

The Current State of Japanese Law Concerning the Electronic Rendering and Enforcement of Judgments and Arbitral Awards

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1. Digitalization of Court Proceedings in Japan

➤ Related laws

- Code of Civil Procedure (1996)
- Civil Enforcement Act (1979)

➤ Recent amendments for the full digitalization of court proceedings

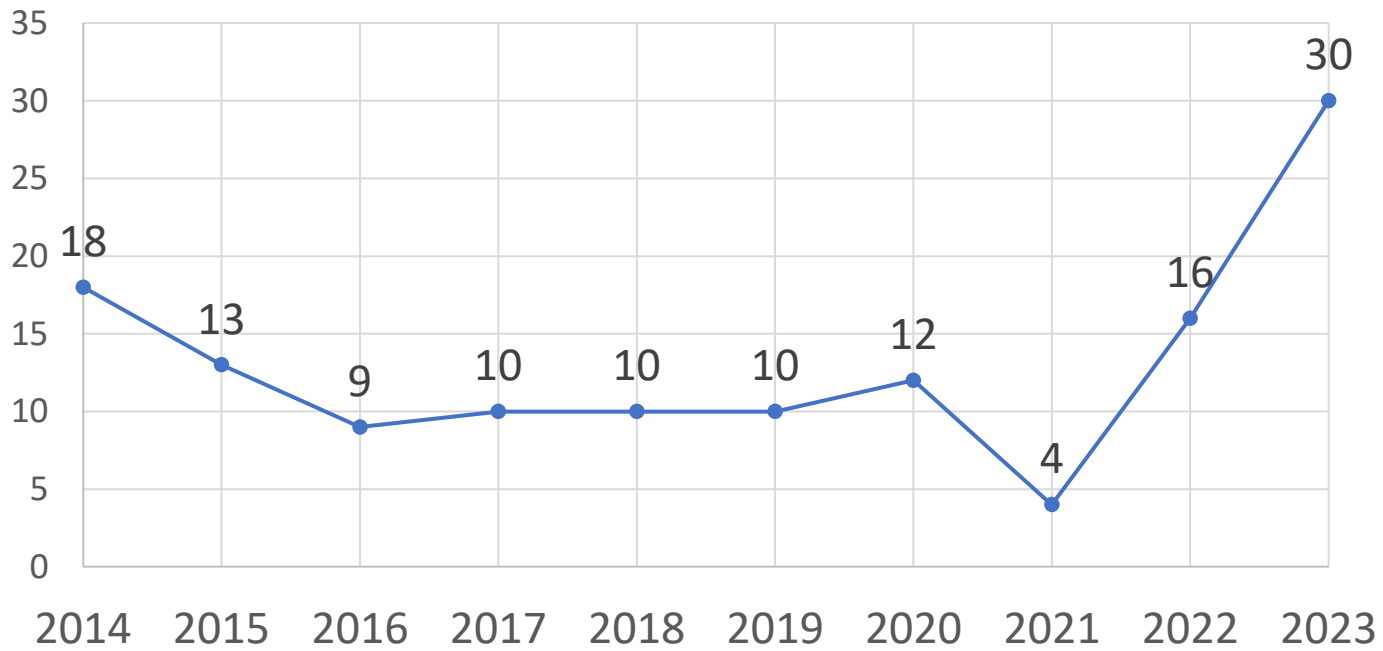
- Amendments to the Code of Civil Procedure and other laws in 2022
- Amendments to the Civil Enforcement Act and other laws in 2023

✓ The full implementation is to be completed by May 2026

⇒ Judgments will be rendered electronically and electronic applications for their enforcement will be possible

2. Current Practice of Electronic Awards in Court Enforcement Proceedings

- No cases have been reported so far.
- ✓ Number of arbitration-related court cases filed over the past 10 years (District courts, Japan nationwide)



Source: Annual Report of Judicial Statistics for 2023, Vol. 1, Table 1-2

3. Enforcement of Electronic Awards Under Japanese Law

➤ Arbitration law in Japan

- Arbitration Act (2003) (Based on UNCITRAL Model Law)
- Important amendments in 2023
- Enforcement of an arbitral award is possible by obtaining a court order allowing the enforcement (= “enforceability order”)
- Art 46 (*Art 48*) (1) A party that intends to process a civil enforcement based on an arbitral award may file a petition with the court for an **enforceability order** (meaning an order allowing the civil enforcement based on an arbitral award; the same applies hereinafter), designating the obligor as the respondent.

3. Enforcement of Electronic Awards Under Japanese Law

➤ Enforceability of electronic awards

- Form requirement under the current Arbitration Act
- Art 39 (*Art 41*) (1) For an arbitral award to be made, a written arbitral award must be prepared and signed by the arbitrators who has made the arbitral award; [...]

Cf. UNCITRAL Model Law, Art 31 (1) The award shall be made in writing and shall be signed by the arbitrator or arbitrators.

- ✓ General Understanding: Requirement for paper form and physical signature

⇒ Amendment is needed to clarify that arbitral awards can be made electronically

4. Possibility of Electronic Filing of Applications and Submission of Awards via Electronic Means

- Basic steps for enforcement (in general)
 - i. Obtain a document (= “title of obligation” or “*Schuldtitel*”) that serves as the basis for enforcement
 - ii. Obtain an attestation of the enforceability (“enforcement clause” or “*Vollstreckungsklausel*”) of the document
 - iii. File a petition for seizure of specific property (real estate, movable property, monetary claim, etc)

4. Possibility of Electronic Filing of Applications and Submission of Awards via Electronic Means

- 2023 amendment of the Civil Enforcement Act
 - Creation of electronic judgments and other electronic forms of title of obligation
 - Introduction of electronic filing of applications (for enforceability clause and seizure)
- ✓ How to submit an electronic title of obligation?
 - General rule: Submission of a paper form certificate showing the contents of the digital data (Art 25, Civil Enforcement Act)
 - Exception: Certain types of titles of obligation, including court decisions, do not need paper form submission because the court has the data (Art 18-2, *ibid.*)

4. Possibility of Electronic Filing of Applications and Submission of Awards via Electronic Means

➤ Enforcement of arbitral awards

- Title of obligation: Arbitral award for which an order of enforceability has become final and binding (Art 22, no (vi)-2, Civil Enforcement Act)

i. Application for enforceability order

- After the full implementation of the 2023 amendments:
 - Electronic filing will be available
 - Submission of electronic data will be allowed instead of a paper form copy of the award (new Art 48 (2) no (i), Civil Enforcement Act)
 - Same applies to Japanese translation of the award

4. Possibility of Electronic Filing of Applications and Submission of Awards via Electronic Means

ii. Application for enforcement clause

- Electronic filing will be available
- The clause will be provided in an electronic way (new Art 26 (2) no (i), Civil Enforcement Act)

4. Possibility of Electronic Filing of Applications and Submission of Awards via Electronic Means

iii. Application for seizure

- ✓ How to submit the title of obligation, which is “arbitral award for which an order of enforceability has become final and binding” ?
- As enforceability orders are court decisions, the submission of a paper form certificate may be omitted (Art 18-2, Civil Enforcement Act)
- However, there is uncertainty as to whether this exception applies to the arbitral award part.
 - If the exception doesn't apply, a paper form certificate of the award's contents will be required.

⇒ Need for clarification

5. Possibility of Physical Filing of Applications Seeking Enforcement

- ✓ Even after the full implementation of 2023 amendments, physical filing of applications for enforcement using a paper document certifying the contents of the arbitral award will be still possible.
- ✓ However, if the application is filed by a representative attorney, the electronical filing will be obligatory (Art 19-3, Civil Enforcement Act).

6. Conclusion

- ✓ The current Japanese law, even after full implementation of the 2023 amendments, leaves some doubt as to:
 - i. whether an electronic arbitral award can be recognized as an arbitral award and
 - ii. whether all applications and document (data) submissions for the enforcement may be carried out fully in electronic form

Thank you for your attention!

