

Dispute Resolution in Digital Economy

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How to harmonize perspectives of common and civil law jurisdiction for High-Tech Dispute Resolution

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1. Hybrid of Common Law practice and Civil Law Practice for High-Tech Dispute Resolution

Arbitration for High-Tech Disputes – Remote can benefit on availability of resources

- Role of Arbitrator- Common Law Style (Adversarial) vs. Civil Law Style (Parental/Interactive) – Depending upon parties and nature of the case.
- Role as Expert or collaboration with external/internal experts-can be Online.

Should co-work as hybrid/combination of common law and civil law system?

Should training arbitrator on “technology” and/or train technology engineer to be arbitrator as C.I.Arb. was founded-aiming at sufficient and accessible resource.

- Broad Discovery or Limited Discovery or More Specific Discovery on High Technology.

Should have Double Standard between High-Tech evidence and general evidence– as protocol/guideline?



2. Harmonization for Mediation as High-Tech Dispute Resolution

Mediation/ADR : Facilitative (Common Law style, globally utilized) vs. Evaluative (Civil Law Style. ex. in Japan - 22nd Department of Tokyo District Court)

- Common law type facilitation for business and high-tech significance in the speedy market, seeking for common/business interests among the parties.

Confidentiality, Cost, Timing, etc.-should aim at “win win” resolution, not only for parties but also for market/users ex.) 5G, SEP type technology

- Expertise for some evaluation/assessment on high-tech, including value of technology and complexity, based upon Civil Law Type practice is important.
- Co-work with Expert: Tech Expertise and Legal Expertise/Facilitation, should harmonize, how?-Mediator can be trained or Engineer can be trained, or?

Ex.) Japanese Judicial System: – ADR by judge and appointed expert as co-mediators, with prejudice– then, arbitration/ (litigation) unless settled.



3. Combination of Arb. and Med. , for High-Tech Dispute Resolution

Arb. Med. Arb. or Med. Arb. Med., for Harmonization of across jurisdictions

- Identity of Arbitrator and Mediator - Divided Strictly without Prejudice or Continuing with Observation/Impression of the case for speed up?

How and when experts can/should be involved, through Arb. Med. process? facilitation/evaluation/negotiation/communication? Need Consistency and Speed

Concrete measures for Hybrid or Harmonization if multiple jurisdiction/governing law/legal culture-should have some protocol/guideline – choose alternative option.

- Elements/Requirements for Efficient Arbitrator/Mediator - expertized in High-Tech , Commercial Business Disputes, and Legal/Dispute Resolution capability.

Resource and Easy Access to Expert, Arbitrator and Mediator-Online advantage

How to Utilize previous arbitration or mediation for subsequent procedure or settlement, without prejudice or as continuing process for speedy resolution?



Yoshihiro (Yoshi) Takatori



Yoshi Takatori is an expert of dispute resolution including international litigation, arbitration and mediation. He is one of the few Fellow of the Chartered Institute of Arbitrators (F.C.I.Arb.).

He is the world's leading expert, and listed as a recommended arbitrator for the Japan Commercial Arbitration Association (JCAA) and is also listed on both Singapore International Centre's (SIAC) and Korean Commercial Arbitration Board's (KCAB) Panel of Arbitrators and as a Specialist Mediator at Singapore International Mediation Center (SIMC).

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Honors

- Financial Times, Top 10 Legal Innovators for Asia-Pacific Region, 2019
- Chambers Asia Pacific, Dispute Resolution: International, Japan, 2012-2019, BAND1
- Legal 500 Asia Pacific, Dispute Resolution: International, Japan, Intellectual Property: International, Japan, 2013-2019
- Best Lawyers, Arbitration and Mediation, Litigation, Japan, 2019

Admissions

- Japan
- New York
- FCI Arb

Expertized in Cross-border Dispute Resolution including, IP, PL, Anti-Trust, and Employment, Compliance, and Cyber-Security. He also gives advice to Government of Japan and conduct training sessions to Judges.

Executive Director of Japan Arbitrators Association, Co-Convener of Chartered Institute of Arbitrators, Japan Chapter, and Advisory Board/Chair of Web Hearing Committee of Japan International Dispute Resolution Center, and a member of Private International Law Association of Japan.

Memberships

- Specialist Mediator, Singapore International Mediation Center (SIMC)
- Vice Chair, International Committee of the Dai-ichi Tokyo Bar Association, Chair of California Division
- Co-convener, Japan Chapter of the Chartered Institute of Arbitrators (CIArb.),
- Executive Director of Japan Arbitrators' Association
- Member of Private International Law Association of Japan



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Publications

- Author, “Developments in Sanctions Against Russia and Countermeasures by Russia – Points to Keep in Mind Including Dispute Resolution in Light of Recent Moves by the Authorities and Courts in Russia” (JCA Journal No. 748, October 2019)
- Co-author, “Appointing an Arbitrator in International Arbitration” (Arbitration & ADR Forum Vol.6, Japan Association of Arbitrators, March 2019)
- Co-author, “Significance and Use of International Mock Arbitration and Mediation (1) – Summary of the Joint Seminar with the Ministry of Justice in Japan and Charter Institute of Arbitration (CI Arb)” (NBL, No 1129, September 2018)
- Author, “Japan’s New Bid to Compete in Arbitration - Opening Up” (Asian Business Law Journal, May 2018)
- Editor, "Cross-border Dispute Resolution Strategies" (Lexis Nexis, June 2016)
- Editor-in-chief, "International Arbitration Textbook" (Shinzansha, June 2015)
- Editor and co-author, "Cyber Security Strategy for Litigation and Compliance" (NTT Publishing, April 2015)
- Author, "Dispute Resolution for Global Business," (*Chuo Keizai*, September 2012)



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Speeches and Programs

- Speaker, “The Use of International Arbitration/Mediation in Intellectual Property Rights Disputes – Strategies for Global and Comprehensive Solutions Including Standard Essential Patents (SEP)/FRAND” (Jointly hosted by the Japan Patent Office and C.I.Arb. with the support of the Japan Association of Arbitrators, February 2020)
- Speaker, “Impact of the GDPR on Japan Related Data Management – Adequacy Determinations and Measures for the Tokyo Olympics” (Joint seminar held by the Frankfurt Germany Bar Association and the Tokyo Daiichi Bar Association, August 2019)
- Speaker, “Combining International Arbitration and Mediation in Practice in Intellectual Property Disputes and SEP” (Intellectual Property High Court, Tokyo High Court, July 2019)
- Speaker, “Cybersecurity in International Arbitration and Mediation” (World Bank, ICSID, 2018 Energy Charter Treaty Forum, Paris, France; September 2018)