



International Mediation in Japan

Establishment of JIMC-Kyoto and Other Latest Developments

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A International Commercial Mediation is Attracting Worldwide Attention

Mediation is Attracting Worldwide Attention

1. LOW COST

Recently, the cost of litigation and arbitration tends to be extremely high.
The cost of mediation tends to be much less expensive

2. FAST

- Mediation hearings usually take only 1 day to a few days
- This tends to be faster than litigation or arbitration
- Even complicated and large cases are settled amicably in expeditious mediations
 - (Ex) Settlement of Intel-AMD antitrust disputes in several countries, with the payment of \$1.25 billion and cross-licensing
 - (Ex) The rules of leading international mediation centers provide that cases should be resolved in principle within 4 months of application

3. PARTIES CAN CONTROL THE OUTCOME OF THE RESOLUTION

-Mediator encourages settlement between the parties in dispute. Parties are not forced to accept an unwanted resolution, and where they fail to agree on a solution, the mediation proceeding ends

4. LESS ADVERSARIAL (FEWER CONFLICTS)

- Mediation is a less adversarial (and less conflictual) resolution system as compared to litigation or arbitration
- Mediation can resolve disputes with less psychological burden as compared to litigation or arbitration

5. WIN-WIN SOLUTION

- In mediation, the parties may seek win-win solution/add-sum settlement
- Parties do not prefer zero-sum solution in many cases in which the parties should continue the business relationships
- Looking at the whole business relationship behind the conflict

International Mediation Centers in Asia

(trend to promote the International mediation)

In Asia, many countries have begun promoting international mediation actively.
Major international mediation centers in Asia have full-fledged hard and soft infrastructure.

Name of Organization	Permanent Facility (not necessarily exclusive to mediation)	Rules for Mediation	Mediator Panel	Notes
Singapore International Mediation Centre (SIMC)	 <small>Photo: Maxwell Chan</small>	○	○	22 new case filings in 2017
Hong Kong International Arbitration Centre (HKIAC)	○	○	○	12 new cases in 2019 16 new cases in 2020
Asian International Arbitration Centre (AIAC) (Malaysia)		○	○	1 case in 2018
Vietnam Mediation Centre (VMC)	○	○	○	Established in April, 2018
Japan International Mediation Center in Kyoto (JIMC-Kyoto)		○	○	Established in November, 2018

The Singapore International Commercial Mediation Convention (to grant international enforcement power)

On August 7, 2019, the signing ceremony of the Singapore International Commercial Mediation Convention was held.

- ▶ 53 countries including the United States, China, India, Singapore and South Korea have signed the Singapore International Commercial Mediation Convention.
- ▶ The Singapore International Commercial Mediation Convention aims to grant international enforcement power to settlement agreements reached by international commercial mediation similar to that of New York Convention for arbitration.
- ▶ The Singapore International Commercial Mediation Convention entered into force in September 2020. Japan has not yet signed the Convention.



B Overview of Mediation in Japan

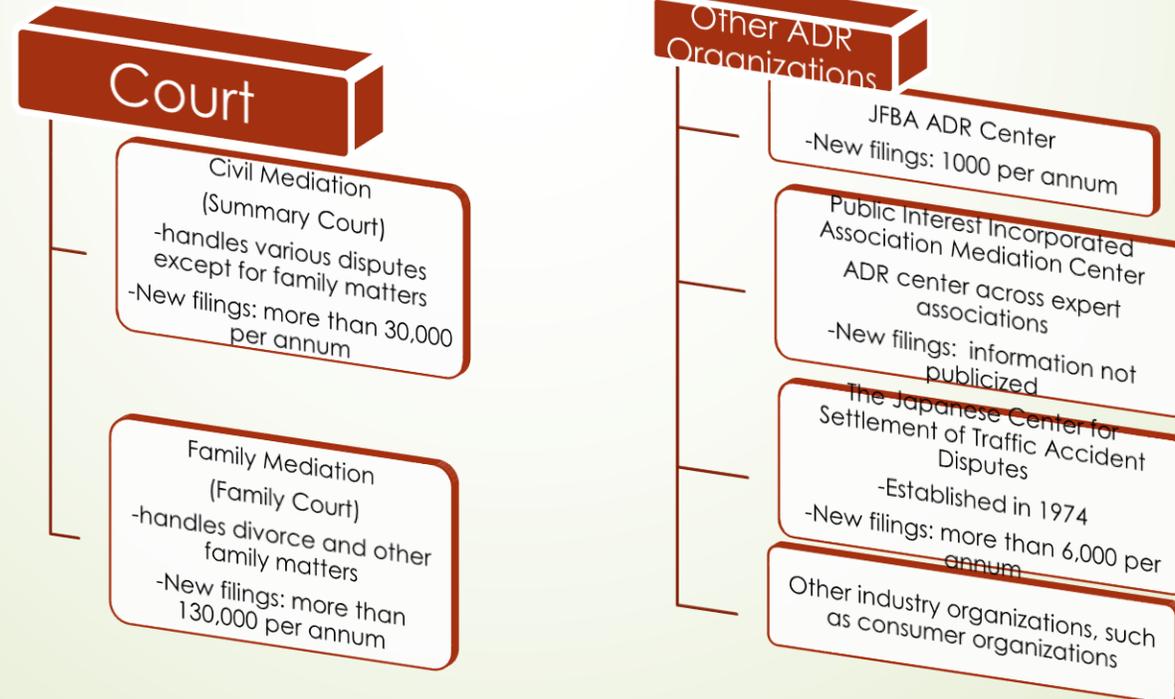
Japanese Culture Has a High Affinity with Mediation

- ▶ Japanese traditional culture is a culture that has a high affinity with mediation.
 - The spirit of mediation is inherent in the Japanese culture where its origins can be traced back to the 17-Article Constitution of A.D. 604 which is said to be the first constitution of Japan. The first article provides, “[c]herish harmony among the people.” Mediation is said to have been widely used as means of dispute resolution from that period into the Kamakura and Edo periods
- ▶ In fact, modern Japan has a long history of domestic mediation, and domestic mediation is actively utilized today
 - In modern Japan, after the Meiji period, a mediation system developed centering around court-annexed mediation in domestic cases (see next slide)

Mediation has a high affinity with Japanese culture, and it is readily acceptable to Japanese people and companies. Mediation is an area where Japan can naturally contribute to the world of dispute resolution

Domestic Mediation in Japan

- Japanese civil mediation has almost 100 years of history. Its origin can be traced back to the Land and House Rent Law (1922)
- Court-annexed mediation (family conciliation, civil conciliation) is actively used
 - Mediation by courts is fair and highly reliable because it is operated by the court and a judge is involved
 - In addition to lawyers, other experts (i.e. real estate appraisers, architects, certified public accountants, etc.) can join proceedings as needed, which facilitates the appropriate resolution for each case
 - Regarding family cases, filing for mediation to the Family Court is required before filing a lawsuit (Conciliation First Principle)



Former Situation of International Mediation in Japan

- As stated in slides 7~8, Japan has a cultural and historical affinity with mediation, and mediation has been actively used domestically. However, until recently, international mediation has seldom been used in Japan.

Reason 1 (Obstacle 1): There are several material differences in practice between global standard mediation and Japanese domestic mediation practice

Reason 2 (Obstacle 2): The mediation infrastructure in Japan was poor in terms of both hardware and software

[No international mediator panel (the number of experienced and trained international mediators is very small, and training for international mediators has just begun)

[No institution specialized in international mediation

[No hardware infrastructure (no permanent facilities)

C Latest Developments for Promotion of International Commercial Mediation in Japan

① Establishment and Features of the Japan International Mediation Center in Kyoto (November 2018)

– Establishment of the Japan International Mediation Center in Kyoto (JIMC-Kyoto) –

Removal of the obstacles mentioned in slide 9
Practicing global standard mediation
Equipped with global standard hardware and software

Setting at Kyoto



Why Kyoto ?

- ◆ International mediation is an intensive procedure completed in a short period of time. Because mediation is expedited, it need not be situated in a business center
- ◆ Kyoto is an important city of Japanese culture having a high affinity with mediation
- ◆ The pacific atmosphere of Kyoto – with its gardens, temples, shrines – is favorable to amicable negotiations
 - ◆ ⇒A famous international mediator favors Hawaii as a place of mediation for similar reasons
- ◆ Kyoto is a tourist destination that is appealing to mediators, parties and their counsel
- ◆ JIMC-Kyoto has dedicated facilities on the campus of Doshisha University, which are comparable to the facilities of leading global ADR centers but are less costly
- ◆ JIMC-Kyoto has an option of Kodaiji-temple as mediation facilities

Global Standard Mediation Practice by JIMC-Kyoto

JIMC-Kyoto conducts global standard mediation

Partly due to the high affinity of mediation with Japanese culture, in modern Japan after the Meiji period, domestic mediation significantly spread and developed a distinctive style. There are quite a few differences between Japanese domestic mediation practice and global standard mediation practice

Japanese Domestic Mediation Practice	Global Standard Mediation Practice
Pleadings and information during the mediation process may be disclosed in the succeeding litigation or arbitration procedure	Pleadings and information during the mediation process may not be disclosed in succeeding litigations or arbitrations
Evaluative-type is mainly used	Facilitative-type and evaluative-type coexist (hybrid usage)
Intermittent meetings, loose schedule, and hearings last for relatively long periods of time	Intensive, tight schedule with hearings lasting for short periods (usually 1 day or 2 consecutive days)
Mostly private sessions with parties	Not only private sessions but also joint sessions are used as appropriate

Features of JIMC-Kyoto (Soft and Hard Infrastructure)

Equipped with global standard hardware and software

- ◆ Can utilize full-fledged hard and soft infrastructure in line with global standards

Software infrastructure

- Mediator panel rich in diversity (See slide 15)
- Global standard mediation rules
- Speedy procedure in line with global standards

Hardware infrastructure

- Splendid facilities (See slides 16 and 17)

Features of JIMC- Kyoto (Soft Infrastructure)

15

Mediator Panel

- 53 non-Japan resident mediators (increasing with recommendations by well-experienced global practitioners)
- Panel prepared with cooperation from international mediation centers such as SIMC, HKMC, etc.

USA	6	New Zealand	1
Australia	4	Korea	1
Canada	1	United Kingdom	6
Singapore	10	Vietnam	2
India	4	Cambodia	1
Hong Kong	14	China	1
EU	4	Total 53 (※ 2 are double-counted)	

- Approx. 70 Japan resident mediators (increasing)
Experts of dispute resolution such as commercial and family affairs, etc.

The mediation panel of JIMC, along with the ICC and SIMC, is recognized overseas as a panel rich in diversity. (“...International organisations such as the Singapore International Mediation Centre (SIMC), the Japan International Mediation Center (JIMC) and the International Chamber of Commerce (ICC) select mediators from diverse countries for their panels, thereby recognising a variety of national and organisational standards for mediator competency, certification and practice” (Nadja Alexander and Shouyu Chong (eds), *The Singapore Convention on Mediation: A Commentary* (Kluwer Law International, 2019)5.53))

Features of JIMC-Kyoto (Hard Infrastructure)

□ Mediation Facilities

- Use of Facilities of
Doshisha University
(equipped with
simultaneous
interpretation booth
and dining facilities
offering diverse global
cuisine)

University and JAA signed a MOU
on December 1, 2017



(Doshisha Facilities)



Features of JIMC-Kyoto (Hard Infrastructure)

Option of mediation in temples and shrines in Kyoto such as Kodaiji-temple

Historically, temples and shrines in Kyoto have been places for resolving disputes. JIMC-Kyoto expects to increase the number of shrines and temples available for mediations



(Kodaiji-temple Facilities)



② Amendment to Foreign Registered Lawyers Law (May, 2020)

Recognition of Representation of International Commercial Mediation by Foreign Lawyers and Gaibens (Foreign Registered Lawyers)

3. Establishment of Provisions on Representation in International Mediation

- The scope of “international mediation cases”
 - Civil mediation cases (including conciliations) where all the parties to the case are involved in a dispute concerning a contract or transaction **between businesses** (Note 3);
 - ⇒ Excluding consumer disputes, labor disputes, family affair disputes, etc. and
 - Cases where either of the following (A) or (B) apply:
 - ⇒ In principle, these are pursuant to the conditions for international arbitration cases.
 - (A) A party to the case has a specific connection to a foreign jurisdiction** (Article 2, item (xi-2) (a) of the new Foreign Lawyers Act). (Note 2)
 - (B) The governing law agreed by the parties is a law other than Japanese law** (Article 2, item (xi-2) (b) of the new Foreign Lawyers Act).

(Note 2) The new Foreign Lawyers Act additionally recognizes internationality for circumstances where those who hold a majority of issued shares have a head office, etc. in a foreign jurisdiction (Article 2, item (xi) (a) and item (xi-2) (a) of the new Foreign Lawyers Act).

The requirements for (A) are delegated to the Regulation for Enforcement of the Act on Special Measures concerning the Handling of Legal Services by Foreign Lawyers, which sets forth the following in addition to Example 2 on page 3:

- The combined shares of a party (Company Y) held by an entity (Company B) having a head office in a foreign jurisdiction and its subsidiary (Company A) that it wholly owns constitute a majority of the party's shares;
- When a corporation that is to determine its practices with more than half of the members is a party to the case, the entity that has a head office in a foreign jurisdiction accounts for more than half of the members.

(Note 3) Cases are limited to those performed by private businesses.

A Bill to Amend Part of the Act on Special Measures concerning the Handling of Legal Services by Foreign Lawyers was enacted on May 22, 2020.

Establishment of Provisions on Representation in International Mediation came into force on August 2020.

③ Execution and Implementation of Covid 19 Joint Protocol between JIMC and SIMC (September, 2020)

JIMC and SIMC signed MOU for Joint Protocol in September 2020 to jointly mediate on-line the cases relating to Covid-19 swiftly and at low cost.

Epoch-making Collaboration among International Mediation Institutions during and after Covid-19.

Conclusion and Implementation of COVID19 Joint Protocol between JIMC and SIMC (September 2020)

- ▶ The Covid19 Joint Protocol has been signed between JIMC and SIMC to build a collaborative relationship between JIMC and SIMC for conducting online international mediation under the global epidemic of the new coronavirus.
- ▶ The joint protocol is a mediation jointly conducted by both organizations to resolve international commercial disputes that occur frequently due to the effects of the new coronavirus, quickly, cheaply, and online.
- ▶ As a general rule, two mediators, one each from JIMC and SIMC, will be appointed. One of them may be a SIMC mediator who understands the corporate culture of the subject foreign companies and the culture of the subject foreign country and communicate in English, and one of them may be a JIMC mediator who understands the corporate culture of Japanese companies and culture of Japan and can communicate in Japanese and English.

Gist of JIMC- SIMC Joint Covid19 Protocol

22

Some key aspects of the Joint Protocol include:

- ◆ Mediations may be easily filed at either JIMC or SIMC online by paying a low JPY 20,000 or SGD 250 filing fee. JIMC and SIMC will jointly manage mediations.
- ◆ Cases will be resolved by two experienced mediators (one nominated by each Centre) to facilitate cross-border settlement.
- ◆ Parties will enjoy fixed and reduced fees as described below. For example, for disputes of less than S\$1.3M, each party pays S\$6,500.
- ◆ Mediation can be conducted online to overcome the current limitations on travel.
- ◆ Settlement agreements may be enforced under the Singapore International Commercial Mediation Convention in countries that have ratified the Convention, including Singapore.

The co-mediation aspect allows for the appointment of mediators who are familiar with different legal and cultural contexts, selected from both centres' established panels of mediators with skillsets to address any given dispute.

Dispute Value	Total fee payable per party for 2 mediators (SGD)	Total fee payable per party for 2 mediators (JPY)
Below 1 billion yen (SGD 1.3 M)	SGD 6,500	JPY 500,000
1 billion - 5 billion yen (SGD 1.3M- 6.5 M)	0. 5% of Dispute Value, subject To a cap of SGD 13,000	0. 5% of Dispute Value, subject to a cap of JPY 1,000,000
Above 500 million yen (SGD 6.5M)	0 .2% of Dispute Value, subject to a cap of SGD 16,000	0 .2% of Dispute Value, subject to a cap of JPY 1,250,000

④ Latest Movement towards Early Signing of Singapore International Commercial Mediation Convention by Japan

July 2020

Japan Institute of Business Law published a detailed study report, which considered various issues concerning enforceability of settlement agreements resulting from mediations in line with the Singapore International Commercial Mediation Convention.

September 2020

The Minister of Justice referred the Legislative Council to consider possible amendments to the law including enforceability of settlement agreements resulting from mediations.

October 2020

Legislative Council has been held, and is expected to reach the conclusion as early as Summer 2021.