

Corporate Newsletter

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Japan Arbitration Day 2020 in Context – Opening Ceremony for Tokyo’s Hearing Center

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A. INTRODUCTION

On 12 October 2020, an opening ceremony took place for the Tokyo hearing center of the Japan International Dispute Resolution Center (“JIDRC”). It was held as part of the Japan Association of Arbitrator’s (“JAA”) annual Japan Arbitration Day.¹ The Ministry of Justice and the Japan Federation of Bar Associations joined the JIDRC and JAA as hosts. The impressive line-up hints at the importance of the Tokyo hearing center for Japan’s broader strategy of boosting international arbitration in Japan through a collaboration between public and private actors.

B. Boosting International Arbitration in Japan and Japan as an arbitral seat

In 2017, the Japanese government adopted an official policy to promote international arbitration in Japan. The Ministry of Justice is leading the implementation of this policy and is cooperating with actors from the private sector. This has culminated in various initiatives to promote not only international arbitration in Japan, but especially Japan as a venue and seat of arbitrations. In May 2018, the JIDRC opened its first hearing facilities in Osaka, Japan’s second biggest city. To supplement Japan’s ADR offerings, the Japan International Mediation Center in Kyoto opened in November of the same year. Kyoto, with its peaceful atmosphere and beautiful sights, seems to be particularly well-equipped to serve as a venue

¹ See the JIDRC’s website for the official program and further information at <https://idrc.jp/en/>.

for mediation. In December 2018, the Japan Commercial Arbitration Association (“JCAA”) announced that it had updated its Commercial Arbitration Rules and Administrative Rules for UNCITRAL Arbitrations, as well as introduced new Interactive Arbitration Rules.² These three sets of rules came into force in January 2019.

With a focus on international arbitration, the Foreign Lawyers Act was amended to clarify and broaden the scope of party representation by foreign counsel in international arbitrations in Japan.³ These changes came into effect in summer 2020 and now provide a robust framework for foreign counsel to represent parties in international arbitrations seated or conducted in Japan. It is also no secret that Japan is currently amending its arbitration law, which is based on the 1985 UNCITRAL Model Law. The modernization aims to reflect the 2006 amendments to the UNCITRAL Model Law, in order to stay up-to-date with international arbitral standards. Discussed changes include easing strict translation requirements in enforcement proceedings as well as establishing a special jurisdiction for arbitration-related cases for the Tokyo and Osaka District Courts.

C. A Hearing Center for Tokyo

Everyone who has organized or tried to organize arbitral hearings will be familiar with the potential obstacles encountered when using hotels or other non-specialized venues. This is particularly true in the case of Japan, where it is difficult to find hotels and staff that have experience in hosting arbitral hearings. It has been clear for some time now that Japan needed a state-of-the-art hearing facility in its Capital if it wanted to compete with neighboring Asian countries to attract international arbitrations.⁴ The JIDRC Tokyo fills this gap. It is not connected to any one arbitral institution, but rather open to serve as a host for cases registered and administered under the auspices of any arbitral institution, as well as for *ad hoc* arbitral proceedings. Like the Seoul IDRC, the JIDRC Tokyo aims to not only serve as a hearing facility, but also to host seminars and workshops for capacity building of the local bar and business communities, as well as to attract international arbitration events and conferences to Japan.

The JIDRC Tokyo offers six breakout rooms and two hearing rooms, the latter of which can be combined to accommodate 170 people. It is equipped with state of the art conferencing technology, including video conferencing and simultaneous interpretation booths. A convenient location in central Tokyo provides for easy and comfortable access to Haneda International Airport in under 30 minutes and the reliable and fast local transportation throughout Tokyo and wider Japan. In terms of infrastructure, the JIDRC Tokyo should comfortably match the offerings in Hong Kong, Seoul, Singapore or elsewhere in the neighboring region.

The hearing center in Tokyo officially opened its gates in March 2020, just in time for the Tokyo 2020 Olympic Games and potentially connected arbitrations before the Court of Arbitration for Sport (CAS). The Covid-19 pandemic not only forced the Olympic Games to be rescheduled, but also posed challenges to hearing centers around the world, as most arbitrations shifted from the use of hearing centers to “virtual” proceedings. The JIDRC Tokyo quickly adapted to the “new normal” of virtual hearings and now is able to offer several options that cater to these types of hearings, while still

² The rules are available on the JCAA’s homepage at <https://www.jcaa.or.jp/en/arbitration/rules.html>. For a breakdown of the most important amendments see D. Gilmore, J. Ribeiro, S. Beer and B. Holley, New 2019 JCAA Rules: Is Three a Crowd?, 8 February 2019, Kluwer Arbitration Blog, online at <http://arbitrationblog.kluwerarbitration.com/2019/02/08/new-2019-jcaa-rules-is-three-a-crowd/>.

³ An unofficial translation of the “*Act on Special Measures concerning the Handling of Legal Services by Foreign Lawyers*” can be found online at <http://www.japaneselawtranslation.go.jp/law/detail/?id=3584&vm=02&re=02>. For an analysis from an arbitration perspective see T. Allen and T. Uenishi, Amendments to Japan’s Foreign Lawyers Act Clarify and Broaden the Scope of Party Representation by Foreign Counsel in International Arbitration, 7 July 2020, Kluwer Arbitration Blog, online at <http://arbitrationblog.kluwerarbitration.com/2020/07/07/amendments-to-japans-foreign-lawyers-act-clarify-and-broaden-the-scope-of-party-representation-by-foreign-counsel-in-international-arbitration/>.

⁴ See for further elaboration of the importance of an arbitral hearing center L. Markert, The importance of arbitral hearing centres for the popularity of the arbitral seat – the case of Japan, 18 June 2018, Euromoney Expert Guides, online at <https://www.expertguides.com/articles/the-importance-of-arbitral-hearing-centres-for-the-popularity-of-the-arbitral-seat-the-case-of-japan/AROQWEZH>.

remaining available for in-person hearings. This dual-use infrastructure promises to adequately serve the varying demands posed in connection with hearings in the Post-Covid-19 era.⁵

D. Opening Ceremony

The opening ceremony of the JIDRC Tokyo was influenced by the current pandemic and held as a hybrid webinar, with the majority of speakers present at the hearing facility and most participants attending online. The Minister of Justice, Ms. Yoko Kamikawa, participated in the opening ceremony in person, and in her speech she underscored Japan's determination to promote international arbitration in Japan. She stressed that Japan recognizes and seeks to improve upon the infrastructure necessary for it to become a hub for cross border dispute resolution. She reaffirmed that the Ministry of Justice will continue to work on promoting international arbitration in Japan and commended the JIDRC's multilateral approach embodied in six memoranda of understanding for cooperation concluded with other arbitral institutions and hearing centers around the globe. The Minister's opening remarks were followed by a congratulatory greeting from the JCAA's president, Mr. Kazuhiko Bando. Greetings and congratulations were followed by video-message from Mr. Alexis Mourre, President of the ICC International Court of Arbitration, Mr. Gary Born, President of the SIAC Court of Arbitration, and Ms. Meg Kinnear, the Secretary-General of ICSID.

In the first keynote speech the Former Chief Justice of the Supreme Court of Japan, Mr. Itsuro Terada, he focused on the development of law in the last decades, which in Japan was dominated by changes in society and family. Mr. Kevin Kim (Partner of Peter & Kim), in the second keynote speech, highlighted the factors which make Japan, especially Osaka and Tokyo, an excellent choice as a venue or seat for international arbitrations. He noted that Japan's situation will be further fostered by the JIDRC's new hearing centers and an appetite for more international arbitrations by businesses and the local arbitration community. At a time of not only growing interest in arbitration among Japanese companies, but an overall growing demand for arbitration in Asia, Japan now is in an excellent position to capitalize on meeting this demand.

After the keynote speeches, Prof. Yoshihisa Hayakawa, Executive Director and Secretary General of the JIDRC, took the participants on a virtual tour of the JIDRC Tokyo hearing center. The opening ceremony was topped off by a panel discussion moderated by Ms. Yoshimi Ohara (Partner of Nagashima Ohno & Tsunematsu, Executive Director of the JAA) with the topic of "*Role of Tokyo as Seat of International Arbitration – Expectations and Suggestions in the era of Covid 19*". The Panelists included Mr. Michael Moser (Arbitrator, Twenty Essex), Mr. James Castello (Partner of King & Spalding), Mr. Tsuyoshi Harada (Head of Legal Division, Nippon Steel Corp.), Mr. Hiroyuki Tezuka (Partner of Nishimura & Asahi, Executive Director of the JAA) and Mr. Yoshihiro Takatori (Partner, Kasumigaseki International Law Office). In the various insightful contributions, Tokyo's hearing center was welcomed as a further boost to Tokyo as a venue or seat for arbitrations in these Covid-19 times and beyond. It was pointed out that it is now up to the various stakeholders to actually use the facilities in order to benefit from Tokyo's new offering. While the hearing center in Tokyo is only one piece of the puzzle to expand Japan's capacity as a venue or seat for international arbitrations, it was recognized both as having a prominent role in this endeavor and worthy of promotion that reflects its importance.

E. Conclusion

The Japanese word "*Omotenashi*" is used to describe and promote Japan's outstanding hospitality, and can be summed up as hosts offering the best service by abandoning their own interests in order to anticipate guests' every need. The opening of the JIDRC Tokyo will make it even more comfortable to hold and host international arbitrations in Japan – adding critical infrastructure to an already arbitration friendly framework. In this sense, the new hearing center underscores Japan's "*Omotenashi*" culture for international arbitration. The 2020 Japan Arbitration Day adeptly promoted the opening

⁵ For a reflection "*on whether, and if so how, virtual hearings will replace physical hearings as the default mode of conducting oral hearings in the post-COVID world*" see S. Lim and L. Markert, Rethinking Virtual Hearings, 19 July 2020, Kluwer Arbitration Blog, online at <http://arbitrationblog.kluwerarbitration.com/2020/07/19/rethinking-virtual-hearings/>.

and offerings of the JIDRC Tokyo, and it is hoped that users, their counsel, and arbitrators will soon avail themselves of this new facility.



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Foreign Intern (through October 2020)

*Please note that we are not engaged in a Gaikokuho Kyodo Jigyo (the operation of a foreign law joint enterprise).