



# No disputing Japan's potential

## Vying to become a hub for alternative dispute resolution

With a highly developed legal system and reliable courts, Japan has long been seen as a safe and stable place to conduct business. However, one area where Japan could be said to be lagging is in alternative dispute resolution (ADR). In resolving international commercial disputes, methods such as mediation and arbitration are seldomly used here and less well known than in other countries.

Many on the panel were bullish about Japan's ability to become a major Asian ADR centre. Hughes Hubbard & Reed's Tony Andriotis, who organised the event, noted that Singapore and Hong Kong, which share a common law system and a colonial history, are currently leading arbitration centres in Asia.

"Japan is a civil law jurisdiction, free from that history, and it could become a major destination for civil law arbitration," he stated. "We can build something new here."

Haig Oghigian of Squire Patton Boggs, who co-moderated the event along with Yuki Sakioka of Anderson Mori &

Tomotsune (AMT), highlighted the benefits to small and medium-sized enterprises (SMEs) of Japan becoming a centre for ADR.

"If you're a big company, and money is no object, then you can afford to arbitrate anywhere, but if you're an SME, then you'll be focused on the cost," Oghigian observed. "If Tokyo can provide the same level of service as elsewhere, but for less money, then so much

the better."

The relative paucity of arbitration in Japan — an average of only 20 cases a year — can largely be attributed to two main causes. The first is that, domestically, Japanese companies prefer litigation to settle disputes.

"Japanese courts are efficient and trustworthy; in a way, they're too good," said panellist Yoshimasa Furuta of AMT. "This means there's little need for domestic companies to enter into arbitration."

The second issue, which concerns cross-border arbitration seated in Japan, is

that there are legal ambiguities over who can be allowed to act as an arbitrator or represent a party. Oghigian, however, doesn't consider this to be an insurmountable problem.

"Any arbitration system will have these issues," he said. "Even Singapore had this problem."

Panellist Michael Mroczek of Okuno & Partners believes that developing into an arbitration hub will be beneficial for Japan, but that it will take time.

"Promoting Japan as a place for arbitration?" he asked. "It'll be an investment."

ADR associations and their members, which include the panellists, have been actively lobbying the government and the Ministry of Justice to update relevant laws and advocating for Japan to become a prime destination for dispute resolution. Their efforts are already bearing fruit.

"The Ministry of Justice is planning to send judges, who have been seconded to the ministry, to be trained as arbitrators," reported Yoshihiro Takatori of Orrick, Herrington & Sutcliffe.

Investments have also been made to establish facilities for ADR here. The Japan International Dispute Resolution Center is a new permanent facility in Osaka conducting arbitration, and there are plans to launch a similar facility in Tokyo within a few years. And the Japan International Mediation Center in Kyoto is scheduled to open soon.

Despite the head-start of other jurisdictions in Asia, Japan is beginning to realise its potential not only to become established as a location for ADR, but to be a thriving one, benefitting global businesses and lawyers alike. ●

Yoshimasa Furuta (left) and Tony Andriotis



**As a way** of promoting Japan's potential as a global ADR hub, a panel of lawyers, facilitated by the Roppongi Bar Association, gathered on 18 July at the Thomson Reuters office in Tokyo to discuss obstacles that need to be overcome in order to achieve this goal. The event was co-sponsored by various professional and commercial organisations, including the EBC and the Greek, Swiss and Netherlands chambers of commerce.