

INTERNATIONAL

Conflict-Averse Japan Turns to Arbitration

by Brian Yap

A host of unforeseen legal disputes triggered by COVID-19 and the war in Ukraine has pushed conflict-averse Japanese companies to become more litigious, with law firms in Japan benefiting from an increase in the use of international arbitration among their clients for settling disputes with foreign counterparts.

Law firms in Japan have been pouring money into expanding their dispute resolution practices through the active hiring of international arbitration experts, both in their head office and regional offices in Asia.

International arbitration, which traditionally was not a popular method of dispute resolution in Japan, has come to account for a larger share of revenue for law firms in Japan, with some saying the increase has been dramatic. The number of traditional litigation cases, meanwhile, has been steadily falling since 2011. A change in the nature of disputes brought about by the pandemic and geopolitical upheaval, coupled with the option of online evidentiary hearings in international arbitration cases, have been driving the trend toward the use of international arbitration, lawyers say.

“With the increase in international arbitration cases, particularly in lucrative energy and construction projects, we are now eagerly searching for an arbitration partner with strong expertise in arbitration and excellent client relationships for our Tokyo office,” said Shinsuke Yakura, Orrick Herrington & Sutcliffe’s Tokyo office head, who also leads Orrick’s complex litigation and dispute resolution group in Tokyo.

Orrick has also set sights on Southeast Asia for regional expansion and Singapore has become its latest target. While energy and infrastructure has been the San Francisco-based firm’s first priority in Southeast Asia, the next step, according to Yakura, will be international arbitration.

“Singapore is one of the most frequently selected cities for arbitration, and we are now eagerly trying to hire an international arbitration practice partner locally,” Yakura said. “Other dispute resolution firms definitely have offices in Singapore because Singapore is a hub for arbitration in Asia.”

Nishimura & Asahi, the largest law firm in Japan, has made similar efforts in response to the increased use of arbitration by Japanese companies.

“In the past five years, we have had a foreign partner in our dispute resolution group and we have hired a counsel as well as a non-Japanese foreign associate for our group,” said Akihiro Hironaka, dispute resolution partner at Nishimura & Asahi.

The firm has been strengthening its dispute resolution practice and overall presence in the Asia region with dispute resolution lawyers in regional offices outside Japan, he added, noting that Japanese companies with regional

offices in Asia prefer a one-stop shop when dealing with a dispute resolution matter in another country.

The increase in the adoption of arbitration by Japanese companies is reflected in the number of cases that have been filed with domestic and international arbitration centers in recent years. The Japan Commercial Arbitration Association (JCAA), for example, has reported a jump in the number of arbitration cases heard, from nine in the pre-pandemic year of 2019 to 18 in 2020 and 15 last year.

The Singapore International Arbitration Centre (SIAC), which is a common seat of arbitration for disputes arising from construction projects, also has seen a rise in the number of arbitration cases filed by Japanese companies, from seven in 2019 to 29 in 2020, although only six were filed there last year. Japan was in strict lockdown due to COVID-19 for much of 2021.

Japanese corporations have also taken their arbitration cases to the Hong Kong International Arbitration Centre (HKIAC), which saw Japan rank ninth last year among 41 jurisdictions where parties participating in arbitrations were based. In 2019 and 2020, Japan did not make the top 10.

Joaquin Terceno, dispute resolution partner at Freshfields Bruckhaus Deringer’s Tokyo office, told Law.com International that he has seen Japanese companies make more use of international arbitration, calling it “the biggest growth and change.” Once some companies started turning to arbitration, others followed, he said.

Orrick’s Yakura said disputes arising from construction and renewable energy-related projects as a result of the COVID-19 pandemic are in part responsible for the increase in arbitration. Parties involved in such projects are choosing international arbitration over litigation largely because of traditional courts are perceived to lack special knowledge and expertise in such areas, he said.

“In most cases, contracts in such areas are drafted in such a way that the dispute resolution clause designates arbitration as a dispute resolution mechanism,” Yakura said.

In addition, Japanese companies forced to deal with unforeseen issues triggered by the pandemic, have grown concerned that their directors will be exposed to greater liability, especially when bad decision-making occurs over matters such as the collection of payments and the timing of commencing arbitration or litigation.

“In order not to be exposed to such liability, Japanese companies are now seriously considering the timing and the reasonableness of commencing legal procedures, including arbitration and litigation,” he said. “And the triggering event is COVID itself.”

Brian Yap reports for Law.com International, an ALM affiliate of the Daily Business Review. Contact him at byap@alm.com.



CITY OF DORAL NOTICE OF PUBLIC HEARING

All residents, property owners and other interested parties are hereby notified of a **LOCAL PLANNING AGENCY (LPA)** meeting on **August 24, 2022 beginning at 5:30 PM** to consider the adoption of the annual update to the Capital Improvements Element of the City’s Comprehensive Plan. The meeting will be held at the **City of Doral, Government Center, Council Chambers located at 8401 NW 53rd Terrace, Doral, Florida, 33166.**

The City of Doral proposes to adopt the following Resolution:

RESOLUTION No. 22-

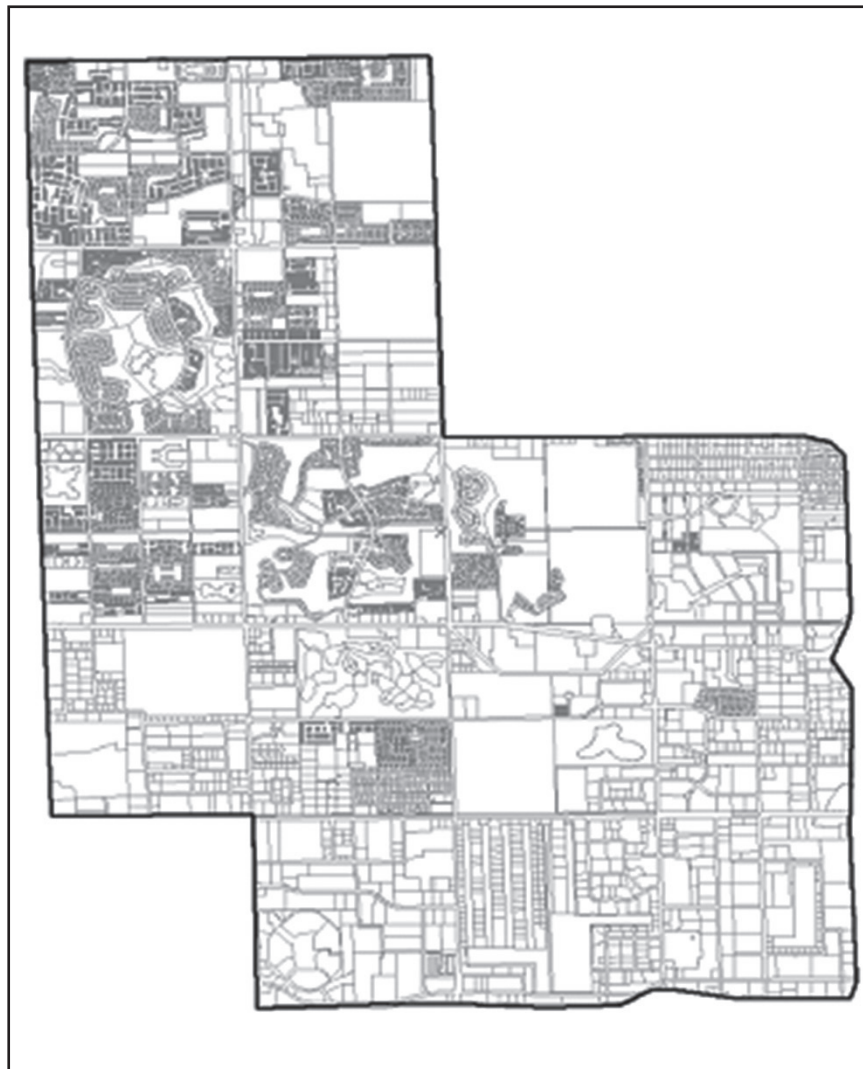
A RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, SITTING AS THE LOCAL PLANNING AGENCY, RECOMMENDING APPROVAL / DENIAL OF, OR GOING FORWARD WITHOUT A RECOMMENDATION TO THE LOCAL GOVERNING BODY THE ADOPTION OF THE ANNUAL UPDATE TO THE CAPITAL IMPROVEMENTS ELEMENT (CIE) OF THE CITY’S COMPREHENSIVE PLAN FOR 2022 AND THE FIVE-YEAR SCHEDULE OF CAPITAL IMPROVEMENTS FOR FISCAL YEARS 2022/2023 – 2026/2027 PURSUANT TO SECTION 163.3177(3)(B), FLORIDA STATUTES; AND PROVIDING FOR AN EFFECTIVE DATE

HEARING NO.: 22-08-DOR-02

APPLICANT: City of Doral

REQUEST: The City Manager’s Office respectfully recommends that the Mayor and City Councilmembers authorize approval of the annual update to the Capital Improvements Element (CIE) of the City’s Comprehensive Plan for 2022 and the Five-Year Schedule of Capital Improvements for Fiscal Years 2022/2023 – 2026/2027.

Location Map



Inquiries regarding the item may be directed to the Planning and Zoning Department at 305-59-DORAL.

Pursuant to Section 286.0105, Florida Statutes If a person decides to appeal any decisions made by the City Council with respect to any matter considered at such meeting or hearing, they will need a record of the proceedings and, for such purpose, may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. This notice does not constitute consent by the City for introduction or admission of otherwise inadmissible or irrelevant evidence, nor does it authorize challenges or appeals not otherwise allowed by law. In accordance with the Americans with Disabilities Act, any person who are disabled and who need special accommodations to participate in this meeting because of that disability should contact the Planning and Zoning Department at 305-59-DORAL no later than three (3) business days prior to the proceeding.

Connie Diaz, MMC
City Clerk
City of Doral