

Dispute resolution in India for Japanese companies

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The legal system in India is a combination of legislations and judicial precedents. The central government and state governments both legislate on subjects as prescribed in the constitution while judicial precedents are laid down by the judicial courts. Foreign entities and multinational corporations must follow federal laws as well as the laws specific to the location where they do business.

Legal systems around the world are usually of two types, common law and civil law. India is primarily a common law country where the main source of legal authority is case law in the form of judicial opinions. Japan is primarily a civil law country where codified laws predominate.



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India has a three-tier court system comprising district courts, high courts and the Supreme Court, which is the highest court of appeal. High courts are mostly situated in state capitals and are the middle rung of this three-tier system.

Remedies for the recovery of contractual payments or damages as the result of a breach of contract are pursued by filing a commercial lawsuit. This involves three stages, which are pleadings, trial and arguments. After the conclusion of the arguments, the court in question delivers its judgment based on the pleadings, documents and evidence submitted by the parties.

At the time of filing the lawsuit, the party pursuing the claim, that is the plaintiff, must pay a court fee, which is calculated according to the amount claimed and the court in which the suit is filed. Every state has its own court fee rules. However, as a rough guide, court fees are usually 1% of the amount claimed in the case. The party aggrieved by the judgment of the trial court can appeal to the high court and thereafter to the Supreme Court.

Alternatively, the parties can resolve their disputes through arbitration either themselves or through any institution to administer the arbitration. The procedure for arbitration is either agreed on by the parties or laid down by the arbitral tribunal.

To commence domestic arbitration, the party which is making the claim issues a notice invoking arbitration where it proposes either a lawyer, a retired judge or an expert as an arbitrator. If the parties are unable to agree on an arbitrator, the appointment is made by a high court under its domestic arbitration jurisdiction. Where a tribunal of three arbitrators is requested, each party chooses their own arbitrator, and those two arbitrators appoint the third and presiding arbitrator. In the case of international arbitration, the Supreme Court appoints the arbitrator under the [Arbitration and Conciliation Act, 1996](#), as amended (act).



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Once the arbitral tribunal is constituted, parties go through stages similar to those in commercial lawsuits. Since recent amendments to the act, arbitration proceedings are time-bound, and an award must be delivered within 12 months of the completion of the arbitral equivalent of pleadings. The act provides a model fee chart to determine the fees of arbitrators with a ceiling of INR3 million (USD39,000).

Institutional arbitration is governed by the procedure laid down by the institution selected by the parties. Each institution has its own rules for conducting the arbitration proceedings, such as the rates of fees for arbitrators, administrative fees and expenses and appointments to the

panel of qualified arbitrators. Popular choices for domestic institutional arbitration are the Indian Council of Arbitration, the Delhi International Arbitration Centre, the Construction Industry Arbitration Council and the Indian Chamber of Commerce Council of Arbitration.

For international arbitration, well-favoured tribunals are the Singapore International Arbitration Centre, the International Chamber of Commerce in Paris and the London Court of International Arbitration in London. Many Japanese companies prefer Singapore due to lower costs, its proximity to Japan and the increasing presence of Japanese companies in the city-state. Singapore is also a reciprocating territory, therefore any arbitral award in Singapore can be directly enforced in India.

Japanese companies would be well-advised to remember the differences as well as the similarities between the two legal systems during negotiations with their Indian counterparts. Contractual documents should be drafted with care and technical issues agreed in order to avoid future disputes.

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