

Latest Developments in Japan towards the Promotion of International Arbitration and Mediation:

Achievements in Legislation and the Japan Commercial Arbitration Association (JCAA)'s Latest Initiatives

July 7, 2023

KAKIUCHI Shusuke (University of Tokyo)

1

「司法外交」閣僚フォーラム開催記念 特別イベント

国際仲裁・国際調停の活性化に向けた 日本の最新動向：

法整備の到達点と日本商事仲裁協会 (JCAA) の取組み

July 7, 2023

垣内秀介 (東京大学)

2

Overview

1. Introduction
2. Background: Situation before the Latest Reform
3. Recent Developments in Legislation
4. Japan Commercial Arbitration Association (JCAA)'s Latest Initiatives
5. Concluding Remarks: Toward the Future of International Arbitration and Mediation

3

概要

1. はじめに
2. 背景——改正前の状況
3. 最近の法整備
4. 日本商事仲裁協会の最近の取組み
5. おわりに——国際仲裁・国際調停の将来に向けて

4

2. Background: Situation before the Latest Reform

(1) Overall Situation of Dispute Resolution in Japan

- **Litigation:** 130 000 (district courts), 10 000 (family courts), 320000 (summary courts)
- **Court Annexed Conciliation Proceedings:** 30 000 (civil matter), 130 000 (family matter)
- **ADR Services Provided by Administrative Bodies**
 - Mediation in individual labor disputes (3800), National Consumer Affairs Center (150), etc.
- **Private ADR Services**
 - Center for Settlement of Traffic Accident Disputes (4200), Certified private mediation services (900 in total), etc.
- ✓ Situation of **Arbitration:** JCAA arbitration (15)
- * Figures are approximate number of cases for 2021.

5

2. 背景——改正前の状況

(1) 紛争解決全般をめぐる日本の状況

- 訴訟：地裁13万件、家裁1万件、簡裁32万件
- 司法型ADR：民事調停3万件、家事調停13万件
- 行政型ADR
 - 個別労働紛争あっせん3800件、国民生活センター150件など
- 民間型ADR
 - 交通事故紛争処理センターあっせん4200件、認証紛争解決事業者合計900件など
- ✓ 仲裁をめぐる状況：JCAA仲裁15件など

* 数字は2021年の概数

6

2. Background: Situation before the Latest Reform

(2) Situation of Legislation before the Reform

- Justice System Reform (from 2001)
- Arbitration
 - First enacted in 1890 (title 10, Code of civil procedure)
 - Enactment of the current Arbitration Act (2003) (based on UNCITRAL Model Law of 1985)
- Mediation
 - Long tradition of court annexed conciliation (since 1920s)
 - Development of administrative ADR after WWII
 - Late development of private ADR services (mainly since 1990s)
 - Enactment of the ADR Act in 2004 (Act on Promotion of Use of Alternative Dispute Resolution)

7

2. 背景——改正前の状況

(2) 従来の法制の状況

- 司法制度改革 (2001年～)
- 仲裁法制
 - 1890年民訴法第10編
 - 現行仲裁法の制定 (2003) (1985年UNCITRALモデル法の採用)
- 調停関係
 - 裁判所の調停手続 (1920年代～)
 - 第二次大戦後の行政型ADRの発達
 - 民間型ADR (多くは1990年代以降)
 - ADR法 (裁判外紛争解決手続の利用の促進に関する法律) の制定 (2004年)

8

2. Background: Situation before the Latest Reform

(2) Situation of Legislation before the Reform

- ✓ Need for further reforms
 - Still inactive use of private mediation and arbitration
 - Amendments to UNCITRAL Model Law in 2006
 - Controversy over enforceability of settlement agreements
 - Adoption of the Singapore Convention in 2019

9

2. 背景——改正前の状況

(2) 従来の法制の状況

- ✓ さらなる改正の必要
 - 民間調停・仲裁の利用の不活発
 - UNCITRALモデル法の2006年改正
 - 民間型ADR手続において成立した和解合意の執行力をめぐ
る議論の対立
 - シンガポール条約の採択（2019年）

10

3. Recent Developments in Legislation

(1) Legislative History

- Arbitration Legislation Subcommittee of the Legislative Council (since September 2020)

(2) Main Features of the Reform

- Amendments to the Arbitration Act in Accordance with the 2006 Model Law Amendments
 - Introduction of the provisions enabling enforcement of interim measures
 - Relaxation of in writing requirement (Art. 7, Option I, Model Law)
 - Expansion of Jurisdiction of Tokyo and Osaka District Court
 - Exemption from Obligation to Submit Japanese Translation of Arbitral Awards and Interim Measures

11

3. 最近の法整備

(1) 経緯

- 法制審議会仲裁法制部会（2020年9月～）

(2) 内容の概観

- モデル法2006年改正への対応
 - 暫定保全措置命令に基づく強制執行を可能とする制度の創設
 - 書面性要件の緩和（モデル法7条オプションI）
 - 東京地裁、大阪地裁の管轄拡大
 - 翻訳文添付要件の免除の可能性

12

3. Recent Developments in Legislation

(2) Main Features of the Reform

- Ratification of the Singapore Convention and Enactment of the Act for the Implementation
 - Introduction of a new procedure enabling enforcement of international settlement agreements
 - Expansion of Jurisdiction of Tokyo and Osaka District Court
 - Exemption from Obligation to Submit Japanese Translation

3. 最近の法整備

(2) 内容の概観

- シンガポール条約加盟と条約実施法の制定
 - 国際和解合意に基づく強制執行を可能とする制度の創設
 - 東京地裁、大阪地裁の管轄拡大
 - 翻訳文添付要件の免除の可能性

4. Japan Commercial Arbitration Association (JCAA)'s Latest Initiatives

- JCAA as Japan's Leading Commercial Arbitration and Mediation Institution (est. 1950)
- Efforts to Provide Procedures that are More Attractive to Users
- Enhanced Public Relations Targeting Potential Users In and Outside Japan

15

4. 日本商事仲裁協会の最近の取組み

- 日本を代表する商事仲裁・調停機関としての日本商事仲裁協会（1950年設立）
- 利用者にとってより魅力的な手続の提供
- 国内外に向けた情報発信

16

5. Concluding Remarks: Toward the Future of International Arbitration and Mediation

- Expected Impact of the Latest Reform: Offer More Effective Options for Resolving International Business Disputes and Promote Their Use
- Role of International Arbitration and Mediation in an Increasingly Divided World

5. おわりに——国際仲裁・国際調停の将来に向けて

- 今回の法改正から期待される効果——国際ビジネス紛争解決のためのより効果的な選択肢の提供とその利用促進
- 分断が進む世界における国際仲裁・国際調停の役割

Thank you for your attention!

19

ご清聴ありがとうございました

20
