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NEWSLETTER

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INTERVIEW WITH CHIÉ NAKAHARA, INTERNATIONAL ARBITRATION PARTNER, NISHIMURA & ASAHI

by Karen Kong, Freshfields Bruckhaus Deringer (Japan)

Ms. Chié Nakahara is an International Arbitration Partner at Nishimura & Asahi, a leading Japanese law firm that have been involved in high-profile and large-scale arbitrations under various institutional rules. Ms. Nakahara specialises in domestic and international litigation and arbitration and has acted in a large number of complex and high profile litigations and arbitrations. Ms. Nakahara serves as a panel of arbitrators at Singapore International Arbitration Centre and also as a registered arbitrator at the Daiichi Tokyo Bar Arbitration Center. She has been recently named as one of the best Corporate Governance & Compliance lawyers in Japan by Best Lawyers.

1. You obtained your LL.B. in Kyoto University and your LL.M. in Stanford Law School. What was the single most important difference between the legal education in Japan and the US?

At Kyoto University, what we learned were precedents, basic knowledge and understanding of legal reasoning including the various methods of statutory interpretation. Most classes were given in a lecture style, and what was tested there was our knowledge and whether we could apply such methods properly.

At Stanford Law School (**Stanford Law**), on the other hand, the focus was on new ideas and transformative solutions. Inspired perhaps by its location in the heart of Silicon Valley, Stanford Law focused us on the future, not the past. Experimentation, exploration, and the translation of new knowledge into entrepreneurial solutions were greatly encouraged. Most classes were small, and we learned from interactions and open exchanges of ideas with each other, including the professors. What was tested was whether you could come up with creative solutions.

This difference in legal education does not simply come from differences between the United States (**US**) and Japan, or common law and civil law. Many factors probably came into play, such as the special location of Silicon Valley and the fact that I was an undergraduate student when I attended Kyoto University, whereas Stanford Law was a graduate school. One thing I can say is that as a result of having gone to both schools, I have grown into a Kyoto-Stanford Law hybrid, with the foundation of knowledge and experience I have accumulated but also a propensity to always opt for a challenge to precedents and not to be afraid of change.

Ms. Chié Nakahara

2. What made you decide to enter into the world of international arbitration?

Looking back, I think several things probably played a part in me stepping into the world of arbitration. My upbringing in two different countries, the US and Japan, must have played a certain role. When I joined the legal profession, I had a desire to connect that profession with my multicultural upbringing, and international arbitration was ideal in this sense. Further, the fact that I was, at Kyoto University, one of the last seminar class students or apprentices of the internationally recognised scholar Professor Yasuhei Taniguchi, who later served as the Chair of the Appellate Body of the World Trade Organization and now serves as the judge of the Singapore International Commercial Court, played a role in my decision to specialise in international arbitration.

3. If not arbitrator, what will you be?

If in the legal profession, I would have become a judge, and if not in the legal profession, it is likely that I would have pursued a career path as a news reporter.

4. What was your most unforgettable experience during your career so far?

Following my year at Stanford Law, I was seconded for a year to a large well-respected US law firm in New York.

Midway through my secondment, a rumour circulated that the firm was experiencing a bit of a difficulty, and suddenly, within a shockingly short time, the law firm was shut down. I witnessed, as a half outsider and half insider, this large well-respected law firm collapse before my eyes. I still remember, every Friday afternoon a new group would start packing their Bankers Boxes, getting ready to leave the sinking ship. It was not a pretty picture.

Fortunately, I was transferred to another nice US law firm to finish my secondment year, but my experience at that law firm has remained in my mind. A fancy Big Law firm can help you further your career, but if you rely too much on it in building your practice, you might lose a lot. I remind myself that the firm is a mere structure; you are the one who does the actual work, so as long as you stand on your own feet without relying too much on your firm's reputation, you will be fine. This makes more sense when you serve as an arbitrator as the parties trust your sense, not the organisation you are a member of.

5. What is the most interesting case you have worked on or read about?

I would pick the case where we, as counsel, challenged the arbitrator.

The opposing party selected someone, who had just retired from a public position, as its party-appointed arbitrator, and subsequently, the arbitrator joined one of the largest law firms in the region. We found out that the law firm regularly provided advice to the appointing party, so, relying on the IBA Guidelines on Conflicts of Interest, we requested that the arbitrator disclose whether that firm derived a significant financial income from such frequent legal advising. To our surprise, the arbitrator refused to disclose such information, and it took us three more months and several additional submissions, including an opinion from a prominent arbitrator, to finally obtain disclosure of that information. What interested (indeed, bewildered) me were his stated reasons for not disclosing. Among other excuses, he contended rigorously that he had served in public office for such a long time that he felt it was a given that he should be seen as someone neutral. I still have not figured out why the past holding of a respected office outweighs new potential conflicts and releases one from a duty to disclose. The neutrality of the tribunal is fundamental to the arbitration system. There is no national authority behind you to back you up.

Interestingly, when the fees paid were disclosed, they added up to quite a considerable amount, certainly worthy of being deemed as a "significant amount of income". We challenged him, and one day before the deadline for the arbitrator to issue a rebuttal and state his view, he recused himself from the case.

6. What are your thoughts on mediation being a viable alternative to arbitration and litigation in Japan and what changes or development do you foresee?

I do not know if the term "alternative to arbitration" is precise, since a lot of the time, both options can work efficiently in a combined manner. Having said that, mediation is a viable option for parties who would like to resolve the dispute, especially in Japan with its long tradition and reputation for amicable settlement of disputes. Mediation can offer a much quicker resolution (compared to arbitration) to disputes at a much lower cost.

One downside of mediation was often said to be the lack of a global enforcement framework. However, with the Singapore Convention on Mediation having over 50 signatories including the US and China, the missing piece has been filled in. Japan has not become a signatory yet, but there have been huge developments regarding mediation in Japan. The establishment of the Japan International Mediation Center in Kyoto (where I serve as the steering committee member and which is the first international mediation center in Japan to facilitate efficient and effective amicable settlement by offering both institutional and ad hoc mediation), can be a game changer, and we expect to see more mediations in the next decade.

7. Do you have a word of advice for young lawyers who would want to specialise in arbitration?

Do not let go of any opportunity thinking that it will be embarrassing if you fail. Take risks while you are young, because as a junior practitioner, nobody will permanently label you or even remember your failure, and with COVID-19 now, you have one more reason to explain it.

When I interviewed great arbitrators at a recent IPBA panel, Professor Hi-Taek Shin replied to my question of how he became an arbitrator with the words, "It is a mystery, but it was a destiny". There are many paths in the career of arbitration, not just one absolute, specific path. There is nothing you can plan precisely in this profession, especially in this era of new challenges. You should tackle opportunities, try, fail, recover quickly, use your youth or COVID-19 as a reason for your failure if needed, then keep going. Then, it will become your destiny, too.

8. How do you manage stress in the profession and particularly during the current COVID-19 crisis and what do you do in your free time while you are staying at home?

Usually, I rely on "global retail therapy". I also enjoy three-day weekend trips with my family to hot spring inns in Japan. However, with the current massive travel restrictions, I cannot rely on those measures so my recently added options for fun Saturdays are online yoga sessions with my friends, followed by online parties!

9. What effect do you think the current COVID-19 crisis has on the arbitration practice and what development will it bring?

The drive for the implementation of virtual hearings, along with the utilisation of new technologies, will be radically accelerated under the present circumstances, so long as travel restrictions and bans are not lifted. Virtual hearings have gone from being merely an option to becoming a new norm and a new platform we will need to learn to embrace.

Technologies and practices that accompany virtual hearings are bound to be improved and refined further. Existing guidelines will be further discussed and developed in global collaboration with our increased deployment of this format.

Furthermore, with virtual hearings promising to eliminate the cost and time of long international travel, the downside of international arbitration can be minimised to a large extent, and more cases might be brought to arbitration.

Previously, in contrast to the "seat" of the arbitration, the "venue" of the arbitration had been explained as the physical place where the arbitration proceedings are held. One cannot deny that the geographical nature of the venue and the venue's local atmosphere and practices can have a certain influence on proceedings. But now, with the venue being "virtual" and losing its physicality, the "geographical" factor and any "local" effects can be minimised, thus making international arbitration achieve more neutrality and become more global and truly international. This development will be made in collaboration and unity with the arbitration community worldwide.

According to Charles Darwin's "Origin of Species", it is not the most intellectual of the species or the strongest that survives; the species that survives is the one that is able best to adapt and adjust to the changing environment in which it finds itself. We, the members of the arbitration community will have to, and will, in a grand spirit of collaboration, quickly adapt ourselves to this situation. In tackling this challenge, we are well-equipped since the core values of international arbitration practices are flexibility, innovation and adaptation. We were one of the first communities to deploy the technologies necessary to connect far-flung parties and practitioners and thereby mitigate the practical difficulties that often accompany the international nature of our proceedings. We are therefore fully capable of embracing and surmounting this challenge.

IMPROVING LEGAL INFRASTRUCTURE TO IMPROVE JAPAN'S STATUS AS A SEAT OF ARBITRATION

By Daniel Allen and Seri Takahashi, Mori Hamada & Matsumoto (Japan)

The question of how to develop Japan into a more attractive seat of arbitration has become something of a hot topic in the Japanese arbitration community. With an increased number of Japanese companies going for arbitration, showing a noticeable shift in their traditional culture of avoiding dispute at all costs, the time appears to be ripe. The Government of Japan has joined the party as well, announcing its intention to pursue measures to bring the dream of Japan as a regional arbitration hub to fruition. Initial signs of the bounty to come are promising: 2018 saw the opening of the Japan International Mediation Center in Kyoto, 2019 was the year of the Japan International Dispute Resolution Center in Osaka, and then 2020 brought us the Japan International Dispute Resolution Center in Tokyo, nestled among the glitz and glamour of Toranomon Hills, and patiently awaiting all comers.

There is no doubt that having the necessary physical infrastructure for an arbitration hearing is critical. Anyone who has had to rent an audio rig for a hearing in a hotel can attest to that. But these authors cannot help but wonder whether the reason why Japan has not risen to the fore as an arbitral seat is the result of a lack of a different type of infrastructure, namely clear legal rules about arbitration. After all (and particularly during the current ascendancy of virtual hearings), a seat's primary contributions to an arbitration will always remain the *lex arbitri* and supervision by its courts.

In terms of human resources, there is no issue. It would be hard to disagree that Japan's judiciary is excellent. Its judges are both highly educated and highly skilled, and corruption in Japan is uniformly low. Moreover, while Japanese judges are busy, extreme delay is uncommon, and most cases reach a first instance resolution in less than a year.

When it comes to statutory law, Japan is no laggard there, either. Japan has substantially adopted the UNCITRAL Model Law in the form of the Arbitration Act, the provisions of which are straightforward and largely free from confounding features.

What is an issue, however, is that there remains relatively straightforward issues of arbitration law that, when raised in the Japanese courts, must be reasoned out as a matter of first principles. That is because, due to the historically low levels of dispute resolution in Japan generally, most Japanese judges are relatively unfamiliar with arbitration law, and few judicial precedents exist to provide guidance.

Two relatively recent Japanese court cases illustrate the issue.

Tokyo District Court Decision of February 17, 2016 concerned a petition to set aside an award that had been rendered in a Japan-seated Japan Commercial Arbitration Association (**JCAA**) arbitration arising out of a supply agreement. Following an award of damages against it, the Respondent sought to set aside the award on several grounds, the main ground being that the arbitral tribunal's failure (in the Respondent's view) to apply Japanese law correctly violated the substantive or procedural public policy of Japan.

It is not conceptually shocking that a litigant might try that argument. As a matter of first principles, it is not unheard of. However in most jurisdictions the scope of the public policy exception would be read narrowly, and a simple mistake as to the governing law does not give rise to a right to set aside the award. Ultimately, the Japanese courts reached the right result. However, to get that result, the successful claimant had to litigate the issue in full before two levels of the Japanese judiciary (after failing at the District Court level, the Respondent in the arbitration appealed to the Tokyo High Court).

"..while Japanese judges are busy, extreme delay is uncommon, and most cases reach a first instance resolution in less than a year.."

Tokyo High Court Decision of August 1, 2018 dealt with a setting aside petition arising out of a Japan-seated JCAA arbitration relating to a licensing agreement. Upon losing the arbitration, the Respondent sought to set aside the award at the Tokyo District Court on the basis that the arbitral tribunal had failed to decide an issue, and that the failure would have been serious enough to affect the outcome of the decision as it would have been serious enough to have entitled the Respondent to seek retrial under the Japanese Rules of Civil Procedure. In other words, the Respondent argued that the award should be set aside due to an inconsistency with the procedural rules applicable in the Japanese courts, which the Respondent characterised as a matter of "procedural public policy".

Alarmingly, the Tokyo District Court accepted that argument, and the Claimant was required to appeal to the Tokyo High Court to get the result that would be familiar to arbitration practitioners around the world, that the arbitral rules chosen by the parties are the procedural rules for the arbitration, and consistency with local court rules is not necessary.

Once again, the Japanese courts are not at fault in either of the above cases. It is their mandate to resolve these issues in accordance with Japanese law, and the fact that these arguments may have been treated as frivolous arguments elsewhere does not mean that they are frivolous when presented as a novel test case. However, these sort of stories make it hard to recommend that a client, even a Japanese client, agree to Japan as a seat when there are other seats in Asia where these relatively settled issues would not require extensive litigation to resolve.

To counteract the contribution that this article may have made to the stereotype that dispute resolution lawyers tear things down rather than build them up, we would like to end by exploring some potential ways to address this issue. One would be for the Japanese government to carry out a study of common arbitration-related legal issues and adopt statutory provisions addressing those issues. Another option might be for the Japanese judiciary to conduct such a study, with an outcome of informal but persuasive guidance to the Japanese judiciary. Finally, an interesting alternative might be to create a distinct court for arbitration related cases, and foster the development of a specialised wing of the Japanese judiciary.

In any event, as arbitration lawyers in Japan, the authors certainly look forward to any and all future developments on this front.

A CONVERSATION ON ARBITRATION IN JAPAN

By Gai Matsushita, Atsumi and Sakai (Japan) and
Tan Kang Min, Allen and Gledhill (Singapore)

Gai and Kang Min are old friends who knew each other while working together in a large Singapore law firm. They start chatting (via Zoom) after attending a SIAC Webinar.

KM: Hi Gai! Did you know I learnt how to cook during the circuit breaker period in Singapore? I am thinking of starting a fast food chain selling fish and chips. I remember it fondly from my undergraduate days in England.

Gai: You mean, fish, and deep fried? It is neither sashimi, sushi, nor tempura. You sure it will survive?

KM: Oh come on. Do not be so negative. I will be selling cool and hip "modern" English cuisine. I am sure it will be a hit in your big Japanese cities like Tokyo and Osaka.

Gai: ...

KM: Anyway, the local Japanese party is a Japanese restaurant chain. The local party is insisting on a dispute resolution clause that provides for the Japanese Courts to resolve disputes. My client is not very comfortable with that. Why are they not proposing other options?

Courts

Gai: Well, Japanese Courts are well-established as the default mode of dispute resolution in Japan.

KM: But I thought Japanese businesses were averse to litigation?

Gai: That is true. But Japanese Courts have been the default option for dispute resolution for a long time. In addition, many cases which go to the Japanese Courts actually get settled through the settlement process which the Japanese Courts provide.

Court – Driven Mediation

KM: Oh, so do you think a mediation clause in a joint venture agreement between local and foreign parties doing business in Japan would be helpful? Since Japanese parties are familiar with Court mediation.

Gai: Ah, the settlement process I mentioned is different from a mediation conducted and supported by private or other organisations/mediation bodies you may have in your mind. It is an attempt by the Courts to encourage the parties to reach a settlement during litigation (**Court Settlement**). This is part of the litigation process and you therefore do not need any jurisdiction clause to commence the settlement process. It is usually commenced pursuant either to a request from the parties or by the Courts' suggestion. The settlement process is not mandatory but I will not dare to ignore the Courts' suggestion to parties to attempt to settle the matter.

Mediation managed by the Courts (**Court Mediation**) on the other hand is a different process from litigation and Court Settlement. Court Mediation can be mandatory at first instance for certain disputes such as disputes regarding land or rental, marriage, divorce or adoption. If a party commences court proceedings for these types of disputes without mediating, the court will usually refer the dispute to Court Mediation.

KM: I see. How is a Court Mediation conducted?

Gai: Court Mediation usually takes place in summary courts before a panel of three mediators which consist of a judge and two mediation commissioners appointed by the Courts. Parties do not have a right to choose any of the mediators. A settlement reached under Court Mediation is enforceable in the same way as a Court Settlement.

Japanese parties are currently less familiar with the process of private mediation even though a settlement that is reached by way of private mediation are binding if formalised at a notary public in a form of an "execution deed." You may also initiate summary litigation procedure to obtain settlement judgment based on the agreement to make the decision enforceable.

Language

KM: Okay, that is helpful. But Japanese Court proceedings are all conducted in Japanese right?

Gai: Yes. The written documents are also required to be submitted in Japanese. All non-Japanese documents submitted to the court must be submitted with a Japanese translation. But, do not worry, translators are provided for witnesses who do not speak Japanese.

Arbitration

KM: Okay. Do you think I can propose a Singapore seated arbitration as an alternative dispute resolution mechanism to the Japanese party?

Gai: Yes, you can. I heard that last year, there were about 20 to 30 arbitrations at the Singapore International Arbitration Centre (**SIAC**) involving Japanese parties. So, Japanese parties are quite familiar with arbitration seated outside Japan.

But from my personal experience, arbitration is not a popular method for resolving domestic disputes between Japanese companies especially for domestic transactions. A Japanese party usually opts for Japanese courts for domestic disputes. Japanese parties may find arbitration more acceptable when the business transactions involve cross-border activities.

KM: What about international arbitration seated in Japan? Is this method of dispute resolution procedure more popular than domestic arbitration?

Gai: Japanese Arbitration Act (**AA**) does not distinguish domestic and international arbitration, but the tendency is that most of the arbitration cases seated in Japan would be treated like international arbitration cases as domestic disputes are likely to be heard at the Courts. Japan's leading arbitration institution is the Japan Commercial Arbitration Association (**JCAA**).

KM: Can English be used in JCAA arbitrations?

Gai: Yes, there is no rule mandating parties to use Japanese. In fact, last year, 53% of arbitrations in JCAA were conducted in English. In 2018, JCAA released a list of around 120 Japanese and foreign arbitrators, stressing that this can help resolve business disputes not only in Japanese but in foreign languages such as English and French. But if the case is between the Japanese parties, the parties sometimes agree subsequently to conduct the arbitration in Japanese if the tribunal is agreeable.

KM: What if I want to propose a SIAC arbitration in Singapore to the Japanese party instead?

Gai: Well, there is no hard and fast rule, but if the current joint venture between your client and the Japanese party only involves restaurants in Japan, then the Japanese party may find it harder to accept foreign arbitration.

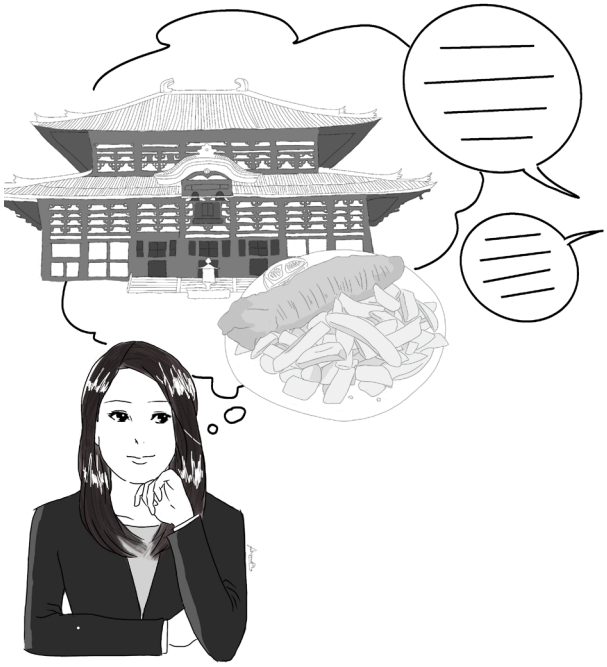
KM: If that is the case, can my client insist to choose Singapore law as a governing law for the joint venture agreement?

Gai: Yes you can choose any law that you are comfortable with. Under the JCAA rules, if you do not agree on the governing law, the tribunal applies the substantive law of the country or state to which the dispute referred to the arbitral proceedings is most closely connected to. Since this rule of conflict of law originates from the AA, the tribunal will have to apply this closest connection test even when arbitration is administrated by the other institutions if seated in Japan.

KM: So what about venue? Is there any suitable facility to hold an arbitration hearing?

Gai: Japan International Dispute Resolution Center (**JIDRC**) operates facilities specialised for a hearing of international arbitration and other types of ADRs in Tokyo and Osaka. JIDRC-Tokyo and Osaka are as fancy as Maxwell Chambers! Osaka is chosen because it is close to the famous and authentic sightseeing spots such as Kyoto and Nara.

KM: That is lovely! I am concerned about the length of arbitration hearings as it would increase the costs for my clients. Will they be long? If I am able to squeeze in a visit to Kinkakuji and Todaiji Temple on the side, assuming the venue of the arbitration is Osaka, that would be nice.



Gai: Well, it really depends on the procedure that your arbitrators prefer. Generally speaking, Japanese arbitrators who have been trained as litigators in Japan are more familiar with document- based Court hearings. Japanese Court hearings are usually shorter than common law style Court hearings which feature more oral examination of witnesses.

KM: Can I pick foreign arbitrators?

Gai: Yes, there is no restriction against foreign arbitrators sitting in an arbitration in Japan. In fact, in three-arbitrator tribunals appointed by a Japanese party and a foreign party, the Japanese party may nominate a Japanese arbitrator while the foreign party may nominate a foreign arbitrator. The chairman may then be appointed by the two party nominees or an arbitral institution. So, it is not uncommon for a tribunal to be multinational, comprising both Japanese and foreign arbitrators. Many Japanese arbitrators also now sit in arbitral tribunals overseas. As a result, Japanese arbitrators are now very international and have a wealth of international experience.

KM: Okay, that sounds good. And what about Japanese lawyers? Are they equally cosmopolitan?

Gai: Oh yes. These days, many Japanese lawyers have lived, studied or worked abroad. This is especially so for Japanese lawyers who are interested in international arbitration. They are usually experienced in foreign cultures and practices, since international arbitration by its very nature will often involve parties and businesses from different countries.

KM: Ahh like yourself. Did you not live in New York, Toronto and Singapore? I suppose Japanese lawyers and arbitrators will be interested in my fish and chips too!

Gai: I guess so.

KM: Thank you Gai. You have been a great help. I am very confident that I will be able to succeed in doing business in Japan and in any arbitration I conduct in Japan now!

Note on accuracy: All legal details have been meticulously checked by Gai, who is a real arbitration lawyer in Japan, and who did live in New York, Toronto and Singapore. Kang Min is not a restaurateur, and does not really like fish and chips. She is a very real international arbitration lawyer in Singapore.

Illustrations by Ms Alyssa P'ng from Allen & Gledhill LLP.

RECENT AMENDMENTS TO THE CIVIL EXECUTION ACT OF JAPAN

By Hiroki Aoki and Claire Chong from Nagashima Ohno & Tsunematsu (Singapore)

Introduction

The Civil Execution Act (Act No. 4 of 1979) (**CEA**) is the primary legislation governing enforcement of civil judgments and arbitral awards in Japan. A party seeking to enforce an arbitral award in Japan must first obtain the requisite approval from the Japanese courts pursuant to the Arbitration Act of Japan. Once the approval is obtained, the same measures and procedures apply for the execution of civil judgments and arbitral awards under the CEA.

A series of amendments to the CEA were enacted on 17 May 2019 and largely came into force on 1 April 2020 (**2020 Amendments**). These amendments are intended to improve the procedures available to judgment creditors seeking information of a judgment debtor's assets in Japan, and by extension, the reliability of the Japanese civil legal system.

Under the CEA and accompanying Rules of Civil Execution, an enforcing party is required to specify the particulars of the debtor's property against which execution is sought. Prior to these latest amendments, the prescribed methods for identifying such particulars were relatively limited and presented practical challenges for judgment creditors.

This article provides an overview of and commentary on the two major revisions to the CEA, namely: (i) the improvement of the Property Disclosure Procedure and (ii) the establishment of a new system to obtain information concerning a debtor from third parties. The latter is a particularly unique feature of the system in Japan, given that procedures specifically for the disclosure of such information by third parties are not ordinarily available in common law enforcement proceedings.

I. Improvement of the Property Disclosure Procedure

In 2003, the CEA was amended to establish a "Property Disclosure Procedure" (**PDP**) by which judgment creditors may file a request to the court to examine the judgment debtor with regard to the status of its assets. This procedure is broadly similar to the examination of judgment debtor proceedings that are available in common law jurisdictions.

If the petition for the PDP is approved by the court, the court will fix a date for the hearing and the judgment debtor is required to (i) file a list of assets prior to the hearing and; (ii) attend the hearing and answer the question(s) posed by the court and the judgment creditors. The PDP, however, has not been commonly used by judgment creditors in practice.

One of the main reasons behind this is said to be the light sanctions prescribed for a judgment debtor's non-appearance or declaration of false statements in the course of the PDP. Prior to the 2020 Amendments, a non-compliant judgment debtor would only be subject to an administrative sanction of up to JPY 300,000 (approximately USD 2,818). As a result, in 2017, approximately 40% of petitions for execution were ultimately concluded unsuccessfully.

The amended CEA provides that a judgment debtor's failure to comply with the PDP constitutes a criminal offence which may attract an imprisonment term of not more than six months or a fine of not more than JPY 500,000 (approximately USD 4,696). The introduction of criminal sanctions is aligned with the position in common law jurisdictions (including Singapore) where a judgment creditor may be subject to committal proceedings and incur criminal liability for failing to comply with a court order for examination.

Apart from the criminalisation of a judgment debtor's non-compliance introduced under the 2020 Amendments, the overall procedures of the PDP remains unchanged. Before the 2020 Amendments, there was some debate on whether to remove the requirement under Article 197(1)(i) of the CEA for a judgment creditor to show, on a prima facie basis, that full recovery of the judgment debt cannot be achieved by executing against known assets. No changes were ultimately made to this requirement. Generally, this requirement has not presented a substantial burden for judgment creditors in practice. The Japanese courts have considered it to be sufficient if a judgment creditor is able to submit a certified copy of registration of the debtor's place of residence (which can easily be obtained from a public register office) and show that execution against the real estate will not satisfy the full amount of the judgment debt.

II. Obtaining information of a judgment debtor's assets from third parties

The amended CEA now allows a creditor to request information pertaining to a debtor such as (i) bank deposits and shares from banks; (ii) real estate from register offices; and (iii) salary from local municipalities.

(a) *Bank deposits and shares*

To execute on bank deposits, an enforcing party must specify particulars of the debtor's bank account(s). While the specific bank account number is not necessary, the name of the relevant bank is insufficient for this purpose. The Supreme Court has ruled that a judgment creditor is required to specify, at the minimum, the branch name of the relevant bank account. In practice, however, a judgment creditor will face difficulty ascertaining the branch name of the bank in question without the debtor's co-operation. This difficulty is compounded by the fact that major banks in Japan typically operate more than 400 branches each.

Under the Attorney Act of Japan (Act. No. 205 of 1949), a qualified attorney may request its bar association to make inquiries to public or private organizations to obtain information necessary for his or her case. It is common practice for Japanese attorneys to seek information of the branch name of the banks with which a debtor is believed to hold an account. While major banks in Japan have generally complied with such requests, smaller banks have refused such requests on occasion. If an organisation denies a request for information, a judgment creditor cannot compel disclosure under this system.

To address these challenges, the 2020 Amendments enable a judgment creditor to seek a court order directing banks to disclose particulars of a debtor's bank accounts, including the branch name of a specific account. A judgment creditor may also seek a court order directing security firms to disclose information of shares, corporate bonds or similar kinds of financial instruments held by the debtor.

A judgment creditor may request these orders on an ex-parte basis without first filing a PDP application to avoid alerting the debtor, who may attempt to pre-empt the court order by dissipating its assets. After an order of disclosure is obtained, the judgment debtor will be notified around one month after the disclosing entities (such as banks) provide the information pursuant to such order.

(b) *Real Estate*

Under the current system in Japan, any party may request a public register office to provide information relating to a registered property by specifying the property's address. However, it was not practically possible to conduct a general search of all properties owned by a specific person.

The amended CEA assists judgment creditors by allowing them to request information of all real estate held in the name of the debtor from a public register office. A judgment creditor must file a PDP application prior to such a request, and the request must be made within 3 years after the PDP. This amendment has not come into force, as it will take some time for public register offices to establish a new information management system. This amendment is expected to come into force before May 2021.

(c) *Salaries*

The amended CEA establishes a new system by which a judgment creditor may seek a court order directing municipalities or organisations which manage employee's pension (for instance the Japan Pension Service) to disclose information of the debtor's place of employment, if any.

Given the sensitive nature of such information and the serious impact of attaching a debtor's salary, this request is only allowed under limited circumstances where the underlying claim: (i) relates to child support or other family related claims under Articles 151to 152 of the CEA; or (ii) arises out of death or personal injury. A PDP application is also a pre-requisite to a request for information on a debtor's place of employment.

Conclusion

The 2020 Amendments to the CEA are a welcome development in strengthening the scheme for enforcement of civil judgments and arbitral awards in Japan. In addition to improving the effectiveness of existing enforcement procedures, the amendments provide judgment creditors with a wider range of procedural tools to achieve recovery of judgment debts against assets located in Japan.