

## International Arbitration in Japan





# Purpose and Contents of the Booklet

The Booklet aims to describe the present situation of international arbitration in Japan and to provide related information.

We would be delighted if the Booklet could work for your better understanding of the present situation of international arbitration in Japan.

Japan International Dispute Resolution Center

# “International Arbitration” is the Global Standard for Dispute Resolution in International Transactions

- ▶ Arbitration is a procedure where the disputing parties appoint third party arbitrators and disputes are attempted to be resolved through the decision of such arbitrators.
- ▶ In comparison with litigation, arbitration has many advantages such as the facileness of enforcement in foreign countries, it is undisclosed and corporate secrets are kept confidential, the parties may appoint specialized and neutral arbitrators, there is generally no appeal so dispute resolution may be made promptly, the use of courts in countries where trust in the judiciary is low may be avoided.
- ▶ Due to such advantages, in cross-border transactions and investments, resolution of business disputes by international arbitration is the global standard.

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### Litigation and Arbitration

Where a legal dispute occurs in transactions with foreign companies, the main methods of resolution of such dispute are “litigation” and “arbitration.” In litigation, the courts of a specific country are used, and procedures and language generally cannot be selected by the parties, and in addition there are such risks as the judge being unfamiliar with the commercial practices of the field or corporate secrets are not kept confidential due to disclosure of the proceedings as a general rule. Furthermore, even if a judgment is won in Japan, compulsory enforcement based upon such judgment in a foreign country may be difficult due to the lack of recognition system of foreign judgement.

As a dispute resolution method to avoid such disadvantages of litigation and a more prompt and free method suited to international business, “international arbitration” has been used in the world since long past.

### Advantages of International Arbitration

There are many advantages where dispute resolution is made through international arbitration. For instance, since the parties may appoint the arbitrators who are the decision-makers, high quality decisions may be obtained by appointing persons with specialized expertise as the decision-makers depending upon the characteristics of the dispute. In addition, arbitration typically concludes at the first instance, and since also flexible measures may be taken such as setting the hearing dates consecutively and in concentration, prompt dispute resolution may be realized. Furthermore, procedures are typically performed undisclosed, and the contents of the decision may also be kept undisclosed.

► **Flexibility**

The parties may freely select the procedures and language

► **Facileness of Compulsory Enforcement**

Compulsory enforcement in a foreign country based upon the arbitral award is facile

► **Specialization and Neutrality**

The parties may appoint neutral arbitrators with specialized expertise

► **Nondisclosure and Confidentiality**

Hearings are undisclosed as a general rule and corporate secrets are kept confidential

► **Promptness**

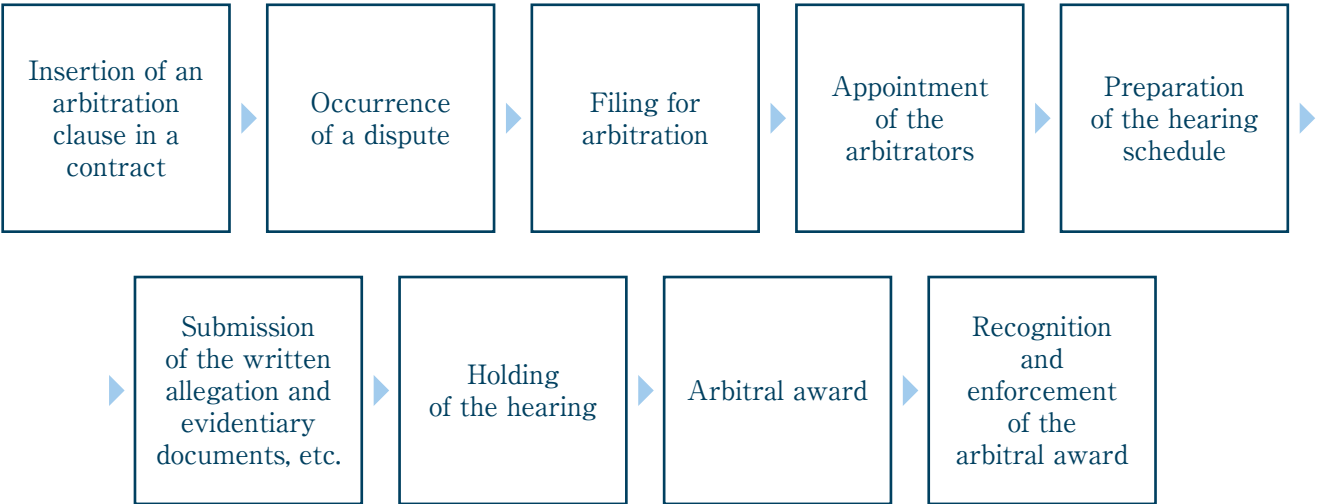
Procedures typically conclude at the first instance

Furthermore, there is the advantage that the enforcement of the arbitral award is facile worldwide due to the organization of the multinational treaty: the “Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention)”※. In light of these advantages, arbitration is heavily used worldwide for the resolution of international business disputes.

※The New York Convention is a treaty for the recognition and enforcement of foreign arbitral awards which was formulated by the United Nations in 1958 and effectuated in 1959. There are currently more than 160 member countries. Japan has been a member country since 1961 and arbitral awards of Japan will be recognized and enforced in a member country of the said treaty,including U.S.,U.K. and China.

### General Flow of International Arbitration

The general flow of international arbitration is as follows.



### Using International Arbitration

An agreement between the parties (an arbitration agreement) is required to use international arbitration, which is set forth in the contract as an “arbitration clause.” It is possible for the parties to commence arbitration by making an arbitration agreement after the occurrence of a dispute even if an arbitration clause is not set forth in the contract; however, it is desirable to set forth an “arbitration clause” in the contract in advance because it may be difficult to obtain an arbitration agreement once after a dispute occurs.

Matters such as the seat of arbitration※, arbitration agency, and arbitration procedure rules to be used are generally provided in an arbitration clause, and other than that, the language to be used and the number of arbitrators may be provided. The major arbitration agencies in the world disclose model clauses. For instance, the Japan Commercial Arbitration Association (JCAA) discloses the following model clause.

**Model clause of JCAA**  
**(in the case it is in accordance with the Commercial Arbitration Rules)**

All disputes, controversies or differences arising out of or in connection with this contract shall be finally settled by arbitration in accordance with the Commercial Arbitration Rules of The Japan Commercial Arbitration Association. The place of the arbitration shall be [city and country].

※ “Seat of arbitration” is a legal concept which functions to determine such matters as which country’s court should be involved in the arbitration proceedings (international jurisdiction), which country’s laws should be applicable to the procedures to be followed in relation to the progression of the arbitration proceedings (governing law of arbitration procedures), and furthermore, is the arbitral award of a “foreign country” in relation to the New York Convention which is a treaty for the recognition and enforcement of “foreign arbitral awards.” Since it is a legal concept, the “hearing venue”, which is the actual location where the hearing related to the arbitration proceedings are held, may differ from the “seat of arbitration”. On the other hand, even if the “hearing venue” is established in multiple countries due to the witnesses’ location or convenience of the parties, or even if the “hearing venue” does not physically exist due to all procedures being performed online, one “seat of arbitration” as a legal concept must necessarily be selected in order to function as a criteria for the determination of the above.



# Appeal of Japan as the Seat of Arbitration

1. Organization of a world standard legal arbitration system
2. Back up system supported by the public and private sectors
3. Cheap and sufficient arbitration hearing exclusive facilities
4. Safe and secure country of Japan

While Japan's appeal as the seat of arbitration is expected to increase further in the future due to the endeavors towards activation of international arbitration under the coordination of the public and private sectors, even currently, Japan has the following appeal as the seat of arbitration or hearing venue.

## World Standard Legal Arbitration System

First, a world standard arbitration system is organized in Japan. The "Arbitration Act" of Japan is based upon the "UNCITRAL Model Law on International Arbitration" set forth by the "United Nations Commission on International Trade Law (UNCITRAL)", and Japan is also a member of the "Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention)" regarding the recognition and enforcement of foreign arbitral awards. Agency powers in international arbitration proceedings involving Japan as the seat of arbitration or the hearing venue are also widely open to attorneys qualified in foreign countries with certain exceptions. Furthermore, Japanese courts do not excessively interfere with arbitration proceedings and take a cooperative stance towards the recognition and enforcement of arbitral awards.

## Advanced Facilities exclusively for Arbitration Hearing at a Reasonable Price

Second, it is possible to use advanced facilities exclusively for arbitration hearing at a reasonable price with sufficient equipment at a reasonable price in Japan. As mentioned below, a facility exclusively for arbitration hearing equipped with the latest equipment will open in Toranomon, Tokyo in March 2020, which makes it possible to use a facility exclusively for arbitration hearing equipped with equipment required for hearing proceedings in international arbitration at a reasonable price, such as videoconference systems and simultaneous interpretation systems.

As for the pilot project utilizing Osaka Nakanoshima Godo Chosha, it is possible to perform hearing proceedings using the international conference rooms, etc. in the said Godo Chosha.

## System for Promoting International Arbitration Supported by the Public and Private Sectors

Third, various training seminars related to international arbitration are convened by JIDRC and other arbitration related organizations, and the development of personnel with sufficient abilities in effectively and efficiently processing international arbitration proceedings in the English language is being speedily promoted. Without saying, there are no obstructions to foreign arbitrators and arbitration agents from performing activities in arbitration proceedings involving Japan as the seat of arbitration or hearing venue.

This means that satisfactory activities of arbitrators and arbitration agents required for the smooth procession of international arbitration proceedings can be very much expected in arbitration proceedings involving Japan as the seat of arbitration or arbitration location.



## Safety and Splendid Tourism Resources

Fourth, it should be emphasized that Japan is a convenient country in various terms as well as a safe and secure place. There are many direct air flights with various countries worldwide and transportation from the airport to the center of cities is facile. Tokyo and Osaka, the locations of the Tokyo and Osaka facilities of JIDRC, have sufficient organized infrastructures as large urban cities, with multitudes of excellent hotels and restaurants in the vicinity of these facilities.

It should particularly be noted that Japan, being a safe country, is a place where one may stay safe, secure and sound during the hearing period. Of course, there is no difficulty in visiting splendid tourism locations if there is room in time during the period of stay.

## Use of the Facility exclusively for Arbitration Hearing

"Japan International Dispute Resolution Center (Osaka) (JIDRC-Osaka)", which was established in Nakanoshima, Osaka as the first international arbitration and ADR exclusive hearing facility in Japan, may be used, in principle, on weekdays: Morning Set: from 9:00am to 1:30 pm, and/or Afternoon Set: from 1:30 pm to 6:00pm. The service charges per four and half hours for the use of the facilities are: Main room: 50,000 JPY, Medium room: 10,000 JPY and Small room: 5,000 JPY. It is easily accessible to Kansai International Airport and Osaka International Airport.

On the other hand, "Japan International Dispute Resolution Center (Tokyo) (JIDRC-Tokyo)", which was established in Toranomon, Tokyo as a top level international arbitration and ADR exclusive facility in the world, may be used, in principle, everyday: Morning Set: from 9:00am to 1:00 pm, Afternoon Set: from 1:00 pm to 5:00pm and/or Evening Set: from 5:00pm to 9:00pm. The charges per four hours for the use of the facilities are: Main room: 50,000 JPY, Medium room: 25,000 JPY and/or Small room: 20,000 JPY. It is directly accessible to Narita International Airport and Haneda International Airport by limousine bus, etc. and will be also directly connected to a newly constructed underground station.





# Arbitration Related Legal System in Japan

## Arbitration Act (Act No. 138 of 2003)

The core of the legal arbitration system in Japan is the “Arbitration Act” enacted in 2003. Since this Act is enacted based upon the “UNCITRAL Model Law on International Commercial Arbitration (Model Law)” prepared by the “United Nations Commission on International Trade Law (UNCITRAL)” which plays an important role to coordinate the contents of laws related to international commercial trade in various countries worldwide, it can be said that a world standard legal arbitration system is adopted in Japan.

However, while the application scope of the Model Law is limited to international commercial disputes, the Arbitration Act of Japan is not limited to international disputes or commercial disputes, and is widely applicable to “civil disputes which have already occurred or civil disputes related to certain legal relationships (whether or not based upon contract) occurring in the future.” Furthermore, as a general rule, it is applicable to arbitration proceedings where the seat of arbitration is in Japan.

As a premise for performing arbitration proceedings, an arbitration agreement “in writing” between the parties is required to exist. However, electromagnetic records are also deemed to be “in writing.” Furthermore, the decision of the validity of the arbitration agreement can be made separately from the validity of the contract in which such arbitration agreement is inserted. Furthermore, the existence of a valid arbitration agreement is the basis granting decision-making power to the arbitral tribunal (mentioned below), but regardless of this, it is possible for an arbitral tribunal to render a decision on the existence of a valid arbitration agreement.

Since the Arbitration Act of Japan widely recognizes “party autonomy” similarly as the Model Law, where a party proceeds with arbitration proceedings designating an arbitration agency, arbitration proceedings are actually proceeded in accordance with the arbitration rules of such arbitration agency (designated by the party). However, if there is no such designation, arbitration proceedings are proceeded in accordance with the following arbitration provisions.

In specific, firstly, arbitral tribunals which render decisions for disputes are constituted by three arbitrators as the default. Each party appoints one arbitrator each, and the two arbitrators who are appointed from each party in this manner appoint the third arbitrator. Arbitrators are required to be fair and independent, and the obligation to disclose facts likely to cause doubt to the arbitrator’s own fairness or independence is imposed during the procession of the arbitration proceedings.

Secondly, the law applicable to the resolution of disputes



(governing law) is determined by the agreement of the parties, but where there is no such agreement, the arbitral tribunal applies the laws and regulations which should be directly applied to the case from among the laws and regulations of the country most closely related to the civil dispute submitted to the arbitration proceedings.

Thirdly, it is possible for any of the parties to file a motion for rescission of an arbitral award towards the court after the rendering of an arbitral award, but the grounds for rescission are extremely limited (during the period till 2019, there has been no arbitral award for which rescission has become determinative as a result of being disputed up to the supreme court). Furthermore, there is no difficulty in the enforcement of arbitral awards by the court, and arbitral awards are enforced so long as the requirements similar to the approval requirements of the New York Convention (mentioned above) are met.

## Legal System for Arbitration Counsels and Arbitrators

In Japan, agency rights at the Japanese courts are limited to lawyers granted with Japanese qualifications by the Lawyer Act; however, with respect to international arbitration proceedings involving Japan as the seat of arbitration or the hearing location, agency rights are widely open to lawyers granted with foreign qualifications※.

Furthermore, with respect to arbitration cases performed pursuant to appropriate proceedings in accordance with the Arbitration Act, etc. in general, persons other than lawyers such as persons with foreign lawyer qualifications are also able to perform activities as arbitrators, and persons other than lawyers perform activities as arbitrators also as a matter of fact.

※ In Japan, the “Act on Special Measures concerning the Handling of Legal Services by Foreign Lawyers” (Act No. 66 of 1986) sets forth the handling of legal services within Japan by persons with foreign lawyer qualifications.

Under the said Act, persons with foreign lawyer qualifications falling under (i) or (ii) below are able to represent proceedings of international arbitration cases in Japan.

- (i) Persons with qualifications as a “registered foreign lawyer” approved by the Minister of Justice or registered in the registry of the Japan Federation of Bar Associations.
- (ii) Persons with foreign lawyer qualifications other than (i) who engage in business performing legal services in a foreign country based upon such qualification and who have been requested or who have accepted such arbitration case in such foreign country.





## Voices from the world

I was impressed by the JIDRC leadership's dedication, commitment and enthusiasm when we organized a conference at the Embassy of Japan in Berlin together with the Japanese Ministry of Justice last year. The event was a great success thanks to the high-ranking Japanese delegation formed by the JIDRC. The JIDRC will be key to Japan becoming an attractive seat for European parties looking towards Asia for their arbitrations. I wish the JIDRC the best of success in raising awareness, attractiveness and international arbitrations in Japan!

**Francesca Mazza,**  
Secretary General of German Institution of Arbitration (DIS)

I am delighted to have this opportunity to extend my congratulations on the opening of the new Tokyo Hearing Facility of JIDRC. Japanese companies, lawyers and arbitrators all play an important role in the international arbitration landscape in Asia. The new Tokyo Hearing Facility will certainly enhance this position and will provide an important platform for Tokyo's development as a leading international arbitration hub alongside Hong Kong, Singapore and Seoul. I wish all of my friends and colleagues in Tokyo every success in the years ahead!

**Michael Moser,**  
International Arbitrator

As President of UIA, I congratulate the JFBA and the Ministry of Justice on creation of the new facilities of JIDRC. The JIDRC and its facilities will serve an important role as a seat for cross-border cases and will permit international lawyers to practice more effectively and efficiently. I welcome JIDRC to the international legal scene.

**Jerome Roth,**  
President of UIA (International Association of Lawyers)

The JIDRC's new hearing facility in Tokyo provides important infrastructure for the practice of international arbitration in Japan. It is a development that will be welcomed by all members of the arbitration community in Asia and, indeed, around the world. This new facility will provide state-of-the-art support for large and complex cases and serves to highlight Japan's continued growth and prominence as a leading jurisdiction for international arbitration in Asia.

**Gary Born,**  
International Arbitrator & President of SIAC Court of Arbitration

Congratulations to JIDRC on the establishment of its state-of-the-art hearing facilities in Tokyo. These will no doubt promote Tokyo as an excellent venue for arbitration hearings and add to Japan's attraction as an arbitral seat.

**Christopher Lau,**  
International Arbitrator

On behalf of all of us at SIAC, we would like to convey our warmest congratulations to the Japan International Dispute Resolution Center on the launch of its new premises in Tokyo. SIAC is honoured and delighted to be an MOU partner of JIDRC, and looks forward to working closely with JIDRC to jointly promote and develop international arbitration within the Japanese legal and business communities.

**Lim Seok Hui,**  
CEO of Singapore International Arbitration Centre



Congratulations to JIDRC on the opening of your new hearing facilities in Tokyo. Japan has long been a key supporter and innovator in the field of international commercial and investment dispute settlement. In fact, Japan was one of the first countries to ratify the ICSID Convention in 1967, and many of its most distinguished legal professionals have served on the ICSID panels of arbitrators and conciliators. The launch of JIDRC's first-class facilities in Tokyo offers further opportunities for cooperation between Japan's dispute resolution community and ICSID—and I look forward to making these a reality.

**Meg Kinnear,**  
Secretary-General of International Centre for Settlement of Investment Disputes

With the opening of the JIDRC in Tokyo and Osaka, Japan has indicated its commitment to becoming a major seat of arbitration. I expect that Japan will soon become a very frequent seat for arbitrations in all types of transactions. Its status as a highly respected economic powerhouse around the world will make it a popular destination both for arbitrations among Asian parties, as well as among other parties engaging with Asia. I look forward to seeing the very promising effects of the JIDRC in the coming years.

**Kevin Kim,**  
Former Secretary General of International Council for Commercial Arbitration

I would like to congratulate JIDRC on the grand opening of the brand-new facilities in Tokyo. This movement shows a strong determination which is not just only for Japan but also Asia-Pacific as a new hub of International ADR seat. I believe Japan will be a reputable ADR seat in the world in the very near future.

**Pasit Asawawattananorn,**  
President of Asian Pacific Regional Arbitration Group & Managing Director of Thailand Arbitration Center

It is my great pleasure to congratulate the opening of JIDRC-Tokyo. The new beginning of an international dispute resolution center in Tokyo is an exciting occasion not only to dispute resolution experts in Japan, but it is also a special event for us here in Korea. As the Chairman of the KCAB INTERNATIONAL, I believe the JIDRC-Tokyo will advance the alternative dispute resolution landscape of not only Japan, but also the Asia Pacific region. I hope the new center in Tokyo will provide a solid arbitration platform to benefit both international and domestic dispute resolution. Once again, congratulations on the opening of the JIDRC-Tokyo!

**Hi-Taek Shin,**  
Chairman of Korean Commercial Arbitration Board International

In November 2019, HKIAC concluded a cooperation agreement with JIDRC under which parties in HKIAC proceedings may have access to JIDRC's facilities and the two institutions may run joint events. HKIAC looks forward to working closely with JIDRC in leading initiatives that contribute international arbitration in Asia.

**Sarah Grimmer,**  
Secretary General of Hong Kong International Arbitration Centre

Japan is a natural venue for arbitrations in north Asia. What has been missing, until recently, is a dedicated facility to host arbitrations. The establishment of the Japan International Dispute Resolution Center fills this void. For this reason alone it is to be welcomed by all persons concerned with international arbitration. Moreover it is a further demonstration of the continuing development of international arbitration in Japan, one of the world's most important economies. I offer JIDRC warm congratulations and wish it great success.

**Michael Pyles,**  
International Arbitrator



# Japan International Dispute Resolution Center

**JIDRC**  
一般社団法人 日本国際紛争解決センター  
Japan International Dispute Resolution Center

## To activate international arbitration

In June 2017, the “Basic Policy on Economic and Fiscal Management and Reform 2017” was approved by the Cabinet of Japan. It aimed to “develop a foundation to activate international arbitration” in Japan as one of the important policies of the Japanese Government. In September 2017, the “Liaison Conference of Relevant Ministries and Agencies” for the policy was established in the Japanese Government.

In December 2017, responding to the governmental movement, the “Liaison Council” for the policy was also established by the entities in the private sector, which relates to arbitration and other types of ADR. The Japan Federation of Bar Associations and the Japan Association of Arbitrators jointly took initiatives in the establishment of the “Liaison Council.” By the proposal of the “Liaison Council”, in February 2018, the Japan International Dispute Resolution Center (JIDRC) was established as a driving-force entity for implementing specific projects for the policy.

As one of the specific projects, in May 2018, JIDRC-Osaka started its operation at Nakanoshima, Osaka as the first-ever-recorded facilities specialized for a hearing of international arbitration or other types of ADR in Japan. Additionally, in March 2020, JIDRC-started its operation at Toranomon, Tokyo as one of the world’s best facilities for a hearing of international arbitration or other types of ADR. The facilities can be used for a hearing of ad-hoc arbitration or institutional arbitration by various arbitration institutions. The facilities can be also used for various seminars or symposium of arbitration or other types of ADR. Equipment required for hearing proceedings in international arbitration and related seminars/symposiums will be available, such as Wifi, videoconference systems, simultaneous interpretation systems and live script systems.



Reception



Hearing Room (Main Room)(for Seminar)





Hearing Room (Main Room)



Hearing Room (Main Room)



Breakout Room (Medium Room)



Breakout Room (Medium Room)





Breakout Room (Small Room)



Corridor



Utility Space

#### ► JIDRC-Osaka



The facilities can be used, in principle, on weekdays:

- Morning Set: from 9:00am to 1:30 pm
- Afternoon Set: from 1:30 pm to 6:00pm



The service charges per four and half hours for the use of the facilities are:

- Main room: 50,000 JPY
- Medium room: 10,000 JPY
- Small room: 5,000 JPY

Please note that a Corporate Support Member of JIDRC which has two or more memberships is entitled to a 60% discount on the above-noted fees for the use of the facilities.

#### ► JIDRC-Tokyo



The facilities can be used, in principle, on everyday

- Morning Set: from 9:00am to 1:00 pm
- Afternoon Set: from 1:00 pm to 5:00pm
- Evening Set: from 5:00pm to 9:00pm

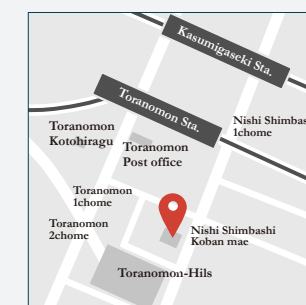


The charges per four and half hours for the use of the facilities are:

- Main room: 50,000 JPY
- Medium room: 25,000 JPY
- Small room: 20,000 JPY

Moreover, JIDRC provides many training sessions for the human resources who will actively work in international arbitration and other types of ADR and organize many seminars and symposiums for promoting international arbitration and other types of ADR to Japanese and foreign business corporations with world-widely renowned arbitration institutions and related organizations. JIDRC also promotes Japan as the Seat of Arbitration in many foreign countries.

JIDRC continues to serve as a driving-force for the activities to activate international arbitration in Japan.



#### Japan International Dispute Resolution Center

1-17-1, Toranomon, Minato-ku, Tokyo, 105-6405

TEL : +81-3-6273-3991

##### Nearest station

- Scheduled to be connected directly with "Toranomon" Station of Tokyo Metro Ginza Line
- Scheduled to be connected directly with "Toranomon Hills" Station of Tokyo Metro Hibiya Line
- "Kasumigaseki" Station of Tokyo Metro Chiyoda Line, Marunouchi Line or Hibiya Line



#### Osaka facility

1-1-60, Fukushima, Fukushima-ku, Osaka City, Osaka, 553-0003  
2F, Osaka Nakanoshima National Government Building

##### Nearest station

- "Fukushima" Station of Japan Railways
- "Shin-fukushima" Station of Japan Railways
- "Fukushima Station" of Hanshin Electric Railway
- "Watanabebashi" Station of Keihan Nakanoshima Line



# Japan Association of Arbitrators



## JAA's Efforts and Vision Toward the Development of JIDRC

1. Japan Association of Arbitrators ("JAA") was founded in 2003 and admitted in 2014 as a Public Interest Corporation by the Cabinet Office. It aims to promote the study of law and develop the professional skills of Japanese lawyers in the area of arbitration and mediation and to educate and increase the number of excellent arbitrators, attorneys and professionals Japan can offer. JAA, since its foundation, has also made significant contributions in innovating techniques for the practice of arbitration and mediation in Japan.

JAA has been persistently proclaiming since its very inception that its primary policy is to establish world top class arbitration facilities as such professional facilities were non-existent in Japan before. JAA has been aggressively promoting and preparing public appeals and raising awareness about the need of such facilities and pursuing all possible opportunities to lobby and persuade the government agencies, politicians, media and business people as well as the bar associations to contribute towards the establishment and development of such sophisticated facility centers. As a consequence, the very first Japan International Dispute Settlement Center ("JIDRC") was established and launched in Osaka in April, 2018, and soon after, the JAA launched its very first Japan International Mediation Center ("JIMC") in Kyoto. Under such environments that carry powerful tides toward globalization of judicial services, with the relentless support of the government promoting their economic growth strategies, JIDRC successfully inaugurated its brand new Tokyo dispute settlement center in March, 2020. This new special arbitration facility, which is the first of its kind in Tokyo, is undeniably a world top class arbitration facility in Japan.

2. With the advent of globalization where the supply chains extend beyond the boarder of nations, disputes arising due to international conflicts are a natural consequence of such global economic activities. These disputes tend to become more and more complex and diversified in their nature with the expansion of such international trade and Japan needs to be prepared and equipped to deal with such matters. It seems that the national court system which is strictly subject to the national judicial system and its culture, may no longer perfectly function as a neutral forum to provide justice on such serious conflicts of legal and cultural questions that transcend national borders. We all know that these kinds of conflict situations are occurring almost every day all across the business world.

Although the following example is under a very different context, but is worthy of mention here: The recent ruling against some Japanese companies by the Korean Supreme Court relating to the compensation claims of Koreans for war time forced labor is a good illustrative example of the point mentioned above. The function and role of arbitration appears to be getting better understood in Japan today than before as a necessary means of dispute resolution in an international context.

3. JAA is pleased and honored to fully support JIDRC's growth and envisions a bright future for it as the world center for dispute settlement and, more importantly, assist with JIDRC's pledge to imparting education and training to arbitration and mediation professionals who may play crucial roles in the functioning of the JIDRC.

# The Japan Federation of Bar Associations



The Japan Federation of Bar Associations (JFBA) was founded in 1949 on the grounds of the Attorney Act, which took effect with the promulgation of the Japanese Constitution. Since its inception, the JFBA has been aspiring to achieve their goals of protecting fundamental human rights and delivering social justice. The JFBA also govern matters relating to the guidance, liaison and supervision of all lawyers and bar associations to ensure that the dignity of lawyers is maintained and their legal services are improved.

The JFBA's initiatives to enhance and reform the legal system for the sake of citizens, as well as their various activities to protect human rights, are key for the organization to "protect fundamental human rights and deliver social justice", which has been laid down as the mission of lawyers in Article 1 of the Attorney Act.

Therefore, in the area of international dispute resolution, the JFBA has also undertaken a variety of endeavors in order to promote and boost international arbitration in Japan. The Opinion Calling for the Enhancement of the Functions of International Arbitration in Japan, which the JFBA issued on February 16, 2017, as part of these efforts, urged the Japanese Government to take action, immediately and through cross-agency collaboration, so as to devise measures and systems to strengthen the international arbitration function in Japan. Taking into account the importance of international arbitration as a measure for Japanese parties to resolve international disputes, and considering specifically the major trend as a whole to choose international arbitration to resolve international commercial disputes, the Opinion submitted by the JFBA led to the creation of the following aspirations related to building physical and human infrastructure: Provide facilities that are suitable to carry out international arbitration proceedings; establish an arbitral legal framework; increase the number of arbitration organizations and enhance their operation; and retain and foster development of legal professionals with arbitral capabilities.

Consequently, after the deliberation and discussions took place among the organizations in both the private and public sectors, the Japan International Dispute Resolution Center Osaka (JIDRC-Osaka) was established in May 2018 as the first arbitral tribunal in Japan, engaged specifically in international arbitration and alternative dispute resolution. Subsequently, the opening of the Japan International Dispute Resolution Center Tokyo (JIDRC-Tokyo) in Toranomon, on a scale comparable with the world's most renowned arbitral tribunals, constitutes the completion of the undertaking to build the physical infrastructure environment for the growth of international arbitration in Japan.

From this point onwards, in addition to the tangible circumstances represented by these facilities, the intangible circumstances such as a legal framework need to be developed. In this regard, the JFBA has been exploring the Japanese laws relevant to arbitration and, on June 21, 2019, published the Proposal for Core Amendments to the Arbitration Act, the Civil Execution Act and Other Relevant Legislation Reflecting the 'UNCITRAL Model Law on International Commercial Arbitration with Amendments as Adopted in 2006'. The JFBA are also addressing other issues including international arbitration awareness activities and human resource development.

The JFBA is committed to undertaking many more initiatives towards invigorating and facilitating international arbitration in Japan.



## Arbitration Institutions in Japan

- The Japan Commercial Arbitration Association
- The Japan Intellectual Property Arbitration Center
- The International Arbitration Center in Tokyo
- Japan Anti-Doping Disciplinary Panel
- Japan Sports Arbitration Agency
- The Japan Shipping Exchange, Inc.

## The Japan Commercial Arbitration Association



### Why JCAA Arbitration?

#### ■ Wealth of Experience in Handling International Cases

JCAA is a non-profit organization and operates as an independent private entity. It has a track record spanning 70 years. Since 2000, the JCAA has administered over **300** arbitration cases in total. Among the 74 arbitration cases filed with JCAA from 2015 to 2019, **82%** were international cases involving one or more non-Japanese companies or citizens.

#### ■ Neutrality and Independence of Arbitrators

JCAA is mindful of the importance of neutrality of arbitrators, which is one of the main reasons why parties choose arbitration. JCAA's panel of arbitrators offers a highly diverse spectrum of arbitrators. Around 2/3 of the **350-plus** panel arbitrators are **non-Japanese** from over **50 different jurisdictions**. Out of **100** arbitrators appointed in JCAA-administered international arbitrations from 2015 to 2019, **44%** were **non-Japanese**.

#### ■ Arbitration Procedures – Global Standards and Beyond

JCAA provides first-class services that meet global standards in international arbitration practice. One way JCAA accomplishes this is by allowing users to choose from three different sets of arbitration rules to meet their specific administration needs:

##### ▸ UNCITRAL Arbitration Rules (2010)

The UNCITRAL Arbitration Rules are well-tested and widely recognized in the arbitration community as an ideal set of rules for a flexible arbitration based on party autonomy.

##### ▸ Commercial Arbitration Rules (2019)

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.

##### ▸ Interactive Arbitration Rules (2019)

The Interactive Arbitration Rules offer maximum predictability and efficiency by incorporating a **"civil law approach"**. This enables the arbitral tribunal to take a more active role, such as requiring it to communicate its preliminary views on important issues to the parties before the evidentiary hearing.

#### ■ Diverse Procedural Language

Parties are free to select the language of the arbitration. The foreign language capabilities of the arbitrators on JCAA's list include: **English, Chinese, French, German, Korean, Russian**, and many others.

As for the language used in international cases filed with JCAA from 2015 to 2019, **53%** were conducted in **English** and **4%** were conducted in **Chinese**.

#### ■ Comprehensive Support

The JCAA provides quick and comprehensive support throughout arbitral proceedings. In particular, the JCAA can make all the necessary arrangements for meetings and hearings (e.g., rooms, interpreters, court reporters) upon request.

**Very efficient assistance**  
throughout the arbitral proceedings.

Dr. Klaus Sachs, CMS

I have experienced with most leading arbitration  
institutions. The JCAA's support is **absolutely first class**.

Mr. Gavin Denton, Arbitration Chambers

#### ■ Speedy Resolution

In JCAA-administered arbitrations concluded during the period between 2010-2019, the average length of the proceedings from the request for arbitration to the final award was **16.6 months**, including the period of suspension for settlement discussions.



# The Japan Intellectual Property Arbitration Center



日本知的財産仲裁センター  
Japan Intellectual Property Arbitration Center

The Japan Intellectual Property Arbitration Center (JIPAC) is an alternative dispute resolution (ADR) organization, originally founded in March 1998 as the Industrial Property Rights Arbitration Center by the Japan Patent Attorneys Association and the Japan Federation of Bar Associations for the purpose of resolving industrial property rights disputes. The Center began its business on April 1 of the same year.

In August 2000, the Center concluded an agreement with the Japan Network Information Center (JPNIC) and became an approved organization for resolving disputes related to JP domain names registered by JPNIC. Then in April 2001, the Center was renamed the Japan Intellectual Property Arbitration Center and expanded the scope of its business from industrial property rights to intellectual property rights.

In March 2004, the Center started to offer a new service for providing "Advisory Opinion on Infringement" and "Advisory Opinion on Validity". In April 2011, the Center started to offer a new service for providing "Freedom-to-Operate Opinion".

Since November 1, 2012, the Center has been approved as an ADR organization certified under ADR act in Japan (Certification No. 119). The Center are providing their services at 8 offices including the Head-quarters at Tokyo, the branches in Kansai region and at Nagoya, and subbranches in Hokkaido, Tohoku, Chugoku, Shikoku and Kyushu regions.

As the duties that our center is performing now, there is the Consultation, Mediation, Arbitration, JP Domain Name Dispute Resolution, Center's Advisory Opinions, Center's Essential Patent Evaluation, Advisory Opinion on Operability and Contribution Degree Evaluation of the Patent.

Mediation is a system in which mediators, consisting of one attorney-at-law and one patent attorney, cooperate to resolve a dispute between the parties, and work toward reaching a settlement. Cases are settled and set forth in a settlement agreement based on mediators' opinions and decisions and agreed to by the parties.

Arbitration is a process in which the resolution of disputes is entrusted to at least three arbitrators, including an attorney-at-law and a patent attorney, and is based on the parties' agreement to adhere to the arbitrators' binding decision.

Additionally, arbitral expert testimony is heard and the parties agree to accept a decision which is made on particular facts (For example, the parties agree not to seek an injunction or damages, but request a decision on the issue of whether or not A's products infringe B's patent, and accept such decision.). Rules for Arbitral Proceedings shall be applied to all arbitral expert testimony.

# The International Arbitration Center in Tokyo



The International Arbitration Center in Tokyo (IAC) is a highly regarded private ADR center established in September 2018. IP leaders around the globe united to create outstanding Asia-based alternative dispute resolution, headed by Randall Raider, a former chief judge of the US Court of Appeals for the Federal Circuit. IAC is the most skilled institution in Intellectual Property.

The important factors in IP arbitration are the arbitrator's knowledge and experience in international IP law and the procedural validity of arbitration. Without a rightful decision, the parties would not respect an award, which could lead to lengthy and costly litigation. On the other hand, intellectual property needs efficient processing. The unparalleled feature of IAC is the quality of arbitration that satisfies these requirements. At IAC, former IP judges, including retired judges from the Tokyo Intellectual Property High Court, arbitrate cases. In addition, the efficiency of arbitration (in principle, one year after the establishment of the arbitral tribunal), the geographical coverage, and the review of an award by the supervisory committee are attractive features to the parties.

Multinational litigation is common in today's IP. In particular, disputes over standard essential patents are becoming increasingly important, and it is necessary to resolve complex multijurisdictional disputes over important technologies in an expedited manner so that the public can continue to use them. IAC is the most appropriate venue to provide an arbitration, mediation, and expert determination for the proper and prompt resolution of highly technical issues.

Starting February 2020, IAC will officially introduce expert determination, an effective simple dispute resolution tool for companies. It is noteworthy that IAC is expanding its reach to cover intellectual property disputes related to Canada, Germany, etc. to enhance its global dispute resolution capability. Advances of high-speed communication and digitization/digitalization have connected the entire universe where consumers can easily conduct international transactions. IAC continues to develop as does science and technology.



# Japan Anti-Doping Disciplinary Panel

The Japan Anti-Doping Disciplinary Panel (hereinafter, the “Disciplinary Panel”) is an organization set forth by the Japan Anti-Doping Code which undertakes the role of finding the existence or non-existence of the fact of an anti-doping rule violation and determines the consequence.

In specific, where Athletes or Athlete Support Persons (supervisors and coaches, etc.) are suspected of committing an anti-doping rule violation, the Japan Anti-Doping Agency (hereinafter, “JADA”) notifies and asserts an anti-doping rule violation against such person. Thereafter, three members (one lawyer who is the chair or vice chair, one physician, and one sport related person), from among the members of the said panel, are appointed as the hearing panel by the chair of the Disciplinary Panel. The hearing panel convenes a hearing with JADA being one party and the Athlete, etc. alleged to have committed an anti-doping rule violation being the other party. On such basis, such hearing panel finds the existence or non-existence of an anti-doping rule violation and determines the consequence.

The Disciplinary Panel is under the jurisdiction of the Japan Sport Council (hereinafter, “JSC”), but its operation is independent from JSC, and it is a fair, neutral and independent organization required to neutrally and fairly make determinations regarding anti-doping rule violations. For instance, the power to appoint members is held by the JSC, but upon appointment, reports are made regarding the suitability, etc. of the candidate member by the advisory committee composed of experts. Specific administrative affairs related to procedural operations such as communications with the party, convening of the hearing, and determination of the consequence are entrusted to independent external experts (operation coordinators) who are appointed to assist the appropriate operations of the Disciplinary Panel. Furthermore, the section responsible for doping investigations (intelligence activities) and the section responsible for affairs related to the operations of the Disciplinary Panel are distinct even within the JSC internally, and the flow of information is cut off between these affairs.

Decisions of the Disciplinary Panel (the hearing panel) are publicized on the JADA website in accordance with the Japan Anti-Doping Code. JADA and Athletes, etc., who are dissatisfied with such decisions, are able to appeal to the Japan Sports Arbitration Agency.

# Japan Sports Arbitration Agency



Japan Sports Arbitration Agency (“JSAA”) is a dispute resolution body established in 2003 to soundly promote sports through the resolution of disputes related to sport competitions or their governance (“sports-related disputes”). Since its establishment, JSAA has been working to resolve sports-related disputes between athletes and sport organizations through arbitration and mediation. The expectation of JSAA as a dispute resolution body in Japanese sports is increasing because the Governance Code for National Sport Federation Members has been adopted in June 2019 (the “Code”). The Code requires national sport federation members to provide in their regulations automatic acceptance to claims by athletes under the Sport Arbitration Procedure of the Sport Arbitration Regulation (“Sport Arbitration Procedure(s”).

Sport Arbitration Procedure, which is the most utilized procedure in JSAA, is the procedure for appeals against decisions made by sport organizations. The typical disputes are selection disputes or disciplinary disputes. The main features of the Sport Arbitration Procedure are as follows:

## ① Prompt Dispute Resolution.

Sports-related disputes require prompt resolution because athletes’ careers are limited and there are fixed entry deadlines for competitions. The Sport Arbitration Procedure allows for flexible proceedings and resolves disputes promptly, taking into account factors such as the entry deadlines.

## ② Low Arbitration Cost.

In the Sport Arbitration Procedures, the arbitration filing fee borne by the claimant is, in principle, limited to 50,000 yen (excluding consumption tax) . The parties are not required to pay the administration fee or the arbitrators’ fees. Thus, parties can use the procedure with certainty of low cost.

## ③ Highly Specialized Arbitrators.

In the Sport Arbitration Proceedings, arbitrators are, in principle, nominated or selected from the candidate list for sport arbitration. The list is composed of arbitrators who are specialized in sports law. Therefore, it is expected that disputes are resolved by highly specialized arbitrators.

Based on the Japan Anti-Doping Code, JSAA is also positioned as an appeal body against decisions made by Japan Anti-Doping Disciplinary Panel. For these appeals, arbitration proceedings are conducted under the Sport Arbitration Regulation related to Doping Disputes.

In addition to these arbitration procedures, JSAA also resolve sports-related disputes through mediation. The sport mediation procedures in JSAA is the first certified procedure under the Act on Promotion of Use of Alternative Dispute Resolution (ADR Act).



# The Japan Shipping Exchange, Inc.

一般社団法人 日本海運集会所  
The Japan Shipping Exchange, Inc.

The Japan Shipping Exchange, Inc. (JSE) was established in 1921 in order to maintain a healthy market in maritime industry after World War I. It started arbitration service in 1926, organizing an Arbitration Commission and setting up arbitration rules. Since then, JSE has worked to resolve disputes in maritime industry for about 90 years to the present.

JSE drafts and circulates standard contract forms under another committee called the Documentary Committee of JSE, and the forms provide TOMAC arbitration clauses. Therefore, TOMAC arbitration is widely used for disputes arising from such forms as contracts of affreightment, ship sale contracts, and salvage agreements irrespective of coastal trade or overseas trade. TOMAC arbitration is also used where printed arbitration clauses in prevailing standard forms drafted by other bodies are amended to provide TOMAC arbitration.

TOMAC Rules were substantially revised in accordance with the enactment of the Arbitration Law based on the UNCITRAL Model Law in 2004. There are some points which differ from the Arbitration Law and the UNCITRAL Model Law as follows.

In maritime industry, we find a certain state called “Charter chain” where an owner charters its vessel out and the charterer also charters it out and then sub-charterer charters it out as well.

When a dispute arises under such a situation, they have to apply for another, new arbitration against their own counterparty respectively if they are involved in arbitration proceedings. It takes time and costs a lot, and in addition, it may give rise to contradictory awards between the above arbitrations even though they are concerning the same dispute. Therefore, in order to avoid these problems, article 27(1) of TOMAC Rules provides that when multiple arbitral proceedings are commenced such as those regarding disputes arising from the multiple contracts on the same ship of charterparty, shipbuilding contract, ship sale and purchase agreement, etc. or when the issues of law or fact are mutually related to each other, TOMAC may decide to consolidate such multiple proceedings into one proceedings at the application of any party or at its discretion. Though there are no provisions in the UNCITRAL Model Law, article 47 (1) of the Arbitration Law provides that the arbitrators may receive remuneration in accordance with the agreement of the parties, and (2) provides that failing the agreement, the tribunal determines the remuneration. On the other hand, TOMAC Rules clearly provide the amount of arbitration cost which shall be calculated, in principle, in accordance with the amount in dispute and include the remuneration for the arbitrators. Although the ratio of the amount each party bears is decided in the arbitral award, parties can predict the total amount they need in the arbitral proceedings before application for arbitration.

## ADR Centers of Bar Associations

With respect to ADR centers operated by the bar associations, there are 38 established centers (including Mediation Center Osaka in which the Osaka Bar Association participates) for 35 bar associations nationwide currently as of January 2020, under names such as “dispute resolution center” or “arbitration center.” An attorney will attentively listen to your and their counterparty’s talk as a mediator, and aim to resolve the dispute by agreement between both parties appropriately reflecting the demands of both parties as well as appropriateness in legal terms. The aim is to resolve civil troubles (including family matters as well as those involving a local municipality as a party, etc.) fairly and satisfactorily within a short period and at a reasonable cost through flexible procedures.

1. Cases which people are hesitant to bring to the court such as harassment cases and adultery cases.
2. Specialized cases likely to become grave and lengthy if litigated such as medical malpractice cases and construction disputes.
3. Disputes occurring from continuous personal relationships such as family, employer-employee and lease related matters.
4. Cases for which “justice and equity” cannot be realized simply by formalistically applying the law.

are an example of the cases which are brought to the ADR centers of the bar associations. ADR seeks resolutions lined with the actual circumstances through discussion aiming for appropriate and prompt resolution of such cases. Many of the cases are resolved by settlement through discussion in the course of seeking terms satisfactory to both parties from a wide perspective and high viewpoint (other than this, arbitration may be conducted pursuant to the Arbitration Act). Bar association ADR plays a role of private autonomy platform.

The success of the discussion largely depends on the persons who will actually be involved. In this regard, attorneys who are constantly working at the forefront of disputes are equipped with not only legal expertise for the resolution of troubles but also the power to precisely view the case and the power to appropriately progress the resolution procedures. The ADR centers of the bar associations prepare systems where experienced attorneys assume the role of mediators in order to exert utmost efforts for the resolution of the troubles met by everyone. Some bar associations perform settlement mediation in accordance with methods corresponding to the respective issue types such as medical ADR, finance ADR and disaster ADR. The ADR centers of the bar associations wish for speedy and satisfactory resolution of civil troubles for the good of everyone.

\*ADR centers operated by the bar associations are listed on the Japan Federation of Bar Associations website.



## Final Remarks

The Booklet aims to describe the present situation of international arbitration in Japan and to provide related information.

We would be delighted if the Booklet could enhance your interest in international arbitration in Japan.

The following is contact details for enquiries for information on international arbitration in Japan

if you would like to obtain more detailed information.

Please do not hesitate to contact the following organizations.

Japan International Dispute Resolution Center

## CONTACT

**Japan International Dispute Resolution Center**  
<http://idrc.jp/>

**Japan Association of Arbitrators**  
<https://arbitrators.jp/>

**Japan Federation of Bar Associations**  
<https://www.nichibenren.or.jp/>

**Japan Commercial Arbitration Association**  
<http://www.jcaa.or.jp/>

**Japan Intellectual Property Arbitration Center**  
<https://www.ip-adr.gr.jp/>

**International Arbitration Center in Tokyo**  
<https://www.iactokyo.com/?lang=ja>

**Japan Anti-Doping Disciplinary Panel**  
<https://www.jpnsport.go.jp/corp/gyoumu/antidoping/tabid/772/Default.aspx>

**Japan Sports Arbitration Agency**  
<http://www.jsaa.jp/>

**The Japan Shipping Exchange, Inc.**  
<http://www.jseinc.org/>

**Ministry of Economy, Trade and Industry of Japan**  
<https://www.meti.go.jp/>

**Ministry of Justice in Japan**  
<http://www.moj.go.jp/>