act No. 151 of 2004).

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