

Kluwer Arbitration Blog

2024 JCAA Arbitration Days Recap Day 2: Flexible Harmonization and Cooperation Towards Best Practices

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From 20 to 22 November 2024, the Japan Commercial Arbitration Association (JCAA) hosted the second edition of the JCAA Arbitration Days, as part of the inaugural Japan International Arbitration Week (JIAW) in Tokyo. This article reports on the second day of the JCAA Arbitration Days, held in hybrid format on 21 November 2024. The panels focused on the overarching theme of user experience in arbitration, sharing best practices, practical insights from the counsel and users' perspectives, and opportunities for continued improvement in Asia, including initiatives targeting cooperation between arbitral institutions.

[Ms. Anna Joubin-Bret](#) (Secretary of UNCITRAL) delivered the keynote speech and set the stage by highlighting the *UNCITRAL Working Group II on Technology-Related Dispute Resolution and Adjudication* and the *UNCITRAL Dispute Resolution in Digital Economy (DRDE)*, as examples of arbitration adapting itself to the impact of technology, one of the themes of the conference.

Practical Strategies for a Better User Experience in Asia

Two panels addressed strategies for improving user experience, one featuring arbitration practitioners, and the other featuring in-house counsels as the ultimate users of arbitration. The first panel was moderated by [Mr. Douglas Freeman](#) (Freeman & Partners, Tokyo), and the second panel was moderated by Ms. Mitsuru Claire Chino (Itochu Corporation, Tokyo).

Both panels addressed what to look for in choosing an arbitration institution. [Ms. Yoko Maeda](#) (City-Yuwa Partners, Tokyo) explained that one of the key differences between arbitral institutions is their scrutiny process of draft awards—some institutions require a very thorough scrutiny, while others do not have a scrutiny process at all. JCAA aims to strike a balance between efficiency and quality by providing a reasonable amount of scrutiny performed by its secretariat. [Prof. Anselmo Reyes](#) (International Judge, SICC, Hong Kong) shared the view that some institutions in Asia have a reputation of being slow in appointing a presiding arbitrator, and suggested that JCAA could differentiate itself by offering a quicker and efficient appointment process. [Mr. Tony Dymond](#) (Debevoise & Plimpton LLP, Hong Kong) added that even though the ICC is known to consider cultural aspects in its process of arbitrator appointments, Asian arbitral institutions may have an upper hand because Asian parties often perceive that Asian institutions may better incorporate cultural nuances.

In the second panel featuring client perspectives, some panelists emphasized the importance of the seat of arbitration. Mr. Tomoya Hashimoto (Marubeni Corporation, Tokyo) opined that the seat of arbitration is the most critical factor as it determines the governing law of the arbitration, the grounds for setting aside the award, and the award's enforceability. Ms. Yoshimi Ohara (Nagashima Ohno & Tsunematsu, Tokyo) considers the seat to be important because it influences the style of arbitration, which is often shaped by the court practices of the jurisdiction. For example, civil law jurisdictions, such as Japan, can have a very different concept of discovery to common law jurisdictions. This may impact how document production is managed in an arbitration. Mr. Tomoki Yanagisawa (TMI Associates, Tokyo, and former General Counsel at ASICS Corporation) added that some seats provide more foreseeability to the arbitration. For example, if the arbitration is seated in a popular location, such as Singapore or London, it becomes easier for the parties to anticipate the characteristics of the arbitration, such as the type of disclosure practices included or the significance of oral proceedings. Mr. Satoshi Kurata (JGC Holdings Corporation, Tokyo) emphasized the importance of institutional rules, particularly the time frame for issuing an award, and shared his experience of a case where the tribunal did not issue the award for over two years after conclusion of the proceeding. With regard to settlement, Mr. Takayuki Kitajima (Visionaria Integritas Plus LLC, Tokyo) observed that Japanese companies generally appreciate when arbitral tribunals take the initiative to facilitate settlement, as it is sometimes difficult for them to suggest it for fear of being perceived as a sign of weakness, and as this is usually a judge-led process in the Japanese courts.

On the topic of Japanese litigation, Mr. Junichi Tobimatsu (Gaien Partners, Tokyo) stressed that the ease of enforcement of arbitral awards abroad remains a key benefit of arbitration, noting that Japanese court decisions are not enforceable in China while arbitration awards are. Ms. Yoshie Midorikawa (Miura & Partners, Tokyo) observed that because Japanese court litigation is generally cost-effective and seen to be of a high-quality, typical benefits of arbitration may not stand out as much in Japan as in some other countries. She suggested, however, that **third-party funding** could be a potential solution.

Impact of Artificial Intelligence on Dispute Resolution

Another panel was moderated by Ms. Eriko Kadota (Linklaters, Tokyo) and speakers based in Japan shared their views on the impact of artificial intelligence on arbitration.

Ms. Carlotta Bruessel (Nishimura & Asahi, Tokyo) introduced the Silicon Valley Arbitration & Mediation Center (SVAMC)'s **guidelines** on the use of AI in arbitration, which are currently the most comprehensive. Mr. Shinsuke Yakura (White & Case LLP, Tokyo) stressed the issue of hallucinations in AI-generated responses and the importance of disclosing to clients if and when AI is being used. In the same vein, Mr. John Rainbird (A&O Shearman, Tokyo) shared his opinion that while AI can assist in routine or low-stakes decisions, human oversight remains crucial for more nuanced and complex issues and that human arbitrators are unlikely to be replaced. Mr. Aoi Inoue (Anderson Mori & Tomotsune, Tokyo) observed that AI technology can help arbitrators reduce their hours, thus lowering costs for clients. However, it is essential to maintain accountability and transparency, as well as careful oversight.

Mr. Michael Mroczek (Nozomi Sogo, Tokyo) delved into the **EU's AI Act**, which establishes rules based on varying levels of risk associated types of AI. For instance, deepfake technology is prohibited while AI tools used in arbitration fall into the second-highest risk category. He added that under the Act, arbitrators must log the use of such tools and maintain these records for at least

six months.

Cooperation and Capacity Building at Arbitral Institutions in Asia

This panel was moderated by [Mr. Tony Andriotis](#) (DLA Piper, Tokyo and JCAA Professional and Institutional Promotions Officer) and panelists discussed how arbitral institutions in Asia can cooperate towards increased capacity building. [Mr. Nicky Balani](#) (Thailand Arbitration Center, Bangkok) discussed collaboration initiatives between Asian arbitral institutions, in particular the establishment of the Thai-Chinese International Arbitration and Mediation Center (TCIAC), in particular its joint appointment procedure where the institution effectively uses pools of arbitrators of Thailand Arbitration Center and Hainan International Arbitration Court. [Ms. Jacques S. Lynn](#) (Deputy Director, Philippine International Center for Conflict Resolution, Manila) added that the Philippines is actively exchanging information and best practices through the Asia Pacific Regional Arbitration Group and the Regional Arbitral Institute Forum. [Mr. Steve Kim](#) (Secretary-General, KCAB International, Seoul), on the other hand, stressed continued development within the institution. He noted that in order for the institution to develop and deal with bigger and more cases, it is critical to maintain a quality team of legal counsel.

Finally, turning to Japan, [Prof. Yoshihisa Hayakawa](#) (Uryu & Itoga, Tokyo, and former Secretary General of the Japan International Dispute Resolution Centre (JIDRC)) noted that Japan's strength lies among others in its advanced technology for arbitration proceedings. In particular, even after the closure of facility service of the JIDRC in 2023, private venues such as the Tokyo Facilities for Arbitration Hearings (TFAH) continue to offer hearing facilities with such technologies. Mr. Tony Andriotis concluded by stating that Japan, as a free country that embraces transparency and rule of law, serves as a role-model in the region on openness and on embracing fairness and impartiality. These elements, he stressed, make Japan a safe and preferred seat for arbitration, and that cooperation amongst regional institutions will allow for an expansion of arbitral best practices and the expansion of transparency, legal harmonization, and access to justice.

Enforcement as an Element of the User Experience

The subsequent panel was moderated by [Ms. Miriam Rose Ivan L. Pereira](#) (Oh-Ebashi LPC & Partners, Tokyo and JCAA Public Relations Officer) and the panelists discussed their experiences relating to enforcement of arbitral awards.

[Mr. David MacArthur](#) (Yulchon LLC, Seoul) pointed out that an award issued by a non-Vietnamese institution (e.g., SIAC), regardless of the seat, is treated by Vietnamese courts as foreign, and that foreign awards face a set-aside rate of 25-30% and long enforcement timelines. Accordingly, parties often opt for Vietnamese institutions. [Ms. Emi Rowse](#) (Kudun & Partners, Bangkok) shared her experience with Thai courts where the courts may view an incorrect application of Thai law in arbitration to be in violation of Thailand's public policy, and enforcement takes 1 to 1.5 years. [Mr. Christopher Bailey](#) (Stephenson Harwood LLP, Singapore) and [Ms. Morgane Guyonnet](#) (Freshfields, Tokyo) highlighted positive developments in Singapore and Japan with regard to enforcement of interim measures. Mr. Bailey explained Singapore was often perceived not as a jurisdiction of enforcement but as the seat of arbitration. However, the Singapore courts recently confirmed the enforceability of an interim award issued by an emergency arbitrator in the U.S. The court made a progressive decision to uphold the foreign award.

Turning to Japan, Ms. Guyonnet explained that the amended Japanese Arbitration Act that came

into force in April 2024 has strengthened the enforcement of arbitration awards by introducing the enforceability of interim measures and granting special concurrent jurisdiction to the Tokyo District Court and Osaka District Court, which will concentrate judicial experience and enhance predictability.

Ms. Lexi Takamatsu (Mori Hamada & Matsumoto, Tokyo) suggested that creativity in the enforcement process is important. Ms. Takamatsu explained that in one notable case, in which the Racketeer Influenced and Corrupt Organizations Act (RICO) was invoked, the claimant (a Russian individual) secured an award against a debtor residing in the U.S. who attempted to shield assets from seizure, in a London-seated arbitration. The court relied on the “domestic injury” ground under the RICO statute to enable the claimant to recover damages incurred during the enforcement process, which Ms. Takamatsu heightened as an example of enforcement ingenuity.

Conclusion

The second day of the JCAA dealt with a wide range of relevant and current topics, both global and regional. The panels delivered insights from various stakeholders on strategies to improve user experience in arbitration in Japan, from the critical elements of an arbitration agreement to new developments on the use of artificial intelligence, enforcement of awards in Asia, and increased collaboration between Asian arbitral institutions. In the wake of recent amendments to Japan’s Arbitration Act which harmonizes it with the latest UNCITRAL Model Law, the Japan International Arbitration Week and the JCAA Arbitration Days provide a much-needed forum for arbitration practitioners to share experiences and actively participate in the development of arbitration in Japan and in Asia.

More coverage from Japan International Arbitration Week is available [here](#).

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