

UNCITRAL WEBINAR  
Dispute Resolution in  
the Modern Context  
31 March 2021

# Towards Smart Arbitration:

Streamlined and Predictable Procedure  
through Identification of Real Issues in  
Arbitral Proceedings

Masato Dogauchi

---

Professor, Waseda University  
Professor Emeritus, University of Tokyo  
Chief Arbitration and Mediation Director, JCAA

## Contents

1. Introduction
2. Common law style arbitration
3. **JCAA Interactive Arbitration Rules**
  - 3.1 The First Dialogue
  - 3.2 The Second Dialogue
  - 3.3 Objectives
4. Prague Rules and DIS Rules
5. Conclusion

1.

## Introduction

- **Civil law style arbitration conforms to **the due process and fairness** in dispute resolution in a different way.**
- Moreover, the civil law style arbitration would provide the business community with **a more party-friendly dispute resolution in terms of cost, time and predictability.**

2.  
Common Law Style  
Arbitration

- Common-law-style arbitration tends to have some problems:
  1. **huge volume of documents and many witnesses** on all possible factual and legal issues;
  2. **lengthy arbitral awards** on these issues; and;
  3. **high-cost** relative to the amount of claims.

## 3.

JCAA Interactive  
Arbitration Rules

- The Japan Commercial Arbitration Association (**JCAA**) introduced the **Interactive Arbitration Rules** in **2019** in addition to its existing two sets of rules.
- Two distinctive provisions on "**dialogue**" between the parties and the arbitral tribunal.  
(Articles 48 and 56)

## 3.1

## The First Dialogue

## ■ The “**First Dialogue**”:

The Tribunal shall -

- at the earliest possible stage of the proceedings,
- **summarize the assertions of the parties** regarding the factual and legal basis of claims and response thereto (**Positions**), and
- tentatively **ascertain the factual and legal issues** (**Issues**) on the basis of the summarized Positions.

### 3.1

## The First Dialogue

- present the parties with **a written description** of the Positions and Issues; and
- **give the parties an opportunity to comment** on the Positions and Issues within the time limit designated by the tribunal.

## 3.2 The Second Dialogue

### ■ The “**Second Dialogue**”:

The Tribunal shall -

- prior to its decision as to whether witness examination should be conducted,
- prepare and give **a written summary** to the parties on the following items:
  - i. the **factual issues** that the arbitral tribunal considers important and the arbitral tribunal’s preliminary views with respect thereto;
  - ii. the **legal issues** that the arbitral tribunal considers important and the arbitral tribunal’s preliminary views with respect thereto; and
  - iii. any other matters that the arbitral tribunal considers important.



## 3.2 The Second Dialogue

- The parties are given an opportunity to comment on the tribunal's preliminary views.
- The preliminary views shall not be binding upon the arbitral tribunal's subsequent decisions or the arbitral award.

## 3.3

## The Objectives

- **The objectives of the Dialogues** are:
  1. To facilitate the arbitral tribunal and parties **to share the outlook of the case;**
  2. To reassure the parties that the arbitral tribunal has **an accurate understanding of their true positions;**

3,3

## The Objectives

3. To allow the arbitral tribunal to **reexamine their understandings** by learning the parties' responses;
4. To assist the parties to consider the **necessity of witness examination** and, if necessary, to determine **who should be examined**;

### 3.3

#### The Objectives

5. To give the parties an opportunity **to reconsider their strategy and tactics** to present their cases effectively and efficiently;
6. To allow them **to consider any possible settlement** without having a final arbitral award;
7. To shorten the time for drafting arbitral award.

## 4.

The Prague Rules  
and DIS Rules

Similar rules are found in:

- **The Prague Rules** on the Efficient Conduct of Proceedings in International Arbitration (2018);
- **DIS Arbitration Rules (2018).**

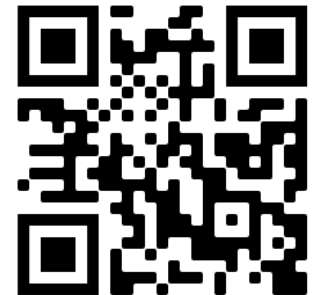
5.  
Conclusion

- **Disproportionately lengthy and expensive resolution of dispute would be against the due process of law.**
- The JCAA Interactive Arbitration would:
  - enhance parties' predictability;
  - shorten the time of proceedings; and
  - consequently, achieve a cost-effective resolution of dispute.
- **Such civil law style procedure would secure the true due process of law in conformity with a sound business sense.**

Thank you.

If you are interested in arbitration and mediation of Japan, please visit the following website:

<https://www.jcaa.or.jp/en/>



**Interactive  
Arbitration  
Rules  
2019**



**The Interactive Arbitration Rules** take a "civil law approach" to offer maximum predictability and efficiency, where the arbitral tribunal takes a more active role in ascertaining issues and is required to communicate its preliminary views on important issues to the parties before the evidentiary hearing.





**The Commercial Arbitration Rules** not only incorporate global standards, such as emergency arbitration and expedited procedures, but also provide carefully crafted provisions to prevent unnecessary procedural disputes arising out of the parties' different legal backgrounds.

UNCITRAL Arbitration Rules  
2010

Administrative Rules  
for UNCITRAL Arbitration  
2019



**The UNCITRAL Arbitration Rules**, initially adopted in 1976 and amended in 2010 and 2013, are recognized as the world standard.

These rules ensure a high degree of flexibility for arbitrators based on party autonomy.

.