

# Arb./Med.Arb. as Multi-layered Dispute Resolution in Practice —Including Practice in Asian Countries and Concrete Mediation Techniques (summary)

Yoshihiro TAKATORI

Special Advisor, Nagashima Ohno & Tsunematsu

This article is based upon my presentation delivered on June 11, 2023, titled “International Commercial Arbitration and Mediation Practice in Asia—From the Perspective of Multilayered Dispute Resolution” at the 136th Annual Conference of the Japan Association of Private International Law. Japan's Arbitration Act was amended on April 21 of last year, and on October 1, Japan signed and ratified the Singapore Convention on the Enforcement of Settlement Agreements by International Mediation, both of which came into effect on April 1 of this year.

These developments present new opportunities for the advancement of multilayered dispute resolution mechanisms in Japan, such as the combination of arbitration and mediation (Arb.-Med.-Arb.). In particular, with the signing and ratification of the Singapore Convention, settlement agreements reached through international arbitration can now be enforced through Japanese courts upon opt-in by the parties. This reduces the need for arbitration “consent award”, which fall under the New York Convention.

In light of such trends, this article discusses the nature and utility of multilayered dispute resolution, with a focus on combining international arbitration and mediation. It also explores the practical prospects for applying these methods, including specific and concrete techniques for international mediation, an area that has not been extensively discussed as one step in multilayered dispute resolution. Furthermore, the article addresses how multilayered dispute resolution can be integrated with litigation, analyzing court precedents to determine whether private mediation could legally be considered a prerequisite for subsequent litigation.

The article discusses the current state of practice not only in Japan but also in transnational practice, in Asian countries. It also explores the concrete methods of international mediation used in the first co-mediation case under the joint protocol of Singapore International Mediation Center and Japan International Mediation Center. These methods were applied to the mock Arb.Med.Arb. case, presented by the Japanese Ministry of Justice, available on its web-site, involving cross-border intellectual property disputes between a Japanese automobile

manufacture and an U.S. California software company on automatic vehicle system.

Through these case studies, the article discusses the practical implementation of Arb-Med-Arb and its future prospects in the context of multilayered dispute resolution.