

How deep is the pool of arbitration specialists in Japan?

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Hong Kong and Singapore are known worldwide as the two leading jurisdictions for international arbitration in Asia. While Hong Kong has a long-standing arbitration tradition going back to the British colonial period¹, Singapore has in the past three decades developed an impressive reputation for international arbitration. Today, both jurisdictions are known for a modern infrastructure, arbitration-friendly courts, a solid legal environment, and a large arbitration community².

In Japan, however, despite similarly favorable conditions, international arbitration seems to be growing rather slowly, its growth lagging far behind that shown in Singapore³. It seems to be completely ignored that Japan has a modern Arbitration Law⁴ based on the UNCITRAL Model Law; that Japan has been a signatory party of the New York Convention⁵ since 1961; and that there

are no significant restrictions on foreign lawyers to act as arbitrators or represent parties in arbitration proceedings (whether or not Japanese law governs the subject matter)⁶. To meet modern standards, the Japan Commercial Arbitration Association (JCAA) – one of the oldest arbitration institutions in the region⁷ – revised its Arbitration Rules in February 2014. The arbitration landscape seems to be perfect – as one would expect it to be in Japan. So why has Japan not yet become the leading arbitration jurisdiction in Asia?

One reason for the slow development, noted by the arbitration community⁸, is an apparent lack of arbitration specialists in Japan. One other reason noted by scholars familiar with Asian culture might be the perception of the Japanese as a “*non-litigious people*”, who “*do not take advantage of the available mechanism for formal dispute resolution*”⁹.

1 Hong Kong Arbitration: A User's Guide, Michael J. Moser, Teresa Y. W. Cheng, Kluwer Law International, 2004

2 Hong Kong International Arbitration Center (HKIAC), www.hkiac.org and Singapore International Arbitration Center (SIAC), www.siac.org.sg.

3 The Japan Commercial Arbitration Association (JCAA) registers no more than 25 cases yearly.

4 Law No. 138 of 2003.

5 Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958.

6 Art. 72 Attorneys Act (Act No. 87 of 2005), Art. 5-3 Act on Special Measures concerning the Handling of Legal Services by Foreign Lawyers (Act No. 66 of 1986), “Foreign Lawyers Law”; For the definition of a „registered foreign lawyer“ see Art. 2(iii) Foreign Lawyers Law.

7 Established in 1950, JCAA Homepage (www.jcaa.or.jp last visited on 22 September 2014).

8 For instance, one speaker at the IBA Asia Pacific Arbitration Group Training Day on September 12, 2014, in Tokyo mentioned this reason.

9 John O. Haley, The Myth of the Reluctant Litigant, Journal of Japanese Studies, Vol. 4 No 2 (1978), pp. 359-90.

10 Tony Cole, Commercial Arbitration in Japan: Contributions to the Debate on Japanese 'Non-Litigiousness', in New York University Journal of International Law and Politics (JILP), Vol. 40, No. 1, 2007

Analyzing the impact of the Japanese culture on the limited number of arbitration proceedings is beyond the scope of this short paper¹⁰. Instead, this very brief paper should invite some thoughts on the size of the pool of arbitration specialists in Japan.

In the Japanese legal educational system – law school and the Supreme Court Legal Training and Research Institute (“LTRI”) – lawyers generally do not receive any theoretical training on international arbitration. Hence, a Japanese lawyer traditionally starts his career at a law firm knowing very little about international arbitration, indeed about arbitration at all. Moreover, the numbers graduating from the LTRI had been very limited. However, after 2004, when Japan introduced the *law school system*, in order to increase the passage rate on the national bar exam from around 3% to around 50%¹¹, the number of lawyers on the professional market has increased. Consequently, the size of law firms has increased. Moreover, since the liberalization of the Foreign Lawyers Law in 2005, a number of domestic law firms have merged with foreign law firms, thereby increasing the presence of big international law firms in Japan. These developments resulted in Japanese law firms hiring experienced foreign specialists. At the same time, international law firms started dispatching specialists from other jurisdictions to their offices in Japan.

The reform of the legal profession in Japan, accompanied by the expansion of the legal market, has resulted in a trend among Japanese lawyers to

specialize by undertaking post-graduate education abroad or by being seconded to law firms in other jurisdictions. International arbitration represents one of the practice areas which this recent trend has affected. The lack of reliable sources makes it difficult to estimate the precise number of arbitration specialists in Japan. The arbitration community is, however, certainly much larger than implied by different online directories that provide the same few names in connection with the international arbitration.

Setting aside any impact that Japanese culture might have on international arbitration, we can conclude that Japan has a very favorable legal environment to be a suitable seat for arbitration. The recent reforms of the legal system addressed above have created a friendly atmosphere for an increase in the pool of arbitration specialists.

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11 Shigeru KAGAYAMA, Legal Education Reform in Japan - To Foster Creative Thinking Ability of Students, available at www.meijigakuin.ac.jp/~yoshino/documents/ivr2003/kagayama.pdf citing The Justice System Reform Council "Recommendations -- For a Justice System to Support Japan in the 21st Century --" (June 12, 2001) (last visited on 22 September 2014).