

# Kluwer Arbitration Blog

## Inaugural California International Arbitration Week: Surfing the Rising Waves of Arbitration in Japan and California

Carrie Shang (California State Polytechnic University-Pomona) and Charles Ho Wang Mak (University of Glasgow) · Wednesday, April 6th, 2022

On 14 March 2022, the first day of the inaugural California International Arbitration Week, the Japan Commercial Arbitration Association (“JCAA”) hosted a webinar on the rising waves of arbitration in Japan and California. The session was moderated by Kazuhiko Nishihara (Secretary General, Japan International Mediation Center in Kyoto), and featured speakers Yoshinori Tatsuno (Partner, Mori Hamada & Matsumoto and Speaker, Japan International Dispute Resolution Center (“JIDRC”)), Miriam Rose Ivan L. Pereira (Counsel, Oh-Ebashi LPC & Partners and Public Relations Officer, The Japan Commercial Arbitration Association (“JCAA”)), and Yoshihiro Takatori, (Executive Director, Japan Association of Arbitrators (“JAA”). The webinar primarily focused on arbitration developments in Japan, along with some noteworthy references to similarities with California and possible areas of collaboration between the two jurisdictions.

### A Brief Introduction to International Arbitration in Japan

Yoshinori Tatsuno opened the webinar with an introduction to the rise of arbitration in Japan. He said that, historically, there was a relatively high level of public trust in the Japanese domestic justice system and a low level of familiarity with arbitration. In the past, institutional arbitration rules were not sufficient to facilitate modern international arbitration cases.

In recent years, however, an increasing number of Japanese companies resorted to international arbitration for dispute resolution needs. These companies have accumulated some experiences in international arbitration. Japanese companies’ increasing exposures to arbitration have led to an uprising caseload of the JCAA. Among the arbitration cases filed with the JCAA from 2016 to 2020, 86% were international cases involving a non-Japanese companies or Japan-based foreign subsidiaries. In 2019, the JCAA also drastically amended its Arbitration Rules to conform with global standards concerning provisions for emergency arbitration, multi-party and/or multi-contract arbitrations, use of tribunal secretaries, and expedited procedures (further expanded in 2021). Overall, the JCAA offers three sets of Rules, one of which is the [Interactive Arbitration Rules](#), where the arbitrators are encouraged to actively administer the communications of the parties and the arbitrators. The JIDRC was also established in 2018 to provide latest and sufficient facilities and equipment for international arbitration cases, including those for virtual hearings.

In terms of similarities between international arbitration in Japan and in California, Mr. Tatsuno believes that international arbitration in Japan is not so different from California. One notable

difference, at least according to Mr. Tatsuno, is that compared to arbitrators trained in California, arbitrators trained in Japan might take a more active adjudicative role in sorting out legal issues and the parties' arguments and may even administer the settlement discussion. Another difference is that there is no formal discovery procedure in Japan, and the extent of document production is more limited compared to other common law jurisdictions.

California lawyers are also able to act as counsel in international arbitration cases taking place in Japan. Japan's *Act on Special Measures Concerning the Handling of Legal Services by Foreign Lawyers (Foreign Lawyers Act)* allows foreign attorneys to represent their client for international arbitration cases held in Japan if: 1) the foreign attorney is registered as "registered foreign lawyer" in Japan; or 2) the foreign attorney is engaged in the work based on the qualification in a foreign jurisdiction and has been requested to undertake the international arbitration case in that jurisdiction. However, it should be noted that a foreign lawyer may only represent a client in international arbitration cases in Japan (i.e. cases involving at least one party that is non-Japanese).

### **Recent Developments with the JCAA**

Next, Miriam Rose Ivan L. Pereira covered some recent developments in the JCAA arbitration rules and how some of those rules may be applied in practice.

As part of the development measures to make JCAA arbitration more in line with international practices, JCAA's [pool of international arbitrators](#) has grown and become more diverse. Now, the JCAA hosts over 400 panel arbitrators from more than 50 countries and regions. Parties can also nominate arbitrators not listed in the JCAA's panel. In 2019, JCAA launched its Interactive Arbitration Rules, which were recently amended in 2021. One of the key features of the Rules is to facilitate the Tribunal's active communication with parties. For example, the Rules encourage the Tribunal to identify the parties' positions and key disputed issues early in the proceedings, as well as allow the Tribunal to present non-binding and preliminary views to the parties on important issues (see Rule 48(1), Interactive Arbitration Rules 2021).

There have also been developments in the JCAA's mediation rules. In 2020, the JCAA promulgated new [Commercial Mediation Rules](#) applicable to domestic arbitration and mediation. The new mediation rules focus on protecting privilege and the confidentiality of the mediation process. They also enhance party autonomy and set a time limit for mediators to conclude the mediation. Very importantly, the new Rules ensure that resulting mediated settlement agreements will be enforceable under the Singapore Convention.

Ms. Pereira concluded by covering the new [Appointing Authority Rules \(2021\)](#), and the recent use of emergency arbitration procedures. Under the JCAA's emergency arbitration procedures, a sole arbitrator will be appointed within two business days of a request, and a final order on emergency measures can usually be issued within two weeks from the appointment of the emergency arbitrator. The arbitrator's remuneration is also fixed to reduce uncertainties in the process.

### **Recent Developments with the JAA**

Yoshihiro Takatori covered recent developments at the JAA, focusing on the collaboration between the JAA and the JIDRC. In the midst of COVID-19, the JCAA and the JIDRC developed and facilitated an online platform for joint operation. The JIDRC has released a [Protocol](#) to provide guidance for online/web-based hearing, which emphasizes on due process issues during online hearings. In addition, the JIDRC Protocol tries to facilitate online proceedings by providing

standards to address practical issues, such as preventing coaching, facilitating efficient translation, and better protecting the opportunity to defend.

In addition to collaboration on the online platform, there is also a strong incentive to collaborate among Japanese institutions to facilitate the arb-med-arb process. The Singapore International Mediation Center has developed a [Joint Protocol](#) with the Japanese International Mediation Center (Kyoto) to facilitate the transition of international arbitration and international mediation conducted in Japan. Full virtual operation of international mediation is also allowed as part of the arb-med-arb process. Mr. Takatori covered some main operational obstacles of cross-border dispute resolution, such as difficulties in scheduling hearings, but was overall confident in the better suitability of the development of technology to facilitate resolving these issues.

### **Arbitration Development in the Post COVID-19 Era**

At the end of the webinar, the panelists provided a preview of post COVID-19 development of arbitration and how that might impact Californian/Japanese arbitration. The panelists thought that Japan should learn from California's experiences on encouraging collaboration between arbitral institutions and the judiciary. Japanese arbitral institutions could also learn from JAMS's example by including more retired judges in their rosters of arbitrators and mediators. The panelists expressed their views on how some high technology dispute resolution initiatives might encourage additional uses of arbitration and mediation in Japan.

In terms of selecting Japan or California as a venue for arbitration, the panelists mentioned that because both jurisdictions have adopted the New York Convention, the ultimate enforcement steps should be the same regardless of the seat. The panelists believed that Japan now has an arbitration friendly legal framework and seasoned English-speaking lawyers, and could provide Californian parties with an additional viable option to conduct their arbitration. However, ultimately the choice of arbitration venue might be determined by the location of witnesses, counsels and arbitration parties.

### **Concluding Remarks**

On the whole, the webinar on the increasing waves of arbitration in Japan and California offered numerous perspectives that many international arbitrators overlook. This webinar presented new development trends of international arbitration in Japan and gave us comparative visions on arbitration practices in Japan and California. The fruitful discussions of Panelists offered new inspirations for people looking for arbitration venues outside more traditional choices of seat.

*More coverage of California International Arbitration Week is available [here](#).*

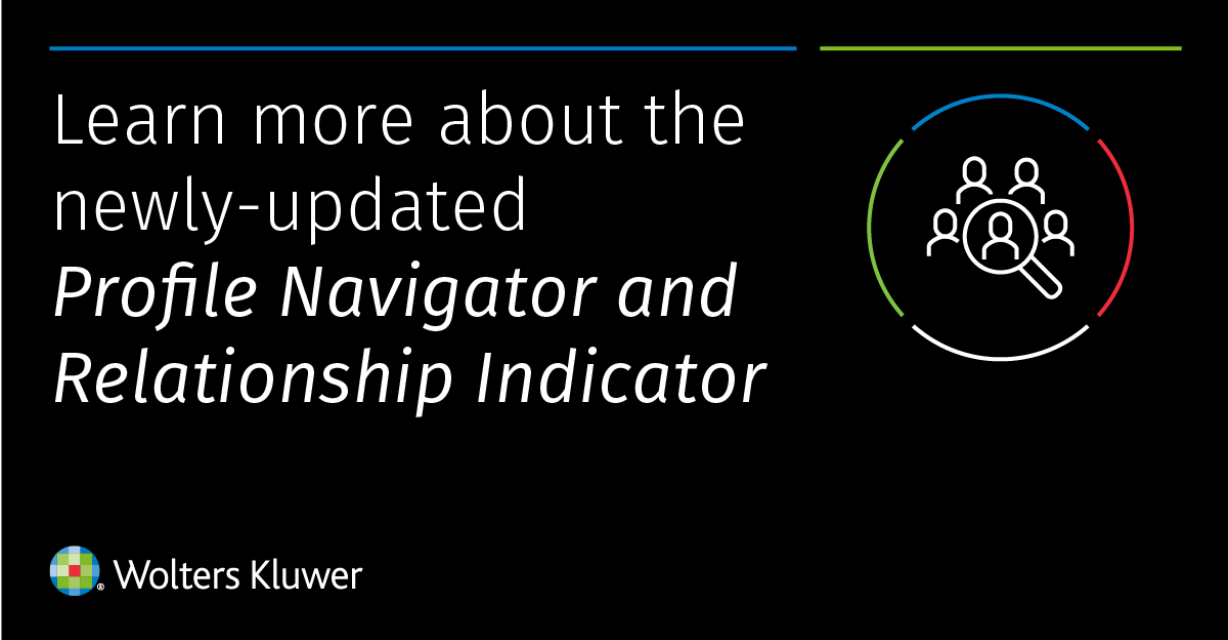
---

*To make sure you do not miss out on regular updates from the Kluwer Arbitration Blog, please subscribe [here](#). To submit a proposal for a blog post, please consult our [Editorial Guidelines](#).*


### **Profile Navigator and Relationship Indicator**


Includes 7,300+ profiles of arbitrators, expert witnesses, counsels & 13,500+ relationships to uncover potential conflicts of interest.

Learn how **Kluwer Arbitration** can support you.



Learn more about the newly-updated *Profile Navigator and Relationship Indicator*



 Wolters Kluwer

This entry was posted on Wednesday, April 6th, 2022 at 8:56 am and is filed under [Asia-Pacific](#), [California](#), [California International Arbitration Week](#), [Japan](#), [Japan Commercial Arbitration Association](#)

You can follow any responses to this entry through the [Comments \(RSS\)](#) feed. You can leave a response, or [trackback](#) from your own site.