

REVIEWS LEGAL INDUSTRY



IBA PARIS 2023

In this edition, **Almudena Arpón de Mendivil Aldama**, President of the **International Bar Association (IBA)** during 2023/2024, discusses with us on the occasion of the **IBA Annual Conference 2023** held in Paris.

Yohsuke Higashi, Liaison Officer at the Corporate M&A Law Committee of the Asia Pacific Regional Forum at the **International Bar Association (IBA)**, explores the impact of technology on legal sessions and the significance of the IBA in the Asia-Pacific legal scene.

Noppramart Thammateeradaycho, Vice Chair of the Asia Pacific Arbitration Group at the **International Bar Association (IBA)** discusses trends in arbitration and the role of women in the arbitration and legal field in the Asian Pacific region.

Tomoko Kondo, Head of Legal and Compliance at **Arthrex Japan**, addresses the role of in-house lawyers in a health industry company.

Alkis Kotzampasis, Associate Partner at **Page Executive**, covers the importance of communication skills and cultural understanding in building a legal career in Japan.

LIR

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Paris as the city of law: IBA's annual conference 2023



"Exchanges at the Conference will help the rule of law globally, which is at the core of the legal profession and, thus, of the IBA. With Paris renowned as the epicentre of enlightenment, with a rich legal legacy, it is the perfect location for this year's Annual Conference".

Almudena Arpón de Mendivil, President of the International Bar Association and partner at Gómez-Acebo & Pombo





This year, Paris welcomed the whole international legal community, on the 75th Annual Conference of the International Bar Association (IBA). From October 29th to November 3rd, the city of light mutated into the "city of law, as **Almudena Arpón de Mendivil**, current president of the association, stated in her opening speech. **The Legal Industry Reviews** had the chance to attend and meet with lawyers and other professionals of the industry from all over the world.

With more than 100 sessions held in the Palais des Congrès, the event offered its attendants insights revolved around the IBA's 2023-2024 presidential priorities: Artificial Intelligence (AI); Environmental, Social and Governance (ESG); Preparing the legal profession for the future as well as talent attraction and retention; Enhancing the contribution of the legal profession to society and the perception of the same, and Promoting and defending the rule of law.

Also, this year's conference counted with the presence of extra special guests like **Lech Walesa**, former President of Poland and a Nobel Peace Prize winner; **Zack Kass**, former Director of OpenAI, technology futurist and specialist in generative AI solutions, **Christopher Stephens**, Senior Vice President and General Counsel of the World Bank Group; and **Helle Thorning Schmidt**, Co-chair of Meta's Oversight Board and former Prime Minister of Denmark.



Almudena Arpón de Mendivil Aldama:

“We are working on what shall be the first report ever measuring the impact of the legal profession in society, determining the levers to maximise such effects. At a time when clients, especially corporates, are increasingly aware of their own socioeconomic impact and expect their business partners to both support and follow through, and when the new generations increasingly want to work for organisations with a positive social impact, the Report will be a great tool to give response to these challenges”.

Almudena Arpón de Mendivil Aldama is the current IBA President for the term 2023-2024. Almudena joined the IBA Management Board in 2009, a position she has maintained under her different IBA roles. Almudena has previously held positions as the IBA Vice President, IBA Treasurer, Chair of the Legal Practice Division and IBA Secretary-General. During her IBA career Almudena has also led a number of committees and relevant projects for the Association.

Almudena is a partner at the Spanish law firm Gómez-Acebo & Pombo. She is the Head of the Technology, Media and Telecommunications (TMT) Group. Her expertise is diverse, with an emphasis on corporate, and she is highly experienced in the telecommunications, media and technology sectors.

Almudena held the position of member of the Board of Directors of the Spanish satellite company Hispasat and was a member of the Executive Board of the European Cultural and Creative Industries Alliance.

Almudena graduated in Law from the Institute of Business Administration (ICADE). She obtained a Master's Degree in Community Law from the College of Europe in Bruges and a PiL from Harvard Law School.

On January 2023, Almudena Arpón de Mendivil Aldama, partner at the Spanish law firm Gomez-Acebo & Pombo, became the second woman in history to lead the International Bar Association (IBA) for the term 2023/2024, after two decades. Her work as President is currently focusing on the defense of gender equality in the legal field, as well as in Artificial Intelligence and ESG. The Legal Industry Reviews had the pleasure of asking a few questions to Arpón de Mendivil, on the occasion of the IBA's Annual Conference 2023 held in Paris.

What milestones in your career have been key to your position as IBA president? How do they impact your plans for the institution?

Reaching the IBA presidency is a long-distance race, I runned it in parallel with my career as a private practitioner in Gómez-Acebo & Pombo. I would say that every step adds up to crossing the line. My path through the different phases of my double career has allowed me, on the one hand, to have an in-depth knowledge of our legal profession, of our challenges as lawyers, and, on the other hand, to get to know the IBA very well, becoming aware of its great virtues

and of its areas for improvement. I thus gained a clear perspective of the objectives of my mandate.

You are the first woman to hold the presidency of the IBA in 20 years, and the second in its history. What does it mean for the legal sector? What does it mean to you personally and professionally?

This is yet an additional example of something which should be common knowledge and that still needs to happen more often: that women can occupy positions of power and leadership when we add to our capacity the effort to do so, commitment and passion. Isn't that the case for men too?

Presiding the largest world association of legal practitioners is such a privilege as well as a great responsibility, both personally and professionally. I am particularly excited by the possibility of contributing with improvements to our profession and to society through the IBA. Logically, the presidency requires sacrifices and renounces, all vital options do so; in this case, I trust the reward may be high.

Similarly, how will the IBA address the role of women in the legal field? What measures have already been taken since you assumed the presidency? Are there any action plans that you can mention to us?

One of the five key areas of the IBA strategic plan during my mandate in promoting gender equality at senior positions in the legal profession. That requires continued work, providing constant visibility on the matter as, on average, we are just achieving 30% female representation at the top.

My efforts are addressed in that direction. I will give some examples.

We are developing an ambitious nine-year global project entitled **50:50 by 2030**: a longitudinal field study into gender disparity in law, designed to uncover and address the root causes of the lack of gender parity at the most senior levels of the legal profession. We are gathering the data on the number of female lawyers at the top, as well as the information about the measures in place in the relevant jurisdictions to promote gender balance. We already have the interim results for countries such as England and Wales, Uganda, Nigeria, Chile, the Netherlands, Spain. We shall present this report at our next annual Conference in México DF 2024. I am confident that this will become a very useful guide on what are the measures that work best and thus, should be followed.

We celebrated the first **IBA Women's Day** last March 8, a success story which brought together virtually female leaders' lawyers from over 30 jurisdictions and then, each leader organised a session with younger associates at their respective jurisdiction.

To me the greatest IBA contribution in the field has been the **IBA Presidential Showcase in Paris dedicated to Female Leadership at Law firms**. An extraordinary session where we benefited from the insights of six brilliant female leaders of their top international or local firms- Farmida Bi, Senior Partner, Norton Rose (UK), Aedamar Comiskey, Senior Partner and Chair, Linklaters LLP (UK), Marie-Aimée De Dampierre, Chair, Hogan Lovells (France), Maria-Pia Hope, CEO and Managing Partner, Vinge, Stockholm (Sweden), Paula Surerus, Managing Partner, Veirano Advogados (Brazil) and Linda Yang, Executive Chairwoman of Global Board at Yingke Law Firm (China). In addition, the Chairs of the two main IBA



divisions, Carola Van den Bruinshorst (Legal Practice Division, Loyens and Loeff) and Myra Garret (Public and Professional Interest Division, William Fry), acted as moderators.

To me, facts are the most powerful message and at the showcase we had meaningful examples on how females perform at the top. The exchange of views was rich on how more stereotype feminine traits – reaching consensus, inclusiveness, flexibility – are becoming a general trend in leadership, without losing sight of the capacity of these female leaders to also take the hard decisions and the tough work. The audience was electrified. We shall repeat.

The IBA, among the priorities of the presidency, highlights the impact of the legal profession on society. What has been that impact throughout history? In what ways will your presidency stand out while fulfilling that priority?

Throughout history, lawyers have been a pillar of society. Abraham Lincoln, Nelson Mandela, Mahatma Gandhi or Ruth Bader Ginsburg are evocative examples. I often say that the Law is the architecture that sustains the world and that lawyers are of essence for its application in all spheres - private, public, business. Lawyers allow for the correct functioning of justice, which is at the centre of the rule of law. However, the relevant contribution of lawyers to society is often

underscored and the perception of the profession is relatively more negative than that of other professions. Therefore, another of the five key areas of the IBA strategic plan during my mandate consists in explaining the contribution of lawyers to society.

We are doing so with what shall be the first report ever measuring the impact of the legal profession in society, determining the levers to maximise such effects (the Impact Report). For such an ambitious and relevant project, the IBA counts with the quantitative analysis of McKinsey. We shall present the Impact Report during the first quarter 2024. This report will provide data on the direct and indirect impact as well as on the social impact in terms of contribution to peace, justice, institutional collaboration, equality and inclusion, sustainability, health, and well-being.

The IBA Impact Report will allow all legal stakeholders, institutions, and society as a whole, attaining a realistic view of the legal profession and of its need for the correct functioning of society. Moreover, at a time when clients, especially corporates, are increasingly aware of their own socioeconomic impact and expect their business partners to both support and follow through, and when the new generations increasingly want to work for organisations with a positive social impact, the Impact Report will be a great tool to give response to these challenges.





“Lawyers are the instruments which allow the rule of law to be effective, and the rule of law, on its turn, allows human rights being protected and democracies operating at their best”.

In this context, what do you think is the role of lawyers today? What impact can the legal community have on the events that are setting the agenda nowadays?

Lawyers should not forget that their role is essential for the well-functioning of society, of business, of justice. Lawyers are the instruments which allow the rule of law to be effective, and the rule of law, on its turn, allows human rights being protected and democracies operating at their best.

Several trends and events are setting the agenda, I can proudly say that the IBA priorities 23/24 cover all of them. Just to recall those 5 priorities are: highlighting the contribution of the legal profession to society, gender equality at the top of the legal profession, AI, ESG and young lawyers; and the five of them fall under the umbrella of the promotion of the rule of Law.

I refer to the main trends and the IBA work on each.

Geopolitical instability and polarisation, particularly as regards to breaches of international public law such and of international humanitarian law (Russia's invasion of Ukraine, the terrible Hamas/Israeli conflict) are receiving special attention by the IBA. Those are dramatic violations of the Law. Unfortunately, there are many other subtle erosions to the rule of law, in terms of the independence of the judiciary, the independence of the legal profession, freedom of expression... The IBA activity regarding the rule of law and human rights protections is unceasing, through the Rule of Law Forum and the IBA Human Rights Institute. For example, the IBA is supporting Ukraine on domestic trials related to war crimes according to international standards of fairness and impartiality. For that purpose, the IBA has signed collaboration agreements with the Ministry of Justice, the Prosecutor General Office, and the Ministry of Defence.

Technology, e.g., digitisation and AI is another of the five key areas of my mandate. AI is clearly becoming

the number one challenge for all of us and legal sector has such a significant role, like in any other developments. We announced the AI & IBA Project on 31 October during the Paris Conference. This covers four areas of work: first, the determination of common principles to apply to AI regulation, to make AI intelligible and ensure alignment, that it is explainable, scope of liability... Second, a report on the impact of AI in the legal profession and issuing guidelines on deontological issues especially applicable to the legal profession. An additional part consists in educating the legal sector on the use of AI, ensuring that we are not left behind this major development.

Increased demands on **social impact and sustainability**, where, we have the ESG @IBA Project derived from another of the five Presidential priorities looking at how can the legal profession contribute to clarifying the cloud of confusion regarding corporate liabilities on this area, how to comply and how to take proactive measures which will benefit all of us.

Finally, the **new generations of lawyers** (which conforms the fifth priority of my mandate) and I would say, all generations, increasingly seek purpose in their careers and want to work for organisations they feel proud of. The IBA developed the toolkit on ESG compliance for Law Firms addressing these issues. Also, the IBA is developing an Executive Programme for young lawyers covering common fields of international business law as well as soft skills, ensuring that young lawyers may develop successful careers in this challenging environment.

In conclusion, what message would you like to deliver to the international legal community?

We, the members of the international legal community, must have our sights set in that our contribution is significant acting accordingly and in a united manner.

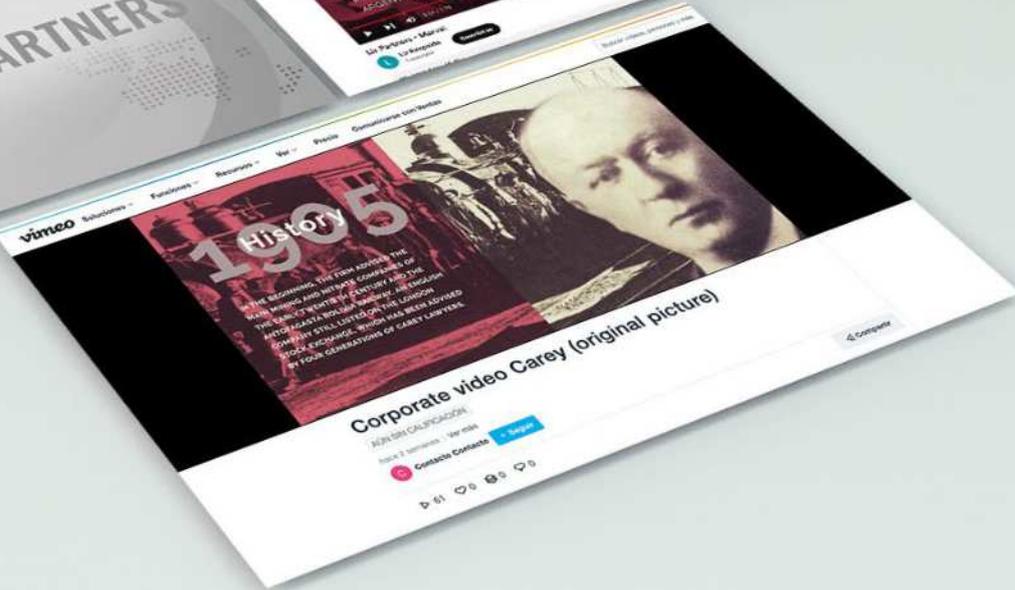
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Yohsuke Higashi:

“Today, Japan may be unique in several aspects (...) because of the geopolitical situation, some international investors are adjusting investment destination in the Asia-Pacific region, and it sometimes leads them to look to Japan”.

Yohsuke Higashi is a partner at Mori Hamada & Matsumoto. His main practice areas include M&A, private equity and venture capital transactions, but he is also the leading partner in the foreign investment regulations practice and has rare expertise in advising international clients on the Japanese FDI regulations under the FEFTA. With his expertise in M&A and FDI combined, he has successfully navigated his international clients on acquisition and joint venture transactions in Japan and negotiating against Japanese companies, including major listed companies.

In 2023, Yohsuke Higashi, partner at Mori Hamada & Matsumoto, became Corporate M&A Law Committee Liaison Officer, Asia Pacific Regional Forum at the International Bar Association (IBA). The Legal Industry Reviews: Japan had the pleasure of talking with him. In his interview, he discusses the role and significance of the IBA in the Asia-Pacific legal scene. Yohsuke Higashi also addresses the geopolitical issues and the importance of international collaboration among lawyers.

What is the role of the IBA in the Asia-Pacific regional legal scene? How about Japan’s legal community? In that sense, and according to your views: how important is the Asia-Pacific Regional Forum for the association?

Law firms and lawyers in the Asia-Pacific region, including Japan, actively participate in the activities of the IBA. For example, after COVID-19 hiatus, in 2023, Tokyo hosted Asia-based International Financial

Law Conference in March and Asia Pacific Mergers & Acquisitions Conference in July, which enjoyed a great turnout from Asia-Pacific region and other parts of the world. This is the testament of how lawyers are eager to learn the latest topics in the practice areas as well as to stay connected with the colleagues in the same region or practice areas.

The Asia Pacific Regional Forum provided support to the host committees for both of these events as it would typically do for events held in the Asia-Pacific region, and I hope that the forum's support contributes to the success of the events.

In addition, the Asia Pacific Regional Forum holds Asia Pacific Regional Forum Biennial Conferences every two years, and the latest conference was held in February 2023. The Biennial Conference presents a great opportunity for lawyers practicing or interested in the Asia Pacific region to connect with each other in a more intimate setting than the IBA Annual Conference, and to discuss the most relevant topics to the region.

The Asia-Pacific has transformed through the years into a leading region in terms of economic growth and technology development. How does this affect the IBA Asia Pacific Regional Forum's agenda? What are the key priorities of the agenda these days?

The new technology development seems to have affected the subjects of conference sessions hosted by the Asia Pacific Regional Forum. The main session of the Forum at the IBA Annual Conference in October 2023 was "the Future of Mobility", where the panel discussed the latest legal landscape surrounding autonomous driving and passenger drones. The sessions in the Biennial Conference covered cutting edge subjects including digital assets, genetic information, biometric data and facial recognition.

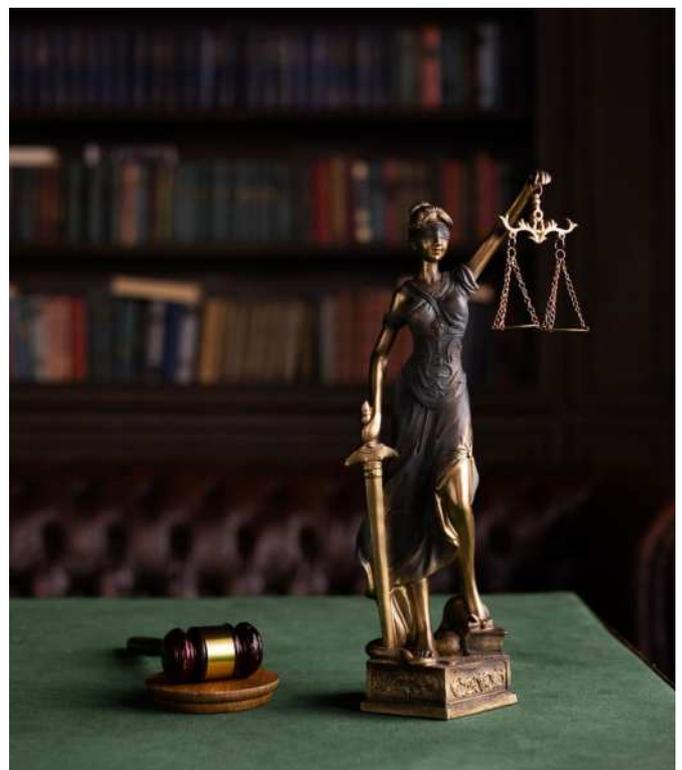
On the other hand, technology development accompanies rivalry between governments against a backdrop of heightened geopolitical tension across the globe. As such, I feel that the interest in

the foreign direct investment regulations, economic sanctions, export controls and other national security agenda are becoming more and more relevant to the members of the Forum.

Tell us a little bit about your position at the Committee, why is it essential to have a Liaison Officer? What are your goals in the position, and how do you make this job your own? (Think about a personal brand or features).

I am a new officer who became the Corporate M&A Law Committee Liaison Officer of the Forum since this year and still in a learning process.

As an M&A practitioner, the role as the Corporate M&A Law Committee Liaison Officer perfectly suits me because it requires me to closely work with the Corporate M&A Law Committee in planning M&A-related events or projects in the Asia-Pacific region. Fortunately, the M&A events tend to attract many participants, as evidenced by the Asia Pacific Mergers & Acquisitions Conference in July 2023, and there will be many more events to come in the region.





“The low interest rate also led to depreciation of Japanese yen (...) it might have attracted further interest of international investors in acquisition opportunities in Japan”.

It always excites me to exchange opinions with colleagues in the same region and practice area on latest legal topics such as shareholder activism and foreign direct investment regulations, and I hope I can support events that are as interesting for attendees during my term of office.

Recently, I also started leading the project at the Forum to update the Doing Business in Asia Pacific guidebook, which was published in 2020, with the aim to publish its 2nd edition in the coming year. The period since the first edition overlaps with the COVID-19 pandemic, and we indeed saw many legal developments relating to supply chain and geopolitical issues. The 2nd edition will be composed of contributions from members of the Forum and will reflect the changes in laws and regulations since the first edition. I expect to closely work with the members of the Forum and deepen my involvement in the activities of the Forum during the process.

As a professional who specializes in M&A and Venture Capitals, what is your vision of these practice areas in the Asia-Pacific region, specially in the Japanese market? What is their relevance, and what are the current trends?

Today, Japan may be unique in several aspects. Firstly, Japan may be the only country where the central bank maintains monetary easing and negative interest rate policy. As a result, acquisition financing is still readily available to private equity investors in Japan, and we have seen continued private equity activities in 2023 unlike many other jurisdictions.

The low interest rate also led to depreciation of Japanese yen, which made the price of Japanese assets cheaper for international investors. It might have attracted further interest of international investors in acquisition opportunities in Japan, especially in real properties and renewable energy projects.

Further, because of the geopolitical situation, some international investors are adjusting investment destination in the Asia-Pacific region, and it sometimes leads them to look to Japan.

Because of these factors, I am optimistic that the Japanese market will continue to be of increased importance and interest for international investors in the coming years.

You are a specialist in foreign investment regulations, and your experience with foreign clients has been broadly highlighted. Could you tell us some key points of the Japanese market, and what challenges it brings for foreign investors? What is your diagnosis of Japanese regulations regarding foreign investment?

Japan has increased focus on risks to national security caused by foreign direct investment, and underwent a major overhaul of the Foreign Exchange and Foreign Trade Act (the “FEFTA”), the statute governing foreign direct investment, in 2020.

Under the FEFTA, if a foreign investor conducts a covered transaction in a business sector designated as sensitive to national security, the foreign investor must make a prior notification to the government and go

through their screening prior to the consummation of the transaction. Covered transactions include not only control transactions, but also minority investments. The designated business sectors are rather wide and cover the software and information processing services (e.g., SaaS business) in general. As such, a minority investment by a venture capital fund is often subject to the prior notification and screening.

After the filing of the prior notification, it is usual to receive a few rounds of inquiries from the screening authority before clearance. While it is very rare for the authority to formerly block a transaction (only one case in the history), the foreign investor sometimes voluntarily gives up a transaction based on the reaction of the authority in the screening process, and is increasingly requested to commit to mitigation conditions as part of clearance.

As such, while Japan still welcomes foreign investment, careful analysis of the target industry and advice of experienced counsel are becoming important.

In addition, in around May 2024, Japan will implement a new screening framework relating to service

providers in critical infrastructure, including utility, transportation, telecommunication, broadcast, and financial services. The new framework will oblige the operator of the critical infrastructure to disclose details of all the service providers in the supply chain and go through a prior screening. This would prompt the operator to impose relevant contractual obligations on the service providers. The operators are starting to prepare for this new framework, and I expect to see impact on foreign service providers anytime now. The time until the implementation is limited, and prompt actions are required.

What are your expectations for the regional legal scene in the upcoming years?

Geopolitical issues may not go away immediately, but the countries in the Asia-Pacific region are already too closely reliant on each other, and the clients require reliable advice in multiple jurisdictions to navigate the complex web of laws and regulations.

Amid the global instability, it is ever more important for the lawyers, who speak the same language of law, to be closely connected and exchange opinions.



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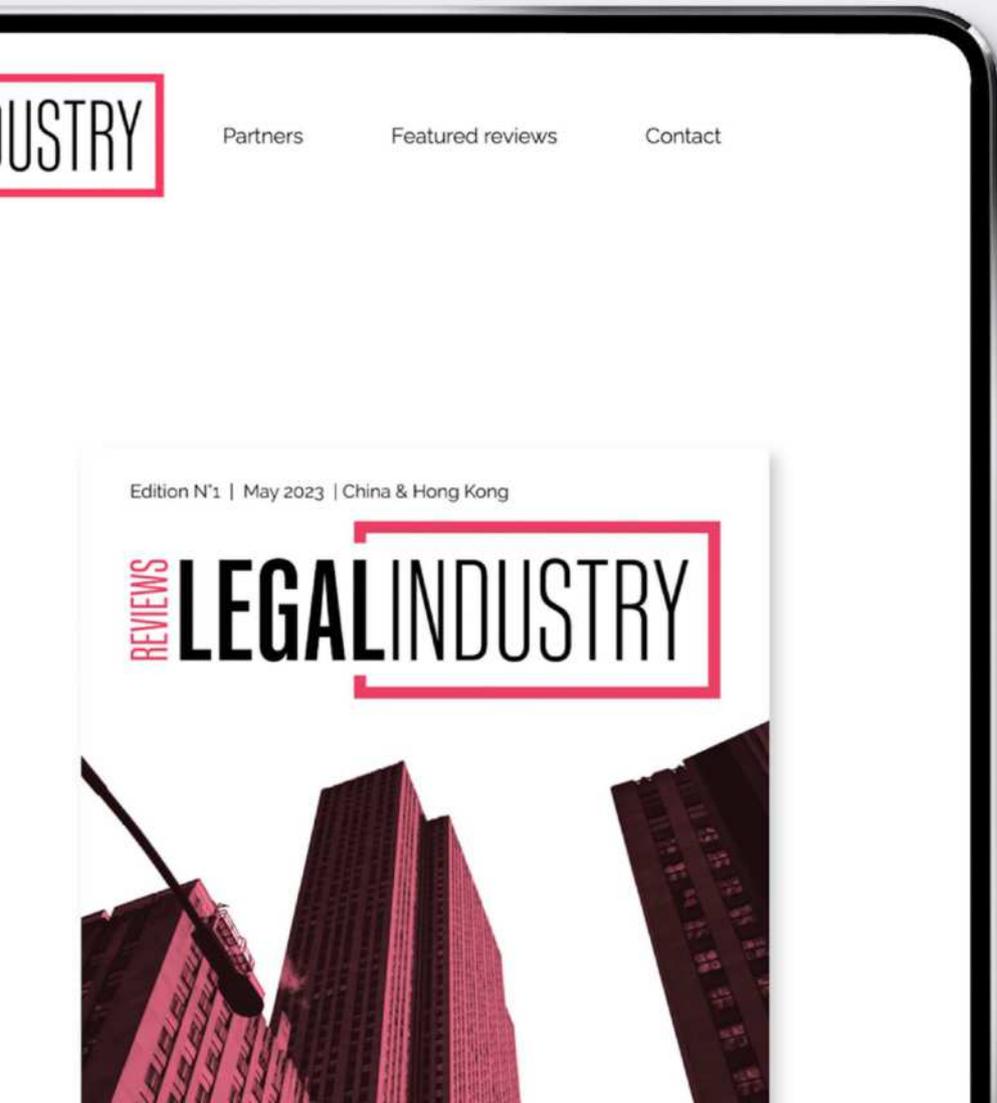
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Noppramart Thammateeradaycho:

“International arbitration necessitates more than just a profound understanding of foreign laws; it also entails cultivating strong ties with the global community of international arbitrators and arbitration practitioners”.

Partner at Tilleke & Gibbins International Ltd, with over 20 years of experience in the fields of litigation and arbitration, particularly within the transportation and shipping industry. She holds a prominent presence beyond the borders of Thailand, representing clients in various Asian countries and navigating diverse arbitration rules. Noppramart has excelled in handling intricate commercial arbitrations and holds esteemed positions within international panels. She is also the exclusive accredited Mediator representing Thailand at the Singapore International Mediation Institute.

In the realm of transportation and shipping, Noppramart is highly esteemed, serving a diverse clientele with her expertise in maritime law. Her areas of specialization encompass cargo claims, charterparties, marine insurance, ship arrests, and the resolution of issues related to liquid cargo contamination. She stands as a trusted advisor for international shipping clients in need of timely and effective solutions.

A report on gender diversity in Japan found that, the national average male-to-female ratio for Japan law firms is 84 to 16 percent. And among the 18 Asian countries analyzed by [Legal Media 360](#) in 2023, Japan has the second-highest gender imbalance in favor of men. To further explore this and the legal practice in the Asia Pacific region, we talk with Noppramart Thammateeradaycho, partner at Tilleke & Gibbins and Vice Chair of the Asia Pacific Arbitration Group at the International Bar Association (IBA) since 2023.

Tell us about the work of the Asia Pacific Arbitration Group. What are its main goals, and how does it work to achieve them? How would you describe your role in the group?

The Asia Pacific Forum's primary objective is to establish connections with legal experts both within and outside the region who specialize in various areas of law. It is also committed to staying updated on the latest legal developments in the region.

Within the APAC Group, these objectives have been accomplished through the dedicated efforts of committee members who voluntarily take on different projects, thereby fulfilling our Group's mission. In the capacity of Vice Chair of the APAC Group in 2023, I have had the privilege of collaborating with fellow APAC Committee members on numerous projects. This has included my involvement in an initiative between the IBA-JIIART joint conference, aimed at promoting investment treaty arbitration.

I also had the honor of serving as a session chair for the 2nd IBA Litigation and ADR Symposium, which delved into the evolving landscape of litigation and arbitration in India. Furthermore, I had the opportunity to participate as a panelist in the IBA's session on "A review of emerging themes in ADR (2023 version)" during the Singapore Convention 2023. Additionally, I have been actively engaged in coordinating Cambodian legal networks to enhance the promotion of IBA activities scheduled for December 2023. I take great pride in considering myself a proactive advocate for IBA's APAC Group.

How relevant do you think it is to build strong relationships between international arbitrators from different countries? How important is the role of the IBA in those relations?

In my view, international arbitration necessitates more than just a profound understanding of foreign laws; it also entails cultivating strong ties with the global community of international arbitrators and arbitration practitioners. This approach enables us to gain insights into the cultural and historical underpinnings of diverse legal systems, thereby enhancing our legal and cultural acumen simultaneously. The International Bar Association (IBA) has played a pivotal role as a bridge, connecting legal communities and professionals from around the world, fostering an inclusive environment that transcends nationality, ethnicity, gender, age, beliefs, and other differences. This has contributed to the collaborative exchange of knowledge and the creation of a supportive atmosphere for all involved.

Regarding the Asia Pacific Region, what are the trends in the arbitration area?

Several key trends were shaping the arbitration landscape in the Asia Pacific region, and please consider the following trend below:

- Investment Treaty Arbitration: The Asia Pacific region was witnessing an increase in investment treaty arbitration cases, particularly involving disputes between foreign investors and host states. This was due to a rise in foreign investments in the region.
- AI: The adoption of technology in arbitration proceedings was on the rise. Virtual hearings, online case management, and e-discovery tools were becoming more common, especially in response to the COVID-19 pandemic.
- Environmental and Energy Arbitration: The incidence of disputes concerning environmental and energy matters was on the rise, mirroring the region's heightened emphasis on sustainability and the shift toward renewable energy sources. This trend can be attributed to the increasing prominence of sustainability goals, the energy transition, and the pursuit of carbon neutrality.



“AI expedites the document review process by swiftly analyzing and categorizing (...) contracts, emails, and evidentiary materials”.

What are your thoughts on arbitration regulations in the region? Do you think that there are changes needed?

Yes, there are some changes are needed on arbitration laws of the region. Whether changes are needed in arbitration regulations depends on several factors, including:

- The needs of the parties involved: The parties using arbitration may have specific requirements or concerns that need to be addressed in the regulations.
- The level of expertise of arbitrators: Ensuring that arbitrators have the necessary qualifications and experience is crucial to maintaining the credibility and effectiveness of the arbitration process.
- Enforcement of awards: The enforceability of arbitral awards is a key consideration, as it determines the practical effectiveness of arbitration as a dispute resolution mechanism. Each country would interpret the public policy differently. This leads to consistency of the results of enforcement of awards in a domestic court.
- Cost and efficiency: Regulations should strike a balance between providing a fair and efficient process and avoiding excessive costs. In many countries, individuals and/or SME businesses would not be able to pursue their claim via arbitration due to the considerable costs.
- Transparency and fairness: Regulations should promote transparency and ensure that the arbitration process is fair and impartial. The arbitral award should be published or accessible but with the blinding names of parties.

- Compatibility with international standards: Many regions seek to harmonize their arbitration regulations with international standards, such as the United Nations Commission on International Trade Law (UNCITRAL) Model Law, to enhance their attractiveness for international business disputes.

In which way do you think that new technologies, such as Artificial Intelligence, are changing the way arbitration is being developed?

Artificial Intelligence (AI) and other emerging technologies are undeniably reshaping the landscape of arbitration, introducing transformative capabilities. The incorporation of AI into arbitration is evident in several key areas:

- Document Review and Management: AI expedites the document review process by swiftly analyzing and categorizing vast document volumes, including contracts, emails, and evidentiary materials. This streamlines the discovery phase, resulting in time and cost savings.
- Predictive Analytics: AI-driven predictive analytics empower arbitrators and legal professionals to evaluate case outcomes based on historical data. This aids in making well-informed decisions regarding case merits, potential settlements, and projected awards.
- Legal Research: AI-driven tools streamline legal research, enabling lawyers and arbitrators to rapidly access pertinent case law and legal precedents, vital components in arbitration proceedings.

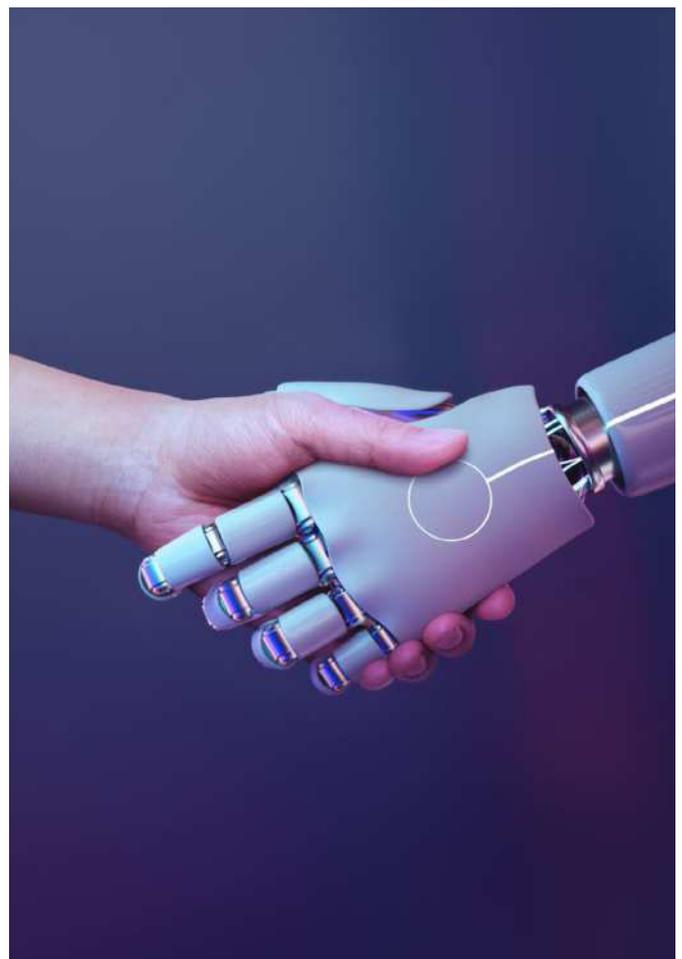
- **E-discovery:** AI enhances the efficiency and precision of e-discovery processes by identifying and categorizing electronically stored information (ESI) relevant to disputes.
- **Virtual Hearings:** With advancements in videoconferencing and virtual meeting technologies, AI facilitates remote arbitration hearings, promoting seamless participation from diverse locations for parties, witnesses, and arbitrators.
- **Translation and Language Processing:** AI simplifies language translation and processing, bridging language gaps in disputes involving parties from diverse linguistic backgrounds. This contributes to the accessibility of arbitration on a global scale.
- **Case Management:** AI enhances the management of arbitration cases by automating scheduling, deadline tracking, and notifications, ensuring organizational efficiency.
- **Online Dispute Resolution (ODR):** ODR platforms, often AI-driven, are increasingly utilized to resolve low-value disputes online, providing efficient and cost-effective solutions, obviating the need for in-person arbitration.
- **Data Security and Privacy:** Given the sensitive and confidential nature of arbitration, AI is deployed to bolster data security and privacy through encryption, access controls, and data protection measures.
- **Arbitrator Selection:** AI aids in the selection of suitable arbitrators based on experience, expertise, and potential conflicts of interest, ensuring impartiality.

While AI promises enhanced efficiency, cost-effectiveness, and data analysis, it concurrently raises pertinent concerns related to transparency, fairness, and ethical considerations. Striking the right balance is pivotal to ensure that AI upholds the credibility and integrity of arbitration. Importantly, AI should complement human decision-making, especially in

intricate legal matters where human judgment and expertise remain indispensable. As AI continues to evolve, it is poised to play an increasingly prominent role in the field of arbitration.

Since you are an expert in the maritime and shipping industry, how relevant is arbitration in those matters? What recommendations would you give to other lawyers that are working in those industries?

The realm of shipping and maritime law represents a distinctive niche in the legal landscape, one that traces its roots far back in history, extending beyond even the tragic sinking of the RMS Titanic. Within this domain, maritime arbitration has stood as an invaluable mechanism for resolving disputes within the shipping and maritime industry.



It's worth emphasizing that a substantial portion of the world's goods, approximately 80-90%, finds its passage across the globe via the sea. Shipping, as a mode of transportation, assumes a pivotal role in the intricate web of global trade and the movement of commodities. In essence, it stands as one of the cornerstones of international commerce. It is important to acknowledge that these percentages may exhibit minor fluctuations over time due to shifts in global trade patterns and the overarching expansion of international commerce. Consequently, maritime arbitration continues to preside as a vast arena for resolving disputes.

Moreover, it is noteworthy that many maritime lawyers, including myself, extend their arbitration practice to encompass a broader spectrum of issues. This includes the adept handling of disputes in the realms of energy, insurance, infrastructure construction, and various other facets of transportation. The synergy lies in the fact that the practice of shipping and maritime law inherently connects us to these diverse areas of legal expertise, facilitating a holistic approach to dispute resolution.

In summation, the practice of shipping and maritime law, intertwined with the vital recourse of maritime arbitration, represents an enduring and indispensable dimension of the legal profession, acting as a linchpin for international trade, while concurrently serving as a gateway to a broader array of legal domains.

Finally, what are your thoughts on women's role both in the arbitration scene and the legal field in the Asia Pacific region? What are your expectations for the future on that matter?

I would like to share some insights into the role of women in the arbitration scene and the legal field in the Asia Pacific region.

- Progress to Date: Remarkable strides have been achieved by women within the legal arena and arbitration sector in the Asia Pacific region. Numerous women have garnered success as arbitrators, attorneys, and legal experts, thereby fostering the advancement of the profession. Drawing from my personal experience of collaborating with clients and colleagues in various Asian nations such as Cambodia, Malaysia, Laos,





“The progress of women in the arbitration scene and the legal field will depend on a combination of efforts by individuals, organizations, and governments to promote gender equality”.

the Philippines, Singapore, Vietnam, and Thailand, it's notable that law schools in these countries have consistently witnessed a higher percentage of female law graduates compared to their male counterparts, often exceeding the 20%-30% range. A standout example lies in Thailand, where both Chulalongkorn University and Thammasat University consistently admit approximately 60-70% female law students each year, a trend that has remained consistent since my own days as a law student in 1994.

Despite these promising statistics, the representation of women within the legal profession exhibits certain disparities. In Thailand, while approximately 40% of legal professionals are female, the situation takes a more challenging turn when it comes to active female arbitrators. Presently, the number of female arbitrators barely surpasses 15, signifying a noteworthy increase from the past when the count was limited to fewer than five female arbitrators.

- **Challenges:** However, gender disparities and challenges persist in the legal and arbitration sectors, as they do in many parts of the world. These challenges can include gender bias, unequal opportunities, and a lack of representation at senior levels.
- **Increased Representation:** The expectation is that there will be increased representation of women in the arbitration scene and the legal field in the Asia Pacific region. This may be driven by efforts to promote diversity and inclusion and by recognizing the importance of diverse perspectives in dispute resolution.

- **Leadership Role:** Over time, more women are expected to take on leadership roles, including serving as lead counsel, arbitrators, and judges. This will contribute to a more balanced and equitable legal profession and arbitration community.

- **Advocacy and Networking:** Women's organizations such as Arbitral Women and networks that support women in law and arbitration are likely to grow in influence. These groups can be instrumental in promoting the interests and rights of women in the profession.

- **Institutional Changes:** Arbitral institutions and legal firms are placing a growing emphasis on diversity and are actively considering the adoption of policies and initiatives to promote a more equitable presence of women within both arbitration cases and the legal profession. As part of my commitment to this cause, I have been hosting webinars in collaboration with prominent Thai arbitration institutes every International Women's Day for the past three years. These webinars serve as a platform for inviting female arbitrators and legal counsels to engage in discussions and knowledge sharing on the empowerment of women in the field of arbitration practice.

The progress of women in the arbitration scene and the legal field will depend on a combination of efforts by individuals, organizations, and governments to promote gender equality and provide equal opportunities. The expectation is that, over time, the Asia Pacific region, like the rest of the world, will continue to move toward greater gender equality and inclusivity in these professions.

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Alkis Kotzampasis

Alkis is an established recruiter with PageGroup in Japan. Initially, he built the legal & compliance recruitment team of Michael Page and during this effort, he received regional top performer awards in 2021 and 2022. Since April 2023, Alkis has transitioned internally to Page Executive. Alkis' practice focuses both on law firms and in-house. He is currently working with top tier international firms to support Partner hiring and with global corporates to assist with Legal Compliance and Gov't Affairs Japan hiring.

Alkis grew up in Athens, Greece. He studied in the UK, MA in International Relations in Durham University and BA in Economics & Politics in Lancaster University. He then moved on to the Council of Europe in Strasbourg for an internship, worked for a year in Athens, fulfilled his military obligation and came to Japan in January 2020.

Legal Market in Japan

Introduction

The legal world in Japan is often misinterpreted. Its perplexed dynamics and unique cultural nuances make it difficult to navigate even for the most experienced professionals. On top of that, globally we are experiencing a period of unprecedented change with the rise of AI and its gradual implementation in the legal world. A successful lawyer, has not only to be a legal expert but also has to master the art of communication. Building connections

and developing the unique ability to operate between fascinating cultures with rich history is necessary to succeed here. This article will try to untangle and discover recent trends, dynamics, and factors which aid success in this highly competitive landscape.

Communication Skills in Law Firms and In-House

Succeeding in a legal career does not necessarily come down to the best legal skills but to having a holistic mindset, combining

commercial ability, sharp thinking, and intrinsic cultural understanding. At first sight, private practice roles compared to in-house roles seem miles apart. Challenging working hours, high salaries, and intense client pressure on one side; work-life-balance, reasonable remuneration and internal stakeholders on the other side. However, on careful scrutiny, we can realise that the skills required to succeed are nearly identical.

In the case of law firms, getting the legal work done may be enough in the junior years. Nonetheless, as an Associate advances, the majority of tasks are significantly influenced by adept communication skills. The ability to create connections, generate rapport, gain trust, create, and manage new clients are prerequisites for success. A law firm Partner is as much a salesperson as a stock market trader, as a recruiter, as a real estate agent.

In the realm of in-house operation, success has analogous factors. The landscape slightly transforms, with stakeholders evolving from external clients to individuals already entrenched within the business. Compared to law firms where providing strictly the letter of the law is

a key task, judgment calls in-house are often needed to balance between the company's business needs and legal risk. A lawyer, having a deep understanding of both, is likely the best person for the job. Communication skills, come into play when needing to explain such situations to the C-Suite and advise them on the course of action, on how to call the shots. Becoming part of the decision rather than just the messenger of the legal side separates average performers from excellent performers.

How to Adapt to working in Japan

The above stands true in any country and any business segment. Living and working in Japan, creates an additional dimension. Cultures with different sets of rules, unique values and history interact with each, building a unique dynamic in the multicultural city of Tokyo. Mutual respect and understanding are fundamental for success in any role in this modern market. Acting either as a Japanese representative in a foreign organization or as an international representative in a Japanese organization, adaptability is a key skill which comes into play.





“What will be difficult to replace, is the human touch, the nuanced delivery of information, the trust humans build with one another”.

There are multiple examples of business situations where such adaptability skills are called upon. Instances such as negotiating for terms, managing offers, revealing, or concealing information, dealing with mistakes. A minor misunderstanding or misstep in any of the above may mean the entire deal is off the table.

On one hand, building trust is integral to achieving any form of business success in Japan. Conversely, directness is essential for effective communication with many Western stakeholders. Neither of these attributes comes naturally to individuals from different cultures. Numerous instances exist where cultural disparities may appear to render effective interaction challenging. Only a select few can acquire these skills during their upbringing or through formal study, unless they are nurtured in a bicultural environment. Instead, these aptitudes are cultivated through practical experience. Living in such situations and progressively fostering comprehension of the opposing perspective is the sole path to seamlessly integrate and conclude business transactions with a notable success rate. The learning process can be optimized by expressing curiosity, exercising patience and having confidence in experienced senior members who possess an understanding of the diverse culture. Second opportunities are infrequent and rebuilding trust proves challenging. Swift adaptation to the nuances of another culture emerges as a pertinent factor for achieving business success.

Impact on Recruitment

Thus far, we have demonstrated how effective communication and adaptability can shape the trajectory of a successful career. The next step is to explore how they influence the hiring process on both fronts – for hiring managers and candidates alike. In a highly competitive market with a limited bilingual candidate pool, hiring managers face a choice on which factors to prioritize. Such factors may include technical skills (i.e. bar admission), education, industry background, salary, years of experience. Communication and adaptability would fall under the criterion of soft skills. Achieving complete satisfaction with a hire across all the mentioned factors is an ideal scenario, which rarely occurs. Based on my experience, junior hiring managers or those still in the process of developing their comprehension of the local market tend to prioritize technical skills and industry background above all else. However, this approach leaves ample room for error, as even the most exceptional lawyer may face challenges in the wrong work environment. It is common for a working relationship to not succeed if the company style does not align with the candidate's personal communication style.

This situation poses challenges for both the company, which may perceive a lack of value for their investment, and the candidate, who may struggle to perform at their best in such an environment. Certainly, different work

environments suit different people; hence, neither side is necessarily at fault. Therefore, seasoned hiring managers often leverage their experience by placing significant emphasis on screening for soft skills. They may even overlook technical disadvantages if they perceive the candidate as the right cultural fit. Effective communication holds substantial importance in this regard and can strongly influence the hiring decision.

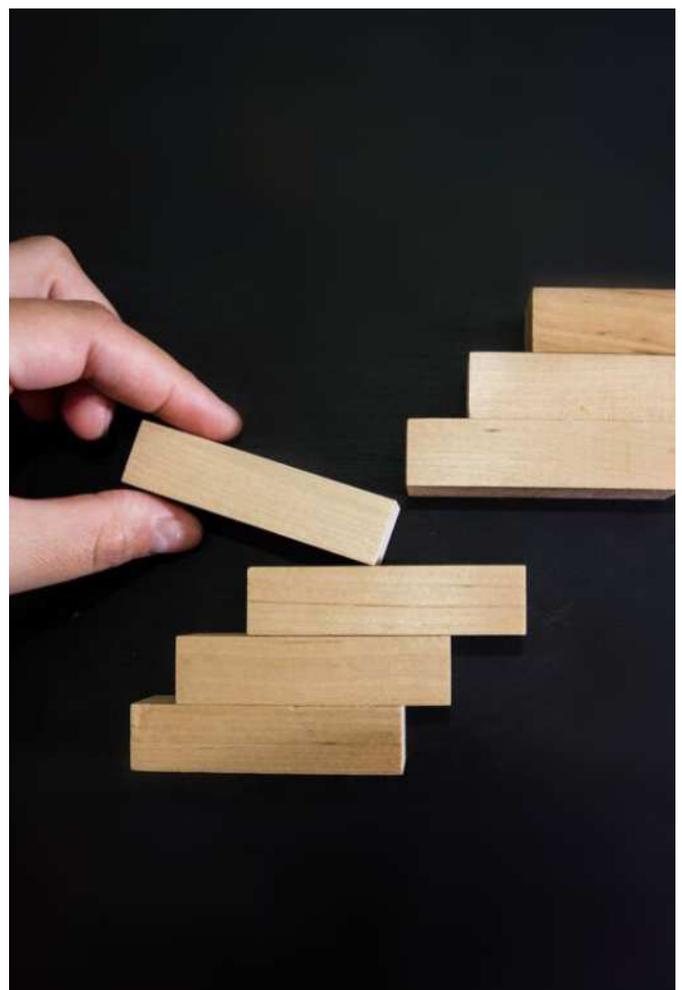
The above observation provides an excellent roadmap on how candidates can be best prepared for the current job market. Mastering the technical aspects of law and securing good education is the first step. Developing their own communication style and understanding how to interact in business efficiently is the second step. Embedding in the local culture and navigating regional nuances is the third step. All of these steps are crucial, as they complement each other in building a well-rounded foundation for success. They are skills essential for navigating complex situations and securing a good position. A good lawyer cannot do without excellent training but also cannot do without being able to get their ideas across the table efficiently and vice versa.

Interpersonal relationships and effective delivery are aspects that technology will likely find challenging to replace.

Conclusion

We have examined what are key skills to build a successful legal career in Japan. It is typical to become engrossed in tangible goals like pursuing the next degree or achieving bar admission. Similarly, finding comfort is natural when one possesses a solid technical

foundation. Occasionally, this inclination leads to a tendency to disregard or overlook the significance of human relationships. As we step into 2024, many technical processes tend to become automated, obsolete, or significantly assisted by technology. What will be difficult to replace, is the human touch, the nuanced delivery of information, the trust humans build with one another. More often than not, this trust is what propels a contract over the line, fosters a successful client relationship, and brings joy to the workplace. Therefore, one can conclude that investing in soft skills and mastering a productive communication style is worthwhile and yields a high return on investment.



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Tomoko Kondo:

“Problem-solving mind is requisite, and an in-house lawyer is expected to be a solution provider. Be diligent and always be curious about business and environment of your professional area”.

Having more than twenty-five years of experience as in-house legal counsel and including 10 years of experience in compliance. She achieved her career experience in high precision machinery manufacturing industry, such as Tokyo Keiki Inc and Nabtesco Corporation, global finance industry such as Lehman Brothers, Goldman Sachs, Shinsei Bank(LTCB), Citco and healthcare industry such as Arthrex and Edwards Lifesciences. Tomoko Kondo has twenty years of experience in team management, including as Head of Global Compliance and Deputy General Counsel of Global Legal. She had covered areas such as M&A, anti competition, anti-bribery, privacy, policy setting, negotiation, investigation, review & draft documents, corporate governance, risk management, litigation, shareholders meeting, training, company reorganization and corporate secretarial. Taking chair of working group of industry organization and selected as one of the General Counsel 500 Powerlist of Legal 500 Japan.

In this edition, we had the opportunity to talk with Tomoko Kondo, Head of Legal and Compliance at Arthrex Japan, who discusses the multifaceted role of in-house lawyers in a health industry company. She also comments on the opportunities for women in the Japanese legal sector.

Could you start by describing the legal team's role in a health industry company such as Arthrex?

I enjoy so much working as Legal. Our coverage is wide and exciting. We review and draft contracts and other necessary corporate documents and these are basic and standard role, but we also need to advise from many perspectives to support business

and corporate body itself. Health industry is a highly regulated industry, and we also have to comply with its unique but important rules and regulations. Thus, together with complying these rules, provide consulting service taking Privacy, Anti-competitions and other perspectives in to consideration is challenging but exciting.

Could you tell us about recent regulations or legal changes that have impacted the work of the legal team? How did the team face them?

There are several. One is update of Privacy law. We have to update internal rules, several processes and provide training to refresh their mind. Another



update was "Medical Device Law". Since it requested enterprise to establish wide corporate governance system, we have to set up many policies and internal institution to evaluate the system such as corporate governance committee. Under such circumstances, I understand most of the legal/compliance department faces the enhancement of scope and area of coverage but also lack of manpower or resource problem. We try to adapt digitalization/tool which are a lot available these days. During Covid-19, environment of our needs of corporate seal has been changed. We refresh the real needs of corporate seal and shift less use and digital signature. We see digitization and I see this trend more to go.

According to your experience and vision, what is the main role of the in-house lawyer in a company?

Firstly, we need to be professional but at the same time, be a good business partner. Unlike external counsel who provides service ad hoc basis, we are in the same boat and work as one team with this enterprise "going concern". We advise but also prepare strategic plan towards future of company for longer term together, create scheme even sometimes from legal perspective to contribute to healthy growth and achieve mission and purpose of the company.

What would you say is the most important skill an in-house lawyer should have or strengthen?

Problem-solving mind is requisite, and an in-house lawyer is expected to be a solution provider. They don't have to be able to cover all area but should pay attention what to come next especially for the company you serve. Thus, networking and keep good relationship with external counsel is also important. At the same time, be diligent and always be curious about business and environment of your professional area.

Recently, you have been recognized in the GC Powerlist Japan by The Legal 500. How does being a female lawyer in Japan impact your work or approach to the legal profession?

It was honored to be recognized, and I am so grateful with many people whom I have been associated with through my work. I see many best and brightest female legal professionals are around, but if I could be or take any of the role to inspire and also to be inspired, that would be great. I realized that in-house

legal professional are not that recognized yet, and I really want to express how fun and exciting job that in-house is. And the wind has been "for" this job now.

How would you describe the women's scenario in the Japanese legal industry?

If you are qualified, work at private practice, heading to Equity partner at big firm shall be good. You can be very strong professional in certain area. You can run independent small medium size boutique firm and work by yourself independently is also good. But if you do really like business, there is a way to enjoy being in-house as a part of big enterprise. Especially in Japan, legal department is good place to work normally since legal department should be one of the most ethical and compliant department. Your clients are always waiting for you to seek your advice and involvement, and no need to look for them. You can experience many types of matters in deep dive if you want because you are in-house, for example, not only M&A deal itself, you will be involved with PMI also not only 100 days plan but longer term. If you want to slow down your work, it would be also possible. Remote working style quite fit to in-house work and work-life balance, supposed to be good. I expect and welcome more and more women come to in-house area.





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Data Protection

Authority's plan for coming years – “Three Year Review” process

On November 15, 2023, the Personal Information Protection Commission (“PPC”), the data protection authority of Japan, publicly announced the discussion topics (“Discussion Topics”) for the “Every-Three-Year Review” of the Act on the Protection of Personal Information (“APPI”). This announcement indicates the basic direction of the next amendment of the APPI, which will likely occur in 2024 or 2025.

The Every-Three-Year Review is conducted under a clause of the 2020 amendments of the APPI. It requires the Japanese government to review the enforcement situation of the APPI every three years after it becomes effective and to make necessary reforms to the APPI.

JIPDEC, which is a non-profit organization acting as an Accountability Agent of the APEC CBPR system in Japan, provided their feedback on the Discussion Topics based on the request of the PPC on November 29, 2023.

The PPC suggested the following three key points in the Discussion Topics: (1) substantive protection of individual's rights and interests, (2) effective monitoring and enforcement, and (3) assistance for the utilization of data.

The first discussion point comes from a concern about an increasing risk that individual's rights and interests, including privacy, are being violated. The Discussion Topics mentioned several cases where personal information has been used unlawfully, such as publishing a database of personal information on bankrupt individuals on the internet and providing lists of personal information to criminal groups by malicious data brokers. With this backdrop, the PPC wishes to assess what rules need to be added to substantively protect the rights and interests of individuals. Among other things, the PPC raised an issue of children's privacy. JIPDEC reported that many countries have regulations on youth privacy and stated that Japan should introduce some regulations on children's privacy.

A surge in the illegal and malicious collection and use of personal data, as well as material data breach incidents in recent years, is coming under close scrutiny by the PPC. These privacy issues accelerated the discussion on the PPC's enforcement approach. The PPC proposed changing their current guidance-based approach to adopting more effective monitoring and supervision for malicious cases and serious security breaches. JIPDEC referred to the enforcement actions in other countries, noting that global

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companies have been fined a significant amount of penalty, to suggest taking the stricter enforcement approach.

The Discussion Topics focus not only on restrictions to protect personal information, but also on support to encourage the utilization of personal information. There is a strong need for the use of personal information, including sensitive information, in the fields of high public interest such as health and medical care, education, disaster prevention, and children. The PPC stated that they needed to discuss how to ensure the secure processing of personal information in the areas of high public interest and what cooperation systems among competent ministries should be. To promote the utilization of personal information, the mechanisms of international data transfers also should be reviewed. JIPDEC called for raising awareness of the APEC Cross-Border Privacy Rules (APEC CBPR) certification as a legal basis for international data transfers and introducing support for obtaining the certification.

The process of the Every-Three-Year Review has just started, and it is still unclear on what amendments will be made and how the PPC will respond to the discussions. The PPC announced that the Interim Summary of their discussions would be published around Spring 2024.





Practice Area News

PPC issues a warning on security measures and data breach report. On **November 16, 2023**, the **PPC** published a warning on security measures and data breach report. This warning recommends that businesses comply with the obligations relating to taking security measures and supervision of employees by following the General Guidelines on the APPI and the Q&A. The PPC also clarifies that a data breach caused by unlawful provision and use of personal data as a criminal offense must be reported.

PPC publishes case studies for effective data governance. On **November 9, 2023**, the **PPC** issued case studies on responsible persons and departments handling personal data in hopes of effective data governance systems. The guidance introduces five governance models in different industries (service, credit, manufacturing, pharmaceutical and telecommunications). Each governance model explains the organizational structure, roles and responsibilities of relevant persons/departments, and the effect of establishing such persons/departments in detail.

PPC releases its semi-annual report. On **November 8, 2023**, the **PPC** released its first-half report. This report discloses the number of the PPC's enforcement actions from **April 1, 2023 to September 30, 2023** as follows:

Acceptance of reports on data breach incidents: 3154

Request for report: 60

Guidance and advice:165

There were no cases of investigation, recommendation or administrative orders against the private sector in the first half, except for cases involving My Number.

PPC publishes survey results on compliance with international data transfers. On **December 6, 2023**, the **PPC** published survey results on compliance with international data transfers. The survey results include responses from 66 companies in ten industries. On data transfers between Japan and EU countries, many companies rely upon the mutual adequacy recognition and Standard Contract Clauses. The survey results also revealed that companies were struggling to address issues of government access to data and data localization requirements in other countries.

In the Firm

• Connect on Tech - online data protection portal

Connect on Tech is our online portal reporting on global developments in data protection, data security, information management and more. You can access this portal from [HERE](#).

• Global Data Privacy and Security Handbook

Our highly sought-after Global Data Privacy and Security Handbook provides detailed and forward-looking information on data privacy & security standards in over 50 countries. Please check it out [HERE](#).

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Applicable Japanese Laws to a Blockchain Game

What is a Blockchain Game?

A blockchain game is a game that uses blockchain technology and crypto assets, tokens, or NFTs (Non-Fungible Tokens).

In a blockchain game, the following typically occurs:

- (1) tokens linked to in-game items are issued and sold,
- (2) the tokens can be transferred, sold, or lent out to third parties,
- (3) the tokens are often given away to users,
- (4) third parties can also use the token,
- (5) as long as the blockchain exists, the recorded digital assets will exist perpetually.

Japanese regulations to consider

When providing a blockchain game to Japanese residents, the laws listed below should be taken into account. Here is a summary of the regulations that pertain to this matter:

(1) Payment Services Act and Financial Instruments Exchanges Act

Issuing and selling NFTs itself is not regulated in Japan. The exception is (i) if tokens are deemed as crypto assets or prepaid payment instruments, such as fungible tokens which might be used as a payment method, they might be regulated under the Payment Services Act, and (ii) if tokens are deemed as securities, such as tokens including dividend feature, they might be regulated by the Financial Instrument Exchange Act. Licenses are required for the sale of crypto assets and securities, respectively, while the issuance of prepaid payment instruments requires notification in certain cases.

(2) Act against Unjustifiable Premiums and Misleading Representations (Premium and Representation Law)

Blockchain game players might be given tokens, digital currencies, NFTs, digital assets, or other gifts that have financial value when a user registers, logs in, and plays the game. These gifts might be considered "premiums" under the Premiums and Representation Law, and in this case, the value of the premiums is limited. If blockchain games allow players to (a) purchase NFTs and (b) earn some reward (e.g., NFTs, tokens, or other digital assets) by playing the game, the reward portion may be subject to the premium



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regulation. Premiums offered to all users shall not exceed twenty percent of the NFT price. Premiums offered to a limited number of users, such as ranking rewards, shall not exceed 20 times the NFT price or 100,000 JPY, whichever is lower, plus the total value of the premiums is limited to 2 percent of the total expected sales for the NFTs. There is an argument that depending on the game design, the reward may not be considered an extra (premium) and may not be subject to the Premiums and Representation Law.

(3) Gambling Act

In Japan, gambling or providing a place for gambling is regulated as a criminal offense. If a service offered to Japanese users constitutes gambling and it is assessed as taking place in Japan, the Japanese gambling regulations may apply. The crime of gambling is established by (a) contesting the gain or loss of property profits by (b) winning or losing by chance. An in-game event that collects 10,000 JPY each as a participation fee from 100 users, and the one winner gets the entire pool (or main of the pool), it would fall under the gambling. Other services, such as loot boxes and synthesis of NFT items, should be examined to see if they fall under gambling.





Practice Area News

Request for tax revisions. On August 31, 2023, the FSA published its tax revision requests for 2024.

These requests include a revision of the year-end market value taxation of crypto assets held by third parties. The legislation process will proceed in accordance with the outline of tax system revisions, which is to be approved by the Cabinet in December 2023 based on the requests.

Amended Payment Services Act. The amended Payment Services Act governing crypto assets and other payment methods was enacted on June 1, 2023. The concept of "electronic payment instruments" has been newly established as a correspondence to stablecoins, which had not been clearly defined, and regulations regarding their issuance and intermediation have been clarified.

Stricter Travel Rules. Stricter regulations for anti-money laundering of crypto asset came into effect on June 1, 2023. According to the new "Travel Rules", when assets over a certain amount of crypto are sent by a customer, the receiving and sending crypto exchanges must share information about the customers. The lack of interoperability in such information sharing systems has prevented users from sending and receiving crypto assets between crypto exchanges.

Investment in security tokens by LPS. The businesses that Investment Limited Partnerships (LPS) may engage in are limitedly listed in the LPS Act. It was not clear whether security tokens were included in the list. On April 19, 2023, the Ministry of Economy, Trade and Industry (METI) published a notice clarifying the interpretation regarding the ability of LPS to invest in security tokens. The notice also clarified that LPS might not acquire or hold crypto assets and stable coin.

In the Firm

• Awards

Chambers & Partners ranks So Saito top FinTech lawyer 2022-2024. Best Lawyers recognizes So Saito for Banking and Finance Law, Financial Institution Regulatory Law and FinTech Practice for 2024.

• New member

Yu Mizushima has joined us as a professional member. He had worked for the Bank of Japan for 12 years after passing the bar exam. Click [HERE](#) for his profile.

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Insurance

FSA released Q&A on the applicability of the insurance business

On November 30, 2023, the Financial Services Agency released a "Q&A on the applicability of the insurance business," which summarizes its basic stance on whether a service constitutes an insurance business with a total of 20 questions/answers, some of which refer to the results of inquiries based on the past no-action letter system. An overview of the Q&A is as follows: When considering whether a service constitutes an insurance business, there are two main aspects to examine: the relevant statutes and the relevant provisions in the Guidelines for the Supervision of Small Amount and Short-Term Insurance ("Guidelines").

For the first part, it is first necessary to examine the business in light of the definition of insurance business, which is, in short, a business concerning insurance that promises to pay a certain amount of insurance money and collects insurance premiums in relation to the survival or death of a person, insurance that promises to compensate for damage caused by certain accidents, or other insurance that underwrites certain matters.

Furthermore, it is necessary to consider whether the business falls within the exemption from the application of the law and whether it can be interpreted as not constituting an insurance business under the law, such as due to it being a guarantee, derivative, etc. instead. If it is difficult to make a determination based on the foregoing, the relevant provisions of the Guidelines should be examined. The related provisions are divided by the method of benefits to clients, i.e., monetary payment or provision of services. In the case of monetary payment, the applicability of the insurance business is examined from the perspectives of whether there are certain personal and social relationships among a certain group of people to whom monetary benefits are provided, whether the benefits such as congratulatory and condolence payments are widely and generally accepted as a social practice, and whether the amounts of the benefits are appropriate according to socially accepted norms. In the case of the provision of services, it should be examined whether it is (i) a repair service, etc. incidental to the manufacture/sale of goods (for example, when a seller of home appliances receives a fee from the purchaser and provides a repair service free-of-charge in the



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event of a breakdown of the purchased home appliance) or (ii) other provision of service, etc. that does not constitute an insurance business based on a comprehensive judgment of the following circumstances (for example, a contract that extends the civil legal liability owed by the manufacturer/distributor to the purchaser of the product as part of customer service, etc.).

The factors to be examined are: (a) the terms of the contract that provides the service (in principle, a contract that promises monetary benefits is indicative of an insurance business), (b) the entity and method of providing the service, (c) whether the service has been recognized as different from insurance business from the past, and (d) the purpose of the regulations of the Insurance Business Act (i.e., whether it is necessary to regulate the scope of the business, financial soundness, etc. to ensure payment of compensation for damage, and to regulate the solicitation of marketing of such services for the protection of policyholders widely). The above is only a general interpretation, and obtaining expert advice on a case-by-case basis is recommended.





Practice Area News

Draft amendments to the guidelines reflecting the application of IFRS 17. On December 5, 2023, the FSA published a draft amendment to the Comprehensive Guidelines for Supervision of Insurance Companies to clarify the method of displaying overseas subsidiaries in the consolidated financial statements of the insurance group, given that the International Financial Reporting Standards (IFRS) 17 (Insurance Contracts) apply to companies with the fiscal year beginning on or after January 1, 2024, including overseas insurance subsidiaries owned by Japanese insurance companies.

Business Improvement Orders issued to major Japanese insurers. After extensive examinations, including on-site inspections, the FSA issued and published on December 26, 2023 business improvement orders to four major, Japanese P&C insurance companies, finding that they conducted improper activities for premiums adjustments, etc. in handling a number of corporate co-insurances in their underwriting processes, which exposed them to risks of violations of the Antimonopoly Act of Japan, etc.

In the Firm

• Delivering diverse solutions across Asia

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• Our dedicated Insurance team

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Our Team



Risk Management

Reinforcing Japanese anti-bribery regulation against foreign officials

Under continuing pressure from the international community to combat bribery, Japan will reinforce its regulation on foreign corruption. In response to the OECD's recommendation to strengthen its enforcement against bribery of foreign officials, on June 7, 2023, the Japanese Diet amended the Unfair Competition Prevention Act ("UCPA"), the main law in Japan to regulate foreign corruption. The amendments include the following important changes to regulate corrupt conducts.

First, the penalty for natural persons who bribe foreign officials is increased significantly. The maximum fine for natural persons raised from JPY5 million to JPY30 million, which is the highest maximum fine for natural persons in Japan at the time of writing. In addition, the maximum term of imprisonment increased from five years to ten years, which is the longest term of imprisonment for white-collar crimes in Japan at the time of writing. As a result of the ten-year maximum term of imprisonment, the statute of limitations for prosecution increased from five years to seven years.

Second, the amendments impose more severe penalties for corporations whose employees or executives bribe foreign officials. In Japan, a corporation is subject to criminal sanction only when a dual punishment provision is stipulated (i.e. a provision to punish not only the executive or employee who committed the crime but also the corporation to which the executive or employee belongs) which the UCPA already regulates. The amendment increases the maximum fine for corporations under the dual punishment provision from JPY300 million to JPY1 billion, which is the highest maximum fine for corporations in Japan at the time of writing. From the viewpoint of severity of the criminal penalty to both natural persons and corporations, the bribery of foreign officials has become one of the most serious white-collar crimes in Japan.

Third, the bribery of foreign public officials by non-Japanese executives or employees of a corporation



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having its principal office in Japan was added to the scope of criminal penalty of the UCPA. Specifically, in cases where a non-Japanese employee, who belongs to a Japanese corporation, bribes a public official of a foreign country in connection with the business of the corporation, the employee could be punishable even if the employee is non-Japanese and the place of the criminal act is a foreign country, which means that the Japanese corporation is also subject to criminal sanction under the dual punishment provision.

The amended UCPA is scheduled to go into effect as of April 1, 2024. While it remains to be seen how vigorously the Japanese Public Prosecutor Office ("PPO") will enforce the new UCPA to combat foreign corruption, we expect that the amendment will strengthen the PPO's enforcement. Thus, companies having operation in Japan need to update their compliance program to prevent corruption.





Practice Area News

Amendment of the Sports Organization Governance Code. On September 29, 2023, the Sports Agency amended the "Sports Organization Governance Code for Central Sports Organizations". One of the background reasons for the amendment was serious scandals in the sports industry. While the existing 13 principles of the Code remain unchanged, the amendment includes many important revisions, including the timely and appropriate disclosure of information in the event of misconduct.

New Regulation about Stealth Marketing. On October 1, 2023, the public notice designating stealth marketing as unfair representation came into effect. As a result, from this date onward, stealth marketing became a violation of the Act Against Unjustifiable Premiums and Misleading Representations and subject to orders for action and penalties. The Consumer Affairs Agency (CAA) released guidelines for the interpretation of the above-mentioned public notice.

Draft of New Guidance for Food Companies on Respect for Human Rights. On October 27, 2023, the Ministry of Agriculture, Forestry, and Fisheries (MAFF) began soliciting public comments on the draft of new guidance for food companies on initiatives to respect human rights. This guidance adds commentaries to the "Guidelines on Respecting Human Rights in Responsible Supply Chains" and will promote food companies' efforts to respect human rights.

Questionnaire Survey about the Whistleblower System. On November 9, 2023, the CAA announced that it will conduct a questionnaire survey regarding the status of the whistleblower system. The survey will target about 10,000 companies, including 4,000 listed companies, and will require voluntary cooperation from the target companies. This is the first survey by the CAA since the enforcement of the amended Whistleblower Protection Act as of June 1, 2022.

In the Firm

• High Evaluation in asialaw 2023-24

M&P has been chosen as a "Recommended firm" for Corporate, M&A and Competition/antitrust, and a "Notable firm" for dispute resolution in asialaw 2023-24.

• Selected in "ALB Asia Fast 30 2023"

M&P has been selected as one of Asia's fastest growing law firms in Asian Legal Business (ALB), published by Thomson Reuters, for three consecutive years.



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Contemplated review of the Japanese Consumption Tax rules

Many countries, including Japan, have raised concerns over multinational enterprises (“MNEs”) not paying adequate taxes in jurisdictions where service users are physically located, and tried to eliminate this trend. In particular, as growing criticism against foreign corporations that provide their services directly to consumers in Japan from overseas via the Internet while failing to comply with Japanese Consumption Tax (“JCT”) rules and pay adequate JCT in Japan is gaining momentum, Japanese tax authorities are strengthening their tax enforcement against these MNEs that provide services to consumers in Japan.

Japanese Consumption Tax on Electronic Services

Transfer of assets and provision of services within the territory of Japan are subject to JCT (an indirect tax similar to the EU VAT) in general. If the transfer of assets and the provision of services are subject to JCT, the business operator and the service provider are required to register themselves as JCT taxpayers in general, collect JCT from their customers, and pay such amount to the Japanese tax authorities. The JCT rules cover all enterprises and sole proprietorships, including foreign corporations and non-residents, who transfer assets and provide services in Japan.

Certain services provided via electronic and telecommunication networks are defined as the provision of electronic services (“Electronic Service”), and the Electronic Services provided by offshore service providers to users in Japan are subject to JCT (i.e., destination principle). If this is the case, the abovementioned rule applies, and the offshore service providers are required to collect the applicable JCT from the users in Japan and pay the same to the Japanese tax authorities under the current JCT Act.

Recent Trend

Recently, an increasing number of online games developed by offshore online game developers are distributed to users worldwide, including users in Japan. While online games are usually sold to Japanese users via digital platforms; since the contents of online games are normally provided by the developer to the end-users directly, the developers are required to collect and pay the applicable JCT to the Japanese tax authorities under the current JCT Act. However, it is observed that offshore online game developers often do not follow the JCT rules, and sometimes fail to collect and pay applicable JCT from users in Japan to Japanese tax authorities.



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In a recent case, an offshore online game developer providing online games to users worldwide, including Japan, was found to have failed to collect and pay the proper amount of Japanese JCT. The game developer was fined and paid the highest record of additional JCT and penalty taxes ever paid by an offshore company.

Review of the JCT rules applicable to sales of online games

Japanese tax authorities have been strengthening enforcement of the JCT rules against these offshore developers, and as a countermeasure against non-compliance with the JCT rules by offshore online game developers, demonstrated by the case above, new JCT collection rules are expected to be introduced in the 2024 tax reform plan where digital platform operators will become responsible for collecting and paying the JCT on behalf of offshore online game developers.

The expected effective date of the new rules is 1 April 2025 or after, to provide those responsible for collecting and paying the JCT under the new rules sufficient time to implement necessary measures and mitigate the impacts of this drastic change.





Practice Area News

Corporate Enterprise Tax Reform. The size-based tax under the current Corporate Enterprise Tax is imposed if a corporation with the stated capital amount exceeding JPY 100 million, regardless of their profits or losses. However, as many corporations have lowered their stated capital amount to avoid the size-based CET, the government plans to introduce a new criterion, based on the sum of the stated capital and the capital reserve, in the 2024 tax reform plan.

New Supreme Court Decision on J-CFC. On November 6, 2023, the Supreme Court ruled that, in relation to the J-CFC rules, taxation of income, including interest, received by a Cayman SPC at the level of the Japanese parent company is permissible even where the parent company is substantially unable to receive dividends from the SPC and there is no intention and/or situation for the parent company to avoid the tax under the facts and circumstances.

All-Time High MAP Cases. The latest report of National Tax Agency ("NTA"), published on November 10, 2023, revealed the number of new MAP cases for its 2022 business year reached a record high of 301 (+22% on 2021), most of which are bilateral APAs. This is partly related to the end of the consolidated tax regime, but some of the new requests are for renegotiation of previously agreed cases due to the COVID-19.

Record-High Additional Tax Collection. The NTA announced on November 29, that it additionally collected JPY 186.8 billion (+29.9% on 2021) in corporate income tax, JPY 135.7 billion (+56.2%) in consumption tax, and JPY 33.8 billion (+48.4%) in withholding tax from corporate taxpayers in its 2022 business year. The introduction of a new AI tool, which has been actively used since 2021 to identify taxpayers likely to underreport, appears to have contributed to these results.

In the Firm

- DLA Piper advises Japanese and non-Japanese multinationals on cross-border M&A, private equity and venture financing, regulatory, compliance, employment, finance, tax, and real estate. We also represent dispute resolution and investigations.

The firm has been consistently recognized as a leading law firm for its Japan Tax practice in Chambers Asia Pacific, Legal 500 Asia Pacific, and International Tax Review.



Recent developments on AI regulations in Japan

In December 2023, the draft of the unified, new guidelines for AI businesses operators ("New Guidelines") was announced. The New Guidelines were prepared as the uniform guidelines for AI governance in Japan by compiling the existing 3 guidelines on AI ("AI R&D Guidelines for International Discussions", "AI Utilization Guidelines" and "Governance Guidelines for Implementation of AI Principles") to promote the safe use of AI.

The New Guidelines are not legally binding. Business operators involved in AI are expected to voluntarily promote certain initiatives, such as establishing appropriate AI governance, in accordance with the New Guidelines. In addition, it is notable that the Liberal Democratic Party, the ruling party in Japan, has proposed to enact legislation to ensure the compliance with the New Guidelines.

The New Guidelines consist of two parts (main body and appendix), totaling approximately 200 pages. The outline of the New Guidelines is as follows:

- The business operators subject to the New Guidelines are classified into three categories: "AI Developer", "AI Supplier" (business operator providing services incorporating AI), and "AI User" (business operators using AI systems or AI services).
- The main body of the Guidelines describes (i) 10 principles that are common to the relevant business operators, (ii) the matters that should be especially cared by business operators in each category among the three categories mentioned above, and (iii) the requirements for the developers of advanced AI systems (i.e., the most advanced AI systems, including state-of-the-art foundation models and generative AI systems). In addition, the International Guiding Principles introduced through the Hiroshima AI Process are incorporated in the New Guidelines.
- The 10 principles are: (i) human-centric, (ii) safety, (iii) fairness, (iv) protection of privacy, (v) security, (vi) transparency, (vii) accountability, (viii) education and literacy, (ix) fair competition, and (x) innovation. Matters (viii) to (x) are items that are expected to be addressed by each business operator in cooperation with society.
- For instance, in relation to "fairness" (Principle (iii)), AI Developers should remind themselves the fact that bias cannot be completely eliminated from AI model and develop the AI by implementing a variety of methods to mitigate the bias. AI Suppliers should monitor the occurrence of bias due to AI model and encourage AI Developers to improve the AI model as



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necessary, and AI Users should decide how to use the outputs of AI responsibly, keeping in mind that AI prompts might be biased.

The appendix to the Guideline is intended to complement the main body and includes the following:

- Examples of AI services (including relationships among 3 categories of business operators);
- AI benefits and possibilities, and specific examples of risks;
- Practical points for building AI governance and practical examples;
- Points related to each item of the main body, examples of specific methods, and easy-to-understand references; and
- Checklist for each business operator to check the matters to be addressed in relation to the contents of the Guidelines.

The New Guideline will be made subject to the public comments process starting in January 2024, and will be finalized in March. It is planned to be kept updated as necessary in light of the latest trends, etc.





Practice Area News

Ride-hailing. In **December 2023**, it is announced that taxi companies would become able to provide a new transportation service in areas suffering a shortage of taxis, by using local private cars and non-professional drivers to dispatch cars and collect fares through an app from April 2024. After the long debate about ride-hailing services using private cars, this initiative would become a big step toward the lifting of the ban on ride-hailing.

DAO Hackathon. From **November to early December 2023**, the **Liberal Democratic Party** held the DAO Rulemake Hackathon, by inviting various companies and industry groups to make a presentation respectively about the challenges they face when utilizing a DAO (decentralized autonomous organization) and the proposals for ideal regulatory framework regarding a DAO. Based on the results of this hackathon, the LDP plans to make a proposal on new regulations on a DAO.

Copyrights in AI. In **December 2023**, the **Agency for Cultural Affairs** released the draft of the paper summarizing several copyrights-related issues associated with (generative) AI, which is intended to sort out the issues and reflect voices/interests of various parties affected by AI, such as creators and contents holders as well as AI developers and suppliers. This paper could be a basis for future discussions on the copyrights-related aspect of AI issues.

LegalTech. In **August 2023**, the **Ministry of Justice** issued guidelines clarifying that certain types of contract drafting, review and management services do not constitute the unauthorized practice of law, after the long discussions on the legality of AI contract review services, including services that assist the drafting of contracts and review of legal issues in the ordinary course of business of corporate legal matters that do not involve litigation or dispute.

In the Firm

• Most Reliable Law Firm in Japan

In December 2023, in the survey conducted by Nikkei, our firm has been ranked first for the second consecutive year in the Reliable Law Firm Rankings, as selected by companies.

• Opening Reception of Jakarta Office

In November 2023, we hosted a reception in Jakarta to celebrate the opening of our Jakarta office, which was attended by distinguished guests, including representatives from the Embassy of Japan in Indonesia.

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Nishimura & Asahi Advises Sohgo Security Services on Strategic Purchase of PT. Shield-On Service in Indonesia

Nishimura & Asahi provided assistance to Sohgo Security Services in a compulsory tender offer to acquire a 79.3% share in PT. Shield-On Service, an Indonesian company specializing in temporary staff and security services. The acquisition was carried out via the subsidiary PT. ALSOK BASS Indonesia Security Services represents a strategic initiative for the prominent Japanese security services corporation. The advisory group, headed by partners Masataka Sato, Noriaki Machida, Tomoro Yoshimoto, and Ikang Dharyanto, with assistance from Made Grazia V. Ustriyana and Itaru Matsumoto, played a crucial role in achieving the transaction's successful conclusion.

Written by: [Nishimura & Asahi](#)

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Japanese Legal Professionals Contribute to Worldwide Perspectives: The 8th Edition of The Intellectual Property and Antitrust Review.

Yusuke Takamiya, Tetsuji Odan, Kohei Shiozaki, and Rie Uemura played significant roles in shaping "The Intellectual Property and Antitrust Review" - Edition 8. Their participation in the Japan Chapter provides a thorough and practical summary of international advancements at the crossroads of antitrust and intellectual property. The yearly review showcases recent progress and presents an overview of the present scenario, delivering valuable perspectives into the changing dynamics between these legal realms in important jurisdictions.

Written by: [Mori Hamada & Matsumoto](#)

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