

JAPAN

1. SUBSTANTIVE ASPECTS

1.1. Distinction

1.1.1. Does your national legislation differentiate between different categories of treaties? If it does, how are they categorised?

- Yes. There are two types of treaties in Japanese legislation; so-called “Diet approved treaties” and “administrative agreements”. The former requires the Diet approval for its conclusion in accordance with Article 73(3) of the Constitution of Japan while the latter does not, because it is conducted in accordance with Article 73(2) of the Constitution.

* Article 73 of the Constitution of Japan

The Cabinet, in addition to other general administrative functions, shall perform the following functions:

- (1) Administer the law faithfully; conduct affairs of state.
- (2) Manage foreign affairs.
- (3) Conclude treaties. However, it shall obtain prior or, depending on circumstances, subsequent approval of the Diet.
- (4) Administer the civil service, in accordance with standards established by law.
- (5) Prepare the budget, and present it to the Diet.
- (6) Enact cabinet orders in order to execute the provisions of this Constitution and of the law. However, it cannot include penal provisions in such cabinet orders unless authorized by such law.
- (7) Decide on general amnesty, special amnesty, commutation of punishment, reprieve, and restoration of rights.

1.1.2. What are the criteria for their classification into specific category (subject matter, scope, financial effects, etc.)? Does the form of the instrument lead to a different category of treaty?

- Treaties that fall under any one of the following three categories are “Diet approved treaties”. Treaties other than “Diet approved treaties” are “administrative agreements”.
 1. International agreements which require enactment of new legislation, amendment of existing legislation, or maintenance of existing legislation for their implementation.

2. International agreements that impose financial obligations other than the budget approved or to be approved by the Diet for their implementation.
3. International agreements which do not fall under the preceding categories but are (i) politically important in the sense that the said agreements stipulate the basic relations among countries and (ii) therefore require ratification for conclusion.

1.1.3. What is the legal status of treaties not requiring parliamentary approval in the internal hierarchy of norms?

- Article 98 of the Constitution of Japan provides that “treaties concluded by Japan ... shall be faithfully observed”, and “treaties” in this context do not differentiate between “Diet approved treaties” and “administrative agreements”. It is therefore expected to equally respect treaties of both categories, and in that sense, “administrative agreements” are no different from “Diet approved treaties”. However, it should be noted that “administrative agreements” are implemented within the scope of “Diet approved treaties” or national laws already approved by the Diet or within the limits of the Diet approved budgets.

* Article 98 of the Constitution of Japan

This Constitution shall be the supreme law of the nation and no law, ordinance, imperial rescript or other act of government, or part thereof, contrary to the provisions hereof, shall have legal force or validity. The treaties concluded by Japan and established laws of nations shall be faithfully observed.

1.2. Competence

1.2.1. Which authority is responsible for drafting the text of each category of treaty?

- The authority for drafting, negotiating and concluding a treaty is given to the Ministry of Foreign Affairs (MoFA).

1.2.2. In the process of drafting a treaty, which authority is responsible for the assessment of the legal character and category of an agreement?

- MoFA is responsible for the assessment of the legal character and category of an international agreement.

1.2.3. Which authority has the general responsibility for

ratification/approval/confirmation procedures for treaties (is it generally the responsibility of the Parliament and only certain categories are confirmed by the government or vice versa)?

- It is the Cabinet that has the general responsibility to proceed with the necessary procedures of concluding “Diet approved treaties” that have passed the Diet. In addition, in case of ratification of a “Diet approved treaty”, an instrument of ratification needs to be attested by His Majesty the Emperor.

1.2.4. What are the responsibilities of the line ministries and the Ministry of Foreign Affairs throughout the procedure of conclusion and ratification of each category of treaty?

- In accordance with domestic laws, the authority given to the Cabinet to conclude a treaty is delegated solely to MoFA, and MoFA has the responsibility to perform necessary procedures for the conclusion of a treaty.

1.2.5. What is the competence of autonomous regions/territories for the conclusion of a treaty?

- N.A.

1.2.6. Does the Ministry of Foreign Affairs have delegated competence to conclude less significant treaties on its own, by producing full powers signed by the Minister of Foreign Affairs? If it does, what typically characterises these agreements?

- In accordance with domestic laws, the authority given to the Cabinet to conclude a treaty is delegated solely to MoFA, regardless of the categories of treaties.

2. PROCEDURAL ASPECTS

2.1. Procedure before conclusion/signature

2.1.1. What are the procedures required for the conclusion of different categories of treaties? Can a treaty be concluded through a simplified procedure? If yes, please provide a detailed presentation of the circumstances in which such procedures can be applied and describe the procedures.

- As for “administrative agreements”, after consultation with the Cabinet Legislation Bureau, they are submitted for Cabinet decision for conclusion. Once Cabinet decision is made, the Government can conclude those agreements with counterparts based on the relevant provisions of the agreements.

- As for “Diet approved treaties”, there are, in general, some differences in the process before Diet approval between bilateral and multilateral treaties.
 - ✓ With regard to bilateral treaties, they are subject to examination by the Cabinet Legislation Bureau before signing, including from the perspective of consistency with national legislation. After the examination, they are submitted for Cabinet decision for signing and, after that, for another Cabinet decision for submission to the Diet.
 - ✓ Concerning multilateral treaties, if they require signature, they follow the similar procedures as bilateral treaties. If they do not require signature, the examination by the Cabinet Legislation Bureau will be followed by the Cabinet decision for the submission to the Diet.
- Once the Diet gives approval for conclusion, the Government can perform necessary procedures of conclusion such as ratification and acceptance.

2.1.2. Do you have a procedure to review the harmonization and compliance of treaties not requiring parliamentary approval with existing national laws? What authority does the review and when?

- Yes. MoFA reviews the harmonization and compliance of “administrative agreements” with existing national legislation including through consultation with the Cabinet Legislation Bureau.

2.1.3. Do these procedures have one or two phases (before and/or after signature)? Can a treaty enter into force upon signature?

- Please refer to question 2.1.1.

2.1.4. Are there any differences in the procedures when considering multilateral vs bilateral treaties?

- Please refer to question 2.1.1.

2.1.5. Are there certain denominations of treaties, which, according to your domestic law, always imply a treaty in simplified form? (for example, “Memorandum of Understanding”, “Minutes” etc.)

- No.

2.1.6. Is the procedure for obtaining the mandate for negotiations differentiated according to different categories of treaties? If yes, how?

- No.

2.1.7. Are the signatories of all categories of treaties required to produce full powers upon signature or just some of them?

- No. In Japanese practice, full powers upon signature need to be produced when the signatory does not have authority to sign the treaties, regardless of their categories.

2.1.8. Do you allow for electronic signature of treaties? If so, are there certain requirements concerning what type of electronic signature is acceptable? Do you accept the electronic transmission of treaties instead of the exchange of physical copies? What is the procedure?

- To date, there is no precedents of electronic signature, though there are no restrictions in Japanese national laws on electronic signatures. In fact, there are no provisions regarding electronic signatures in Japanese national laws.

2.2. Procedure after conclusion

2.2.1 Does the internal procedure for expressing consent to be bound change based on different categories of treaties (i.e., ratification, approval, acceptance, etc.)? If so, please explain.

- With regard to “administrative agreements”, there is no consent procedure required except Cabinet decision.
- As for “Diet approved treaties”, in addition to Cabinet decision, approval by the Diet is precisely the internal procedure required for expressing consent to be bound by those treaties. Once approval is obtained, the Government follows relevant provisions of the treaties for conclusion.

2.2.2. Is entry into force of a treaty possible on the date of the signature? If yes, what are the procedural requirements that enable such entry into force?

- With regard to “administrative agreements”, they can enter into force on the date of the signature in accordance with the provisions of the agreements. After Cabinet decision for conclusion is made, the Government can sign and conclude the

agreements.

- On the other hand, as for “Diet approved treaties”, it is practically impossible for the treaties to enter into force on the date of the signature, since they require further procedures.

2.2.3. If entry into force is not possible on the date of the signature, is it possible to use provisional application for an earlier application of such treaty?

- As for “Diet approved treaties”, provisional application is possible within the scope of treaties or national laws already approved by the Diet or within the limits of the Diet-approved budgets, if the relevant provisions are included in the treaties themselves.

2.3. Form

2.3.1. Do different categories of treaties require specific form when the text is prepared for signature (i.e., printing on treaty paper, sealing, treaty folder)?

- No. Regardless of the categories of treaties, the Government prepares the same necessary items for signature such as treaty paper and treaty folder when it is necessary to prepare original text for signing.

2.3.2. Who prepares the text of different categories of treaties for signature?

- MoFA prepares the text regardless of the categories of treaties when it is necessary to prepare original text for signing.

2.4. Implementation

How are treaties not requiring parliamentary approval implemented in national legislation in order to ensure respect of the principle of pacta sunt servanda in accordance with Article 26 of the VCLT?

- In Japanese practice, “administrative agreements” can only be concluded and implemented within the scope of treaties or national laws that are approved by the Diet, or within the limits of the Diet-approved budgets. Therefore, there is basically no conflict between such agreements and national laws.
- On top of that, it is stipulated in Article 98 of the Constitution of Japan that treaties must be faithfully observed, and this is true regardless of whether a treaty is a “Diet approved treaty” or an “administrative agreement”.

- In addition, as an effort to make the agreements widely known to the public, the conclusions of the agreements are made public in the official gazette.

2.5. Publication, Registration and Depository

2.5.1. Do all categories of treaties have to be published?

- Yes. Both “administrative agreements” and “Diet approved treaties” are published in the official gazette.

2.5.2. If not, which categories do not need to be published and made available to the general public? Is there room for discretion?

—

2.5.3. Which authority decides whether a treaty should not be published?

—

2.5.4. Where is each category of treaty published (Official Gazette, website, database, etc.)?

- Please refer to question 2.5.1.

2.5.5. Which categories of treaties are registered with the UN Secretariat?

- Japan registers all “Diet approved treaties” with the UN Secretariat.
- With regard to “administrative agreements”, Japan generally does not register them for practical reasons, except when deemed necessary in light of paragraph 2 of Article 102 of the UN Charter.

2.5.6. Where are the originals (or certified true copies) of different categories of treaties kept (e.g., MFA, authority responsible for their implementation, state archives)?

- MoFA keeps the originals of all categories of treaties.