Towards Smart Arbitration:
Streamlined and Predictable Procedure through Identification of Real Issues in Arbitral Proceedings

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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.
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)
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 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:
  1. **the factual issues** that the arbitral tribunal considers important and the arbitral tribunal’s preliminary views with respect thereto;
  2. **the legal issues** that the arbitral tribunal considers important and the arbitral tribunal’s preliminary views with respect thereto; and
  3. 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.
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;
The Objectives

3.3

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.
The Prague Rules and DIS Rules

4.

Similar rules are found in:

- **The Prague Rules** on the Efficient Conduct of Proceedings in International Arbitration (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.
If you are interested in arbitration and mediation of Japan, please visit the following website:

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