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The New Japanese Prosecutorial Agreement System

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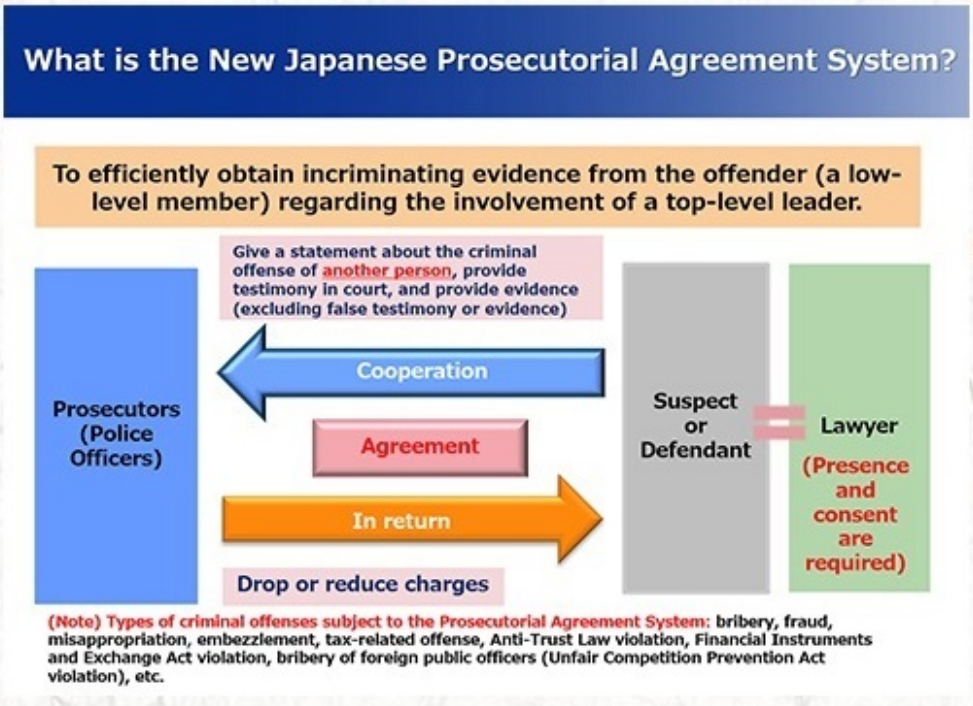
1. What is the new prosecutorial agreement system?

It is a system where there is cooperation between the prosecutor and the accused at the investigation stage and at the trial (the "Prosecutorial Agreement System") that was introduced to help uncover organized crimes (including white-collar crimes involving companies) in Japan. It was newly created pursuant to an amendment to the Japanese Criminal Procedure Code in 2016,[1] making reference to a similar system in the United States, and recently took effect on June 1, 2018.

The Prosecutorial Agreement System allows the accused to negotiate for the criminal charges against him/her to be dropped or reduced in return for such accused providing true testimony or evidence to the prosecutor in order to uncover the crimes of a third party (the wording of the law states "another person") who played a key role in an organized crime.



The criminal offenses covered by the Prosecutorial Agreement System

are limited to certain types of offenses (the wording of the law states "specific criminal offenses"). Offenses relevant to corporate activities include bribery, fraud, misappropriation, embezzlement, tax-related offenses such as violations of the Corporation Tax Act, Anti-Trust Law violation, Financial Instruments and Exchange Act violation, etc. Such specific criminal offenses also include those defined as financial or economic-related criminal offenses in cabinet ordinances, such as bribery of foreign public officers (Unfair Competition Prevention Act violation).

Before this system, if a criminal offender is arrested in an organized crime including corporate criminal offenses, in many cases, the offender would not speak about the background or involvement of the senior leaders involved in the said crime to protect the organization or its leaders, or is not able to speak even though he/she wants to expose the truth because he/she feared losing his/her position in the company. Moreover, it was not easy for an investigator to make progress in finding out everything about the organized crime because it was illegal to make an arrangement between the investigator and the offender "for the charges to be dropped if [the offender] honestly speaks the truth." The Prosecutorial Agreement System now allows investigators to obtain evidence regarding the senior leaders of organized crimes, and at the same time, offenders can get their charges dropped or reduced.

2. Direction of the Implementation

How the Prosecutorial Agreement System will be actually implemented is not clear at this moment. An article entitled, "Approach regarding the Implementation of the [New] Prosecutorial Agreement System for the Time Being" was published by the New Prosecutorial Agreement System Preparations Office, Supreme Public Prosecutors Office in the end of March, 2018, and serves as a useful reference.[2] This article suggests that prosecutors will most likely, at least at the initial stage of the implementation, exercise discretion in applying the Prosecutorial Agreement System by reasonably limiting the subject cases; their attitude will most likely be to exercise self-restraint. For example, it states therein that "it should be a case where public understanding can be obtained concerning the reduction of charges [of an accused], etc., to obtain cooperation in the investigation and trial of the criminal case of another person" and "in considering whether or not to initiate a negotiation, no agreement will be made unless there is a prospect of obtaining through the cooperation of an accused significant evidence to justify the use the Prosecutorial Agreement System, or unless there is a circumstance where credibility can be positively recognized such

as where there is sufficient evidence based on the statements made by the accused at the Prosecutorial Agreement consultation."

3. Suggested General Approach

The Prosecutorial Agreement System, in particular, can be said to be a system that should be effectively used by a company when it desires to minimize damage from organized crimes, if such company becomes aware that an executive officer or management-level employee was involved in a certain criminal offense as a result of an internal investigation. Although there may be cases where it is difficult to decide whether or not to report an offense, especially when the officer intended to contribute to the company or other employees, and did not act for his or her own interest, since the impact thereof on the company itself is serious, it is essential to decide at an early stage whether the company, including those involved in the offense, will contribute and cooperate with the investigators to clarify the whole truth. Doing so will promptly calm the commotion inside and outside of the company, and properly fulfill the responsibilities of the company to its many stakeholders. (Of course, in cases where the appreciation of the investigator of the incident is wrong or the investigator has misunderstood a key aspect of the incident, one should not easily accept what the investigator says in a way that would bend the truth.)

We strongly recommend that not only corporate legal personnel but also other executive-level personnel should become aware of this system and share this information internally. In order to prepare for any contingency, we also strongly recommend that companies consult a lawyer or other experts in advance.[3]

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1. Keiji soshouho [Criminal Procedure Code] Law No. 131 of July 10, 1948, as amended by, among others, Law No. 54 of June 3, 2016.
2. *See* p. 48 ff, *Horitsu no Hiroba*, April, 2018.
3. For detailed information, *see* Mikio Yamaguchi and Toshiya Natori, "Q&A on Understanding the New Japanese 'Prosecutorial Agreement' and the Corporate Legal Practices Thereon – A New Prosecutorial Agreement System of Negotiation and Agreement, and Approaches Thereto," October 5, 2017, Dobunkan Shuppan. Co., Ltd. (in Japanese only).

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Fair Disclosure Rule

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I. Introduction

An amendment to the Financial Instruments and Exchange Act ("FIEA")[1] introducing a fair disclosure rule ("FD Rule") took effect on April 1, 2018 (the "Amendment"). The Amendment was enacted on May 17, 2017, and the Financial Services Agency published the implementing order and ordinance on December 27, 2017 and the Guidelines for the Fair Disclosure Rule (the "Guidelines") on February 6, 2018.

II. Background

In the United States, the U.S. Securities and Exchange Commission established the Regulation Fair Disclosure in 2000, which provides that when an issuer discloses any material nonpublic information intentionally to certain persons, it must simultaneously disclose such information publicly. In the European Union, timely disclosure and selective disclosure were regulated under the 2006 Market Abuse Directive (later replaced in 2014 by the Market Abuse Regulation).

On the other hand, there was no such established fair disclosure rule in Japan that required that where an issuer discloses material nonpublic information to a third party, it must also disclose such information publicly. The Task Force on the Fair Disclosure Rule of the Working Group on Financial Markets of the Financial System Council has discussed and deliberated on the FD Rule since October, 2016. Based on the results of the discussions, the said Task Force compiled the Report - Ensuring fair and timely disclosure of information to investors (the "Report") on December 7, 2016.

III. Purpose

The Report emphasized that the FD Rule should be adopted to ensure fair and timely disclosure to investors so that all investors may trade with confidence. The Report suggests that the adoption of the FD Rule would also have the following objectives: (i) clarifying the disclosure rules for issuers would encourage prompt disclosure and

promote dialogue between issuers and investors, (ii) improve the environment for more objective and accurate analyses and recommendations by analysts, and (iii) ensuring fairness in the timing of information disclosures by issuers would promote a change in the mindset of investors towards making more long-term investments.

IV. Details of the FD Rule

A brief summary of the FD Rule is that whenever a listed company discloses material information to a transaction-related party, it must simultaneously disclose such information publicly.[2]

Information providers under the FD Rule include (i) listed issuers, (ii) directors, corporate auditors or executive officers of listed issuers, and (iii) agents or employees in charge of the investor relations business of listed issuers.

"Material information" that is subject to the FD Rule is defined as important unpublished information about the operations, business or assets of a listed company that would have an important impact on an investment decision.[3] According to the Report and the Guidelines, material information should fall within the scope of information covered by insider trading regulations, and includes undisclosed and settled financial information that would have an important impact on a listed security.

A "transaction-related party" refers to (i) financial instruments business operators, registered financial institutions, credit rating agencies, investment corporations and the like, or their directors, and (ii) the following persons who receive material information in connection with the investor relations business of a listed issuer: (a) owners of listed securities of a listed issuer, (b) qualified institutional investors, (c) legal entities the primary purpose of which is to invest in securities, and (d) participants in a meeting where information regarding an investment in a listed issuer is provided.

The methods of public disclosure stipulated in the FIEA are (i) filing securities registration statements, securities reports, semi-annual reports, extraordinary reports and other disclosure documents through the Electronic Disclosure for Investors' Network (EDINET), (ii) timely disclosures under the rules of stock exchanges through the Timely Disclosure network (TDnet), (iii) disclosure to two or more media organizations, and (iv) posting information on the website of the discloser. Posting information on social networking sites (such as Facebook, Twitter and the like) does not constitute public disclosure.

V. Exemptions

When a transaction-related party who receives material information has (i) a statutory or contractual confidentiality obligation, and (ii) an obligation not to trade securities of a listed issuer, then the listed issuer does not have to disclose such information publicly. If the transaction-related party breaches its obligations and the listed issuer becomes aware of it, then the listed issuer must promptly disclose the information publicly. However, if the material information concerns (i) a merger, corporate split, share exchange or any other corporate restructuring, or (ii) an issuance of shares and the like, and the disclosure of the information may result in such action being materially adversely affected, then this disclosure requirement would not apply.

If (i) a listed issuer is unaware that the disclosed information constitutes material information, (ii) a listed issuer discloses material information to a transaction-related party unintentionally, or (iii) a listed issuer was not aware that the person receiving the material information was a transaction-related party at the time of disclosure, then it does not have to simultaneously disclose such information publicly. When the listed issuer becomes aware that material information has been disclosed to a transaction-related party, then it must promptly disclose such information publicly.

VI. Enforcement

Violations of the FD Rule are not subject to administrative fines. Instead, violators may be ordered to submit reports or materials, or allow inspections of documents, and be instructed or ordered to disclose material information. The violation of any such order may be subject to imprisonment of up to 6 months and/or a fine of up to JPY 500,000.

VII. Conclusion

To comply with the FD Rule, at the very least, listed issuers should manage information covered by insider trading regulations as well as undisclosed and settled financial information that may have an important impact on a listed security. Listed issuers must also provide or amend their internal rules, such as disclosure policies, information management rules, guidelines and manuals, to comply with the FD Rule, and communicate the FD Rule throughout their companies. Hopefully, future practices will encourage early information

disclosures by listed issuers, and promote dialogue between such issuers and investors.

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1. Kinyu shohin torihiki ho [Financial Instruments and Exchange Act], Act No. 25 of 1948, as last amended by Act No. 37 of May 17, 2017.
2. FIEA, art. 27-36, para. 1.
3. *Ibid.*

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The Use of Tax Haven Companies as Investment Vehicles under the New CFC Rule of Japan

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1. Introduction

From an international tax perspective, it is important to understand the nature or scope of potential tax risks of a Japanese domestic company, especially if it has foreign subsidiaries in tax haven countries. If a domestic company has some commercial transactions with its foreign subsidiaries, such as the transfer of important intangible assets (e.g., patents and trademarks), at the outset, it must take care of the tax risks under transfer pricing rules, especially where the consideration for such transactions is extremely lower than comparable transactions.

Furthermore, the Japanese tax code provides a rule on controlled foreign corporations ("CFC"), the so-called anti-tax haven rule, for the purpose of preventing tax avoidance by retaining earnings in subsidiaries that are located in tax haven countries or regions. The Japanese CFC rule is said to be unique and strict in adopting the "hybrid approach," where the main concept is the "entity approach," and the "income approach" is further adopted as a complementary means to cover specific types of passive income on a partial-inclusion

basis (see the discussion in part 2(3) below).

Under the entity approach, a taxpayer often faces serious issues of "over-inclusion," where the income earned by its foreign subsidiaries with economic substance in tax haven countries may be subject to taxation under the CFC rule on a full-inclusion basis unless all the conditions for exemption are satisfied. On the other hand, how to address the problem of "under-inclusion" has been a crucial concern for tax authorities. Under the old CFC rule, under-inclusion was demonstrated by the fact that even the income earned by foreign subsidiaries that lacked economic substance could never be subjected to CFC taxation as long as their effective tax rate was 20% or more (the Japanese normal trigger tax rate).

Under the 2017 tax reform, the Japanese CFC rule was fundamentally amended to address over-inclusion and under-inclusion, although the hybrid approach itself was basically maintained. I have set out below an overview of the new Japanese CFC rule and the Denso Corporation Case,[1] where the real value of the entity approach was put to the test by the Supreme Court.

2. Overview of the New CFC Rule in Japan

The new CFC rule applies to the fiscal years of a foreign related company beginning on or after April 1, 2018. When planning to use tax haven companies as investment vehicles or business hubs, at the very least, the following three basic amendments under the new CFC rule should be taken into consideration to reduce tax risks.

(1) Specified Foreign Subsidiaries

The concept of "Specified Foreign Subsidiaries," consisting of paper companies, cash boxes and black-list companies, was newly introduced. Their income will be subject to CFC taxation on a full-inclusion basis even if their effective tax rate is 20% or more (the normal trigger tax rate), unless their effective tax rate is 30% or more (the special trigger tax rate). Thus, US corporations can be subject to the said new rule and evaluated as tax haven companies under the new CFC rule because the US lowered its corporate tax rate from 35% to 21% in the 2017 Tax Act. To avoid the application of this new tax system that is intended to resolve under-inclusion issues, it is important to carefully check if the foreign related company with an effective tax rate of 20% and more, but less than 30%, could be categorized as a paper company, cash box or black-list company. For instance, a paper company is defined as a foreign related company

that satisfies neither of the following conditions:

a. **Substance Test**: the foreign related company maintains an office or other fixed place of business that is considered to be necessary to conduct its primary business; or
b. **Management and Control Test**: the foreign related company functions with its own administration, control and management in the jurisdiction where its head office is located.

(2) Economic Activity Test

The "Exemption Test" under the old CFC rule was renamed as the "Economic Activity Test" under the new CFC rule. However, the conditions of the Economic Activity Test did not substantially change from those of the Exemption Test except for a few revisions that aim to resolve over-inclusion issues such as the special exception for aircraft leasing. With respect to a foreign related company with an effective tax rate of less than 20%, it is indispensable for the taxpayer, the Japanese shareholders satisfying certain criteria (10% or more shareholding), to check if the foreign related company satisfies all of the following tests under the Economic Activity Test:

a. **Business Purpose Test**: its principal business is something other than owning shares or bonds, licensing industrial property rights or any other rights concerning technology;
b. **Substance Test**: almost the same as the standards adopted in the definition of Specified Foreign Subsidiaries with respect to paper companies as mentioned earlier;
c. **Management and Control Test**: almost the same as the standards adopted in the definition of Specified Foreign Subsidiaries with respect to paper companies as mentioned earlier; and
d. **Unrelated Party Test** or **Country of Location Test**: if its principal business is wholesale, banking, trust, securities, insurance, water transport, air transport or aircraft leasing, then it shall conduct business mainly with a person other than a pre-defined related party (Unrelated Party Test), and if its principal business is not any one of these, then it shall conduct business mainly in the state or territory where its head office or principal office is located (Country of Location Test).

Where at least one of the tests under the Economic Activity Test is not satisfied, all of the income of the foreign related company shall be included in the taxable income of its Japanese shareholders in proportion to their respective shareholdings (full-inclusion). It should also be noted that (1) some special exceptions (safe harbors) are

provided for each condition of the Economic Activity Test (formerly, the Exemption Test) to increase the predictability of the liability of a taxpayer, and (2) the scope of such special exceptions have been expanded under the Economic Activity Test.

(3) Scope of Passive Income

Under the new CFC rule, even where all of the tests under the Economic Activity Test are satisfied, passive income, including but not limited to (a) interest (with some exceptions), (b) dividends or capital gains from the transfer of securities (except for those from a company, 25% or more shares of which is owned by a foreign related company), (c) royalties from intangibles (except for royalties derived from self-developed intangibles, and intangibles purchased or licensed for adequate consideration that are utilized for certain active businesses), will be included in the taxable income of the Japanese shareholders of a foreign related company in proportion to their respective shareholdings (partial-inclusion). The scope of passive income has been broadened under the new CFC rule. For the appropriate management of tax risks, it will be an effective strategy to have some potential passive income qualify within the relevant exceptions based on rational tax planning.

3. Denso Corporation Case

The main issue in this case was whether or not the Singaporean subsidiary of Denso Corporation satisfied the "Business Purpose Test." The said subsidiary provides various kinds of services as the regional headquarters, and owns shares in related companies and receives a huge amount of dividends therefrom. Although the "regional headquarters company rule" had been introduced as a safe harbor to the "Business Purpose Test" in the 2010 tax reform, such safe harbor was not applicable because the subject fiscal year in the Denso Corporation Case was prior to the fiscal year when such amendment took effect.

In this case, the Supreme Court ruled that the following factors should be comprehensively examined for the purpose of determining the principal business of a company that conducts multiple businesses:

a. total sales or revenue from each business activity;
b. number of employees required for each business activity; and
c. situation of the offices and any other fixed place of business.

As a result of applying these interpretive factors to the case, the

Supreme Court judged the tax imposed on Denso Corporation based on the CFC rules to be illegal by holding that the principal business of the Singaporean subsidiary of Denso Corporation was not "owning shares" but "conducting business as a regional headquarters" because such business had a reasonable size and substance, and accounted for a large proportion of its business activities. In this final decision, the Supreme Court emphasized the following facts:

a. various kinds of services were being provided with functional integrity, as the regional headquarters, for the purpose of promoting rationalization and efficiency in the operation of the group companies;
b. sales from services to improve logistics as the regional headquarters represented 85% of its total sales proceeds; and
c. between 80% and 90% of its total revenue came from dividends, which to a considerable extent was generated from the reduction of the cost of sales of its group subsidiaries as a result of its "business as the regional headquarters."

As shown in this decision of the Supreme Court, when subsidiaries in tax haven countries conduct multiple businesses, the factual determination of the "principal business" is one of the key factors to satisfy the Exemption Test (now, the Economic Activity Test). It should be noted that it is still not easy for a taxpayer to determine the principal business of a foreign subsidiary with a high degree of certainty because the Supreme Court in the Denso Corporation Case did not clarify how much weight should be given to the monetary elements (e.g., revenue) and the production elements (e.g., employees/fixed places of business). The tax authorities may in tax investigations still argue against the analysis of a taxpayer. Also, when faced with such a situation, it will be an important strategy for the taxpayer to rely on the aforementioned special exceptions (safe harbors), if applicable, to avoid such conflicting views. In any event, measures against over-inclusion risks should be carefully implemented on a case by case basis under the entity approach.

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1. Supreme Court, October 24, 2017, 8 Minshu 71, 1522-1641.

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Japanese Supreme Court Provides Guidance on Arbitrator' s Duty to Disclose a Potential Conflict of Interest in an International Arbitration

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On December 12, 2017, the Supreme Court of Japan rendered a decision long-awaited by arbitration practitioners.[1] In an appeal from the judgment of the Osaka High Court setting aside an arbitral award due to the failure of the presiding arbitrator to disclose a potential conflict of interest, the Supreme Court modified the ruling of the said High Court by laying down a new general standard of the duty of an arbitrator to disclose a potential conflict of interest.

1. Supplemental Facts

The factual background of this case and the summary of the rulings of the lower courts can be found in the previous issue of our newsletter <http://www.ohebashi.com/jp/newsletter/Newsletter_en_Winter-Issue.pdf>. In addition to the facts contained therein, the decision of the Supreme Court revealed the identity of the parties and the background of the presiding arbitrator, which are relevant to the analysis of the case. In essence:

- The claimants in the dispute are SANYO Electric Co. Ltd. ("SANYO Electric") and its affiliate in Singapore. SANYO Electric became a wholly-owned subsidiary of Panasonic Corporation in April, 2011, two months prior to the commencement of the arbitration in Osaka, Japan before The Japan Commercial Arbitration Association ("JCAA").
- The presiding arbitrator of the arbitral tribunal is a partner at the Singapore office of the international law firm, King & Spalding LLP ("K&S"). About 17 months after his appointment as presiding arbitrator, a new lawyer joined K&S in its San Francisco office. The new lawyer had represented a wholly-owned US subsidiary of Panasonic Corporation (i.e., a sister company of SANYO Electric) in an anti-trust class action before the US District Court for the Northern District of California. The presiding arbitrator did not disclose such fact.

2. Decision of the Supreme Court

In the appeal of the case that set aside the arbitral award under the Arbitration Law of Japan, the Supreme Court modified the ruling of the Osaka High Court finding a breach of the disclosure duty by the presiding arbitrator, and remanded the case for further determination. The decision dealt with two issues regarding the ongoing obligation of an arbitrator to disclose a potential conflict of interest under Article 18 (4) of the Arbitration Law, which states that, "[a]n arbitrator, during the course of the arbitration procedure, shall without delay, disclose to the parties all the facts likely to give rise to doubts as to his/her impartiality or independence (excluding those which have already been disclosed)." [2]

First, the Supreme Court confirmed the finding by the Osaka High Court that the advance declaration by the presiding arbitrator prior to his appointment that "simply provides an abstract statement that a conflict between the arbitrator and other lawyers of K&S may arise" did not fall under the proviso, "those [facts] which have already been disclosed," which are excluded from the ongoing disclosure duty of an arbitrator under Article 18(4).

Second, the Supreme Court set a new general standard to determine whether an arbitrator has breached his or her disclosure duty under Article 18(4). According to the Court, the failure of an arbitrator to disclose the facts that would likely give rise to justifiable doubts as to his or her impartiality or independence amounts to a breach of his or her disclosure duty only where the arbitrator (i) was aware of such facts or (ii) the arbitrator could have discovered such facts by conducting a reasonable investigation, before the completion of the arbitral proceedings. By applying the above standard to this case, the Supreme Court found that, based on the records, it remained unclear whether the presiding arbitrator had been aware of the facts relating to the potential conflict and whether the presiding arbitrator could have found such facts by conducting a reasonable investigation. The Court pointed out that the awareness of such facts by K&S and the conflict check system adopted by K&S were not clearly known. On such basis, the Supreme Court modified the decision of the Osaka High Court that did not consider the above two factors.

3. Comments

(1) Advance Declaration by Arbitrator

This case is probably the first one at a national court level that deals with the legal implication of an advance declaration by an arbitrator in an international arbitration. In recognition of current practices in international arbitration as illustrated in the IBA Guidelines on

Conflicts of Interest in International Arbitration ("IBA Guidelines"),[3] the Supreme Court confirmed that the advance declaration by the presiding arbitrator in relation to potential conflicts of interest did not discharge the arbitrator from his or her ongoing duty to disclose potential conflicts of interest. An arbitrator in an international arbitration should be reminded of this rule regarding an advance declaration or waiver prior to his or her appointment.[4]

What was not settled by the decision of the Supreme Court, however, was the validity and effect of an advance waiver by the parties upon the request of an arbitrator since this case was only concerned with an advance declaration by an arbitrator. It is also unclear whether the declaration of more specific potential conflicts of interest would discharge an arbitrator from his or her ongoing duty to disclose. This will require an analysis of the specific circumstances of each case.[5]

(2) Arbitrator´s Duty to Investigate Potential Conflicts of Interest

Another practical importance of the decision of the Supreme Court is its clarification of the disclosure duty of an arbitrator. In this regard, the Osaka High Court was criticized by many practitioners for apparently requiring an arbitrator to investigate all the existing circumstances in relation to potential conflicts of interest. Probably with such criticism in mind, the Supreme Court took a more practical approach by limiting the scope of the duty to investigate by applying a standard of reasonableness, which is in line with international arbitration practices.[6] The Supreme Court´s ruling was based on an understanding that requiring an arbitrator to make a reasonable search for ordinarily discoverable facts would not be too burdensome for the arbitrator.[7]

Since the duty of an arbitrator to investigate potential conflicts of interest is part of his or her ongoing duty to disclose, there may be a practical concern as to how often the arbitrator must make such investigation. One practitioner suggests that it would be reasonable to conduct a conflict check using the system of the law firm on the parties in the arbitration, and their parent companies and subsidiaries on a quarterly basis.[8]

(3) Potential Outcome of the Procedure to Set Aside the Award

The Supreme Court has remanded the case to the Osaka High Court to determine (i) whether the arbitrator was aware of the undisclosed facts and/or (ii) whether the arbitrator could have discovered such facts by conducting a reasonable investigation. In this regard, the

facts by conducting a reasonable investigation. In this regard, the Judicial Research Official of the Supreme Court noted that the presiding arbitrator did not testify in the original procedure to set aside the award, nor was his witness statement submitted thereat.[9] Thus, the challenge would be for the respondents in this case (i.e., the applicants in the said procedure) to establish either of the above facts since such proof will require substantial information from the presiding arbitrator who rendered the subject award.[10]

As seen recently in a Swiss case rejecting the request for revision of an ICC award due to the alleged lack of independence of the sole arbitrator, proof of such independence heavily depended on the evidence submitted by the arbitrator.[11] In the said case, the sole arbitrator was a lawyer of the Zurich office of an international firm, and it was later discovered that its German office had advised a company in the same group as the claimant. In rejecting the request for revision, the Federal Supreme Court of Switzerland ruled that the lawyers in the network of that international firm did not qualify as members of the same firm based on the evidence submitted by the sole arbitrator that such firm was merely a network of independent law firms that did not share fees.[12]

Although we are still waiting for the decision of the Osaka High Court on remand, the decision of the Supreme Court is consistent with the general trend in Japanese courts of sustaining arbitration awards. Such attitude of the courts in Japan toward arbitration is in line with recent initiatives to promote international arbitration and mediation in Japan, including the recent launch of hearing facilities in Osaka (i.e., Japan International Dispute Resolution Center - Osaka) in May, 2018 and the proposed launch of an international mediation center in Kyoto (i.e., Japan International Mediation Center - Kyoto) in the fall of 2018.[13]

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1. Supreme Court, December 12, 2017, Hei 28 (Kyo) No. 43, 2365 HANREI JIHŌ 70 (Japan).
2. Chusai hou [Arbitration Law], Act No. 138 of Aug. 1, 2003. This provision is based on Art. 12(1) of the UNCITRAL Model Law on International Commercial Arbitration.
3. The official commentary of the decision of the Supreme Court written by the Judicial Research Official of the Supreme Court who was in charge of this case specifically pointed out common practices in international arbitration with reference to General Standard 3(b) of the IBA Guidelines. Norihiko Okada, *Toki no Hanrei*, 1517 Jurist 96, 99 (April, 2018).
4. *See* IBA Guidelines, General Standard 3(b); Note to the Parties and Arbitral Tribunal on the Conduct of Arbitration under the ICC Rules of Arbitration (October 30, 2017), para. 22,

https://iccwbo.org/dispute-resolution-services/arbitration/practice-notes-forms-checklists/

.5. Okada, *supra* at 3, 99.

6. *See e.g.*, Julian Lew, et al., COMPARATIVE INTERNATIONAL COMMERCIAL ARBITRATION, paras. 11-39 at p. 269 (2003).

7. Okada, *supra* at 3, 100.

8. Karel Daele, CHALLENGE AND DISQUALIFICATION OF ARBITRATORS IN INTERNATIONAL ARBITRATION, 55 (2012).

9. Okada, *supra* at 3, 101.

10. *Ibid.*

11. BGE [Swiss Supreme Court] September 7, 2016, 4A_386/2015 (Switzerland). Under Swiss law, a revision is an extraordinary appeal to the Supreme Court which may refer the matter back to the arbitral tribunal or a newly constituted tribunal.

12. *See* James Carter, INTERNATIONAL ARBITRATION REVIEW 477-478 (8th ed., 2018) [Martin Wiebecke].

13. *See e.g.*, JAPAN INT'L DISPUTE RESOLUTION CENTER, *[News] Official Launch of Japan International Dispute Resolution Center (Osaka) (JIDRC-Osaka) on May 1st* (May 1, 2018), http://www.idrc.jp/index_en.html; Luke Nottage and James Claxton, *"Japan is Back" – for International Dispute Resolution Services?*, Kluwer Arbitration Blog (January 29, 2018), http://arbitrationblog.kluwerarbitration.com/2018/01/29/japan-back-international-dispute-resolution-services/.

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