



## ARBITRATION CAN STRENGTHEN INDIA-JAPAN COMMERCE

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**Published in the India Business Law Journal**

Developments in the infrastructure, automotive and technology sectors in India and Japan have strengthened the economic links between the two countries. There has been an increase in cross-border commercial activities, with a corresponding rise in the number of disputes. Entities in India and Japan have more frequently resorted to arbitration to resolve such conflicts.

Enterprises in India and Japan often prefer arbitration because it is cost-effective and offers procedural predictability. Both nations have signed the 1958 New York Convention, which guarantees reciprocity in the recognition and enforcement of foreign arbitral awards.

The arbitration laws of Japan and India are broadly similar because both are based on the UNCITRAL Model Law on International Commercial Arbitration. Many amendments to the Indian Arbitration and Conciliation Act, 1996 (act) have been made with the objects of streamlining arbitral proceedings, reducing court involvement and promoting institutional arbitration. In 2023, Japan's Arbitration Act 2003 was revised to recognise non-written arbitration agreements in certain circumstances and to relax the requirement to submit Japanese translations of foreign-language documents in enforcement proceedings. These amendments were made to make Japan more attractive as an arbitration seat. Such an aim is similar to that of India.

The courts of both countries have resolutely upheld the laws on arbitration. The Supreme Court of India has frequently held that there has to be minimum interference by courts in the enforcement of foreign arbitral awards. Similarly, Japan's courts have favoured the enforcement of arbitral awards in line with the New York Convention. As the courts of both countries have pro-enforcement approaches, the two nations are viewed as reliable enforcers of arbitral awards.

More entities in each nation are opting for institutional rather than ad hoc arbitration. Those in Japan generally apply to the Japan Commercial Arbitration Association because its processes are simple and it has a reputation for fast processing. Arbitration centres in India, particularly the Delhi International Arbitration Centre and the Mumbai Centre for International Arbitration, are seeing an increase in the number of arbitration matters admitted. Institutional arbitration is increasingly used in both territories, bringing greater professionalism to adjudication.

Japan and India have almost identical positions about the practical enforcement of foreign awards. Part II of the act sets out the limited circumstances in which courts in India may decline to enforce foreign awards. These include competency issues, an invalid arbitration agreement and violations of public policy. Similarly, the courts in Japan may refuse enforcement when it is not in compliance with the conditions in the New York Convention or the Model Law on International Commercial Arbitration. This allows foreign awards to be enforced in each jurisdiction with minimum judicial interference.

Indian and Japanese entities should draft arbitration clauses and agreements with precision to minimise later issues. The seat, venue and language of the arbitration, as well as the governing law, must be clearly set out. Entities from both countries must ensure confidentiality within their arrangements. Precise drafting avoids unnecessary litigation subsequently.

Data shows that entities from India and Japan are increasingly taking part in online hearings, filing electronically and opting for institutional arbitration. Hybrid forms of arbitration, such as med-arb, often facilitate quicker and more amicable results. These first attempt mediation, only resorting to arbitration if this does not succeed. Post-covid-19 technology has speeded up the accessibility of cross-border arbitration for businesses in both countries.

In an environment that continues to support greater investment and engagement between Japanese and Indian businesses, arbitration will continue to be the preferred means of dispute resolution to protect business relationships and commercial activities. Businesses in each jurisdiction must draft arbitration clauses with precision and opt for institutional arbitration. This will settle business disputes efficiently because each nation has arbitration laws that mirror those of the other.