KUALA LUMPUR REGIONAL CENTRE FOR ARBITRATION

Newsletter #22 / Apr–Jun 2016

International ADR events coming your way...

2nd IPBA Asia-Pac Arbitration Day

JOINTLY HOSTED WITH KLRCA

klrca
REGIONAL RESOLUTION GLOBAL SOLUTION

IPBA
INTER-PACIFIC BAR ASSOCIATION

Malaysian Bar Council CPD points: 6

KEYNOTE SPEAKER:
THE RT. HON. LORD SAVILLE OF NEWDIGATE

LORD SAVILLE was Lord of Appeal in Ordinary from 1997 to 2010 with judgments spanning diverse areas of law, and was instrumental in the coming into force of the UK Arbitration Act 1996. In his keynote speech, he will address issues which are likely to define and shape the relevance of arbitration in the coming decade. Delegates will hear from him on topics which include, *"Appeals to the courts on questions of law (in the wider context of the relationship between the courts and arbitral tribunals); Confidentiality; Emergency arbitrators and the power to make orders in the absence of one of the parties."*

Lord Saville also chaired the *"Bloody Sunday"* inquiry concerning an incident where troops opened fire on civilians in Londonderry, Northern Ireland. The findings of this inquiry are available on the internet.

DATE
8 September 2016

VENUE
Auditorium, Kuala Lumpur
Regional Centre for Arbitration
Bangunan Sulaiman, Jalan Sultan Hishamuddin, 50000 Kuala Lumpur

TIME
9.00am–6.00pm

REGISTRATION FEE
RM636 Early Bird Special (inclusive of GST)

GOLD SPONSORS:

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MOHANADASS PARTNERSHIP
Advocates & Solicitors
WWW.MOHANADASS.COM

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Korean Commercial Arbitration Board
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ACICA
Australian Centre for International Commercial Arbitration

www.klrca.org

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KUALA LUMPUR REGIONAL CENTRE FOR ARBITRATION

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Director's message

Dear distinguished friends,

Welcome to the second edition of the KLRCA Newsletter for the year 2016 as we cross the midway mark of what has been another impactful couple of months as the Centre continues to promote and facilitate the use of ADR in the region through our many capacity building and knowledge transfer initiatives.

We started the past quarter by bringing you several high profile ADR practitioners to deliver numerous engaging evening talks that attracted large numbers. The KLRCA Talk Series is a sequence of monthly talks held at the Centre. It is a free forum designed to be informative to all those who are interested in arbitration and the scope of alternative dispute resolution (ADR).

The month of May carried a special focus on the adjudication industry. The KLRCA collaborated with the Malaysian Society of Adjudicators (MSA) to host the annual CIPAA Conference, which for the second straight year of it being held at the Centre's auditorium provided a capacity crowd. The participants were treated to a strong panel line-up of experienced and learned presenters who took stage to discuss and deliberate on the latest updates and cases surrounding the CIPAA 2012 Act that came into effect on April 2014.

Following closely was the successful organising and completion of the KLRCA Certificate in Adjudication course that attracted an impressive 80 candidates. Registrations are already coming in fast for the next edition of this course that has been penciled in for November.

In this edition of our Newsletter, we have outlined and included all upcoming events that have been scheduled for the remaining half of the year. As you will notice our events cover all forms within the ADR scope. Specialised international events and certificate courses on arbitration, sports arbitration, mediation, adjudication and domain name disputes are coming your way with globally acclaimed ADR personalities having already confirmed their attendance.

Please do follow us on social media and swing by our website from time to time as we bring you value added publications, statistics and news releases of our latest domestic and international activities. If you would like to pen and share an interesting ADR related article, please feel free to send them in to enquiry@klrca.org. The chosen article will be featured in our upcoming issue with exclusive KLRCA merchandise being presented to the contributor.

Until the next issue, happy reading.

Datuk Professor Sundra Rajoo
Director of KLRCA

Visitor's gallery

↘ Visit by **University of Technology Malaysia (UTM)** • *1st April 2016*

↘ Visit by **Sharjah International Commercial Arbitration Centre (TAHKEEM)** • *21st April 2016*

↘ Visit by **Delegates of the Inter Pacific Bar Association (IPBA) Conference 2016** • *13th April 2016*

↘ Visit by **University of Malaya, Faculty of Law** • *20th May 2016*

↘ Visit by **Kobe University (Japan)** • *23rd May 2016*

KLRCA welcomes visits from various local and international organisations as it provides a well-fortified platform to exchange knowledge and forge stronger ties.

_ANNOUNCEMENT

PRACTICE DIRECTION NO. 4 OF 2016:

Practice Direction On Mediation

As stipulated under Order 34 Rule 2 of the Rules of Court 2012, the Chief Justice of Malaysia has directed that with effect from 15th July 2016, all Judges of the High Court and its Deputy Registrars and all Judges of the Sessions Court and Magistrates and their Assistant Registrars may, at pre-trial case management stage, give such directions that the parties facilitate the settlement of the matter before the court by way of mediation. Judges may encourage parties to settle their disputes at the pre-trial stage or at any stage, where prior to, or even after a trial has commenced.

This Practice Direction further provides for institutionalised mediation. Annexure B specifically states the procedures for the disputing parties to follow in institutional mediation under the auspices of the KLRCA. The KLRCA has a set of flexible rules for Mediation, which covers all aspects of the Mediation process to help parties resolve their domestic or international disputes, along with a panel of qualified mediators with varied expertise to facilitate the mediation process.

The Practice Direction is aimed at encouraging parties to use mediation to arrive at an amicable settlement before trial or appeal.

A copy of the Practice Direction is attached.

Yours sincerely,

Datuk Professor Sundra Rajoo
Director of KLRCA

PEJABAT KETUA PENDAFTAR
Office of the Chief Registrar
MAHKAMAH PERSEKUTUAN MALAYSIA
Federal Court of Malaysia
ISTANA KEHAKIMAN
PRESINT 3
62506 PUTRAJAYA

Telefon : 03-8880 3500
Faks : 03-8880 3886
Laman Web : http://www.kehakiman.gov.my

Ruj. Tuan :
Ruj. Kami PKPMP.KP.100-1/8/1
Tarikh : 30 June 2016

All High Court Judges;
All Judicial Commissioners;
All Sessions Courts Judges;
All Registrars of the High Courts;
All Magistrates; and
All Assistant Registrars of the Subordinate Courts;
Malaysia

PRACTICE DIRECTION NO. 4 OF 2016
PRACTICE DIRECTION ON MEDIATION

1. The Chief Justice of Malaysia hereby directs that with effect from **15 July 2016**, all Judges of the High Court and its Deputy Registrars and all Judges of the Sessions Court and Magistrates and their Assistant Registrars may, at the pre-trial case management stage as stipulated under **Order 34 Rule 2 of the Rules of Court 2012**, give such directions that the parties facilitate the settlement of the matter before the court by way of mediation.

The term "Judge" in this Practice Direction includes a Judge or Judicial Commissioner of the High Court, Judge of the Sessions Court, Magistrate or a Registrar of the High Court.

2. **Objective**

2.1 The objective of this Practice Direction is to encourage parties to arrive at an amicable settlement without going through or completing a trial or appeal. The benefit of settlement by way of mediation is that it is accepted by the parties, expeditious and it is final.

2.2 This Practice Direction is intended to be only a guideline for settlement. The Judge and the parties may suggest or introduce any other modes of settlement so long as such suggestions or directions are acceptable to the parties.

2.3 Advocates and Solicitors shall cooperate and assist their clients in resolving the dispute in a conciliatory and amicable manner.

3. **When to suggest**

Judges may encourage parties to settle their disputes at the pre-trial case management or at any stage, where prior to, or even after a trial has commenced. It can even be suggested at the appeal stage. A settlement can occur during any interlocutory application, for example at an application for, summary judgment, striking out or at any other stage.

4. **Types of cases**

The following are examples of cases which are easy to settle by mediation, for example:

(a) Claims for personal injuries and other damages due to road accidents or any other tortious acts because they are basically monetary claims;
(b) Claims for defamation;
(c) Matrimonial disputes;
(d) Commercial disputes;
(e) Contractual disputes; and
(f) Intellectual Property cases.

5. **Modes of Mediation**

5.1 Mediation may be in the following modes:
(a) by Judge-led mediation;
(b) by Kuala Lumpur Regional Centre for Arbitration; or
(c) by other mediators agreeable by both parties.

5.2 If a Judge is able to identify issues arising between the parties that may be amicably resolved, he should highlight those issues to the parties and suggest how those issues may be resolved.

5.3 The Judge can request to meet in his chamber in the presence of their counsel, and suggest mediation to the parties. If they agree to the mediation then the parties will be asked to decide whether they would wish the mediation to be the judge-led, by Kuala Lumpur Regional Centre for Arbitration or by other mediators agreeable by both parties.

5.4 The procedure in **Annexure A** will apply to a judge-led mediation and the procedure in **Annexure B** will apply to an institutional mediation under the auspices Kuala Lumpur Regional Centre for Arbitration and the procedure in **Annexure C** will apply if it is referred to other mediators agreeable by both parties.

6. **General**

6.1 Agreement to Mediate

When the parties agree to mediate, each of the parties shall complete the mediation agreement as in **Form 1**.

6.2 Confidentiality

All disclosures, admissions and communications made under a mediation session are strictly "without prejudice". Such communications do not form part of any record and the mediator shall not be compelled to divulge such records or testify as a witness or consultant in any judicial proceeding, unless all parties to both the Court proceedings and the mediation proceedings consent to its inclusion in the record or to its other use.

6.3 Results of Mediation

(a) A return date of not more than one (1) month from the date the case is referred to mediation, shall be fixed for parties to report to the Court on the progress of mediation; and in the event the mediation process has ended, the outcome of such mediation;

(b) Where mediation fails to resolve the disputes, the Court shall, on the application of either of the parties or on the Court's own motion, give such directions as the Court deems fit; and

(c) Except with the agreement of the Court, all mediation must be completed not later than three months from the date the case is referred for mediation.

7. **Revocation**

The Practice Direction No.5 of 2010 is revoked.

8. **Savings**

Any proceedings pending or commenced under Practice Direction No.5 of 2010 before the coming into operation of this Practice Direction, shall be continued and concluded under Practice Direction No.5 of 2010 and for this purpose it shall be treated as if that Practice Direction had not been revoked.

(DATIN LATIFAH BINTI HAJI MOHD TAHAR)
Chief Registrar
Federal Court of Malaysia
Istana Kehakiman
PUTRAJAYA

...4/-

c.c:

Chief Justice of Malaysia
Istana Kehakiman
PUTRAJAYA

President Court of Appeal
Istana Kehakiman
PUTRAJAYA

Chief Judge of Malaya
Istana Kehakiman
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Chief Judge of Sabah and Sarawak
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Attorney General's Chambers
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Registrar of the High Court in Sabah and Sarawak
High Court of Kuching
SARAWAK

Registrar of the Subordinate Courts in Malaya
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Registrar of the Subordinate Courts in Sabah and Sarawak
High Court of Kuching
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President
Malaysian Bar Council
Majlis Peguam Malaysia
13,15 dan 17 Leboh Pasar Besar
50050 KUALA LUMPUR

Chairman
Sabah Law Association
3rd Floor, 120 Gaya Street
88000 KOTA KINABALU, SABAH

Chairman
The Advocates' Association of Sarawak
The Bar Room, Kompleks Mahkamah
Jalan Gersik, Petra Jaya
93050 KUCHING SARAWAK

ANNEXURE A
JUDGE-LED MEDIATION

1. Unless agreed to by the parties, the Judge hearing the case should not be the mediating judge. He should pass the case to another judge. If the mediation fails then it will revert to the original judge to hear and complete the case.

2. The procedure shall be in the manner acceptable by both parties.

3. Unless agreed to by the parties, the Judge will not see the parties without their lawyers' presence except in cases where the parties is not represented.

4. If the mediation is successful, the Judge mediating shall record a consent judgment on the terms as agreed to by the parties.

ANNEXURE B
INSTITUTIONAL MEDIATION UNDER THE AUSPICES OF KUALA LUMPUR REGIONAL CENTRE FOR ARBITRATION

1. If parties wish to seek an amicable settlement of the dispute by mediation in accordance with the Kuala Lumpur Regional Centre for Arbitration (KLRCA) Rules of Mediation presently in force, upon the direction of the court, the Plaintiff's solicitor shall, within seven (7) calendar days notify in writing to the KLRCA.

2. Upon receiving such notification, KLRCA shall then proceed with the mediation process as provided for under the KLRCA Mediation Rules that is presently in force.

ANNEXURE C
MEDIATION BY OTHER MEDIATORS AGREEABLE BY BOTH PARTIES

1. **Mediator**

1.1 A mediator may be chosen from the list of certified mediators furnished by the Malaysian Mediation Centre ("MMC") set up under the auspices of the Bar Council, or any other mediator chosen by the parties.

1.2 Such a mediator shall facilitate negotiation between the parties in the dispute and steer the direction of the mediation session with the aim of finding a mutually acceptable solution to the dispute.

1.3 If the parties so desire the may appoint more than (1) mediator to resolve their dispute.

1.4 Any mediator so chosen by the parties may agree to be bound by the MMC Code of Conduct and the MMC Mediation Rules, or not at all.

2. **Procedure**
If parties agree that they be bound by the MMC Mediation Rules, upon direction of the Court, the Plaintiff's solicitor shall, within seven (7) calendar days notify in writing to the MMC. Upon receiving such notification, MMC shall then proceed with the mediation process as provided under the MMC's Mediation Rules.

3. **Settlement Agreement**
Any agreement consequent upon a successful mediation may be reduced into writing in a Settlement Agreement signed by the parties but in any case the parties shall record the terms of the settlement as a consent judgment.

FORM 1

AGREEMENT TO MEDIATE

Case No. : ----------

Name of Judge/Mediator: ----------

Parties : Plaintiff:----------

Defendant: ----------

Third Party:----------

Mention/Hearing Date: ----------

We, the solicitors representing the abovementioned parties hereby consent to refer this matter for mediation for the purpose to reach an amicable settlement and to the satisfaction of all parties.

We also agree that all disclosures, admissions and communications made under a mediation session are strictly "without prejudice". Such communications do not form part of any record and the mediator shall not be compelled to divulge such records or testify as a witness or consultant in any judicial proceeding, unless all parties to both the Court proceedings and the mediation proceedings consent to its inclusion in the record or to its other use.

....

(Plaintiff's Solicitor's Signature) (Defendant's Solicitor's Signature)

.....

(Third Party's Solicitor's Signature)

Dated:

KLRCA MEDIATION FORUM

DATE:
24 NOVEMBER 2016

VENUE:
KUALA LUMPUR REGIONAL CENTRE FOR ARBITRATION
Bangunan Sulaiman, Jalan Sultan Hishamuddin
50000 Kuala Lumpur, Malaysia

FORUM FEE:
RM 300 (inclusive of GST)
Day long event + evening cocktail

EARLY BIRD FEE:
RM 250 (inclusive of GST)
To be registered before 1 October

The KLRCA in collaboration with leading ADR Institutions, including the Chartered Institute of Arbitrators (CIArb), International Mediation Institute (IMI) and ArbDB Chambers London, are proud to host a one day Forum on the 24th of November, exploring mediation and its development in the Asia Pacific Region. With a keynote speech from the Chief Justice of Malaysia, together with leading practitioners, academics, judiciary and Government Officials, the Forum will provide an overview of the mediation process, examine its benefits for international and domestic commerce and host a discussion group to address the growth of mediation in the Region. This Forum is most opportune in light of the recent development wherein the Chief Justice of Malaysia has issued a Practice Direction wherein the KLRCA is named as an institution where the judiciary may refer parties to mediate disputes under the KLRCA Mediation Rules.

Mediation has taken on an increasingly important role in the resolution of many forms of commercial disputes, be they domestic or international. There is growing recognition in commerce today, that the traditional dispute resolution mechanisms, be they the courts or arbitration, are not always the most effective means of resolving business disputes. While the courts and arbitration clearly have their place, mediation provides parties with many advantages not shared by them. Not only do parties maintain control of the dispute resolution mechanism, but relationships are preserved, costs are saved and an amicable solution found in a much shorter period of time. In particular, mediation is playing an increasingly important role in resolving disputes in the following areas: commercial and IT; construction and engineering; maritime; workplace; investor/state; financial services including Islamic banking; and insurance. No one today, whether in business, legal practitioner, academic, institution or Government can afford to ignore mediation as a tool for resolving all forms of disputes.

This forum aims to bring together practitioners and users with a view to address key international mediation issues in Asia Pacific Region. We wish to interact with the arbitration community and have a discussion on what more can be done in the Asia Pacific Region.

klrcA
REGIONAL RESOLUTION GLOBAL SOLUTION

Supporting institutions:

CIArb
evolving to resolve

International Mediation Institute

ArbDB
THE ARBITRATION, MEDIATION & DISPUTE BOARD CHAMBERS

PROGRAMME

9.00am Event Registration

9.30am **Welcome Speech** by Datuk Professor Sundra Rajoo
Director of the Kuala Lumpur Regional Centre for Arbitration **(KLRCA)**

9.45am **Keynote Speech** by Chief Justice The Right Honourable Tun Arifin bin Zakaria

10.15am **Mediation – A NEW tool for legal practitioners and business people**
by George Lim

10.45am Coffee Break

11.15am **Mediation in Action – Role Play**
by Mark Appel (Facilitator) with Paul Rose, Camilla Godman, Michael Cover and John Wright

12.45pm Lunch Break

2.00pm **Mediation and Business – Various Industry Perspectives**
by Wolf Von Kumberg (Moderator)

(a) Commercial and Intellectual Property/IT
by Michael Cover and Robin Jacob

(b) Employment and Workplace
by Jane Gunn

(c) Construction and Engineering
by John Wright

(d) Energy
by Alejandro Carbello

(e) Maritime
by Jayems Dhindra

(f) Investor-State
by Alejandro Carbello

(g) Islamic Finance
by Malik Dahlan

(h) Insurance
by Paul Rose

3.30pm Coffee Break

4.00pm **Panel Discussion on Growing Mediation in the Region**
by Kuthubul Zaman Bukhari (Moderator), Harbans Singh K.S., George Lim, Michael Cover, Camilla Godman, Wolf von Kumberg and Sujatha Sekhar Naik

5.30pm Conference Summary and Thank you note by Lam Wai Loon

6.00pm Cocktail Reception

For more information, please contact:
Business Development Team
Phone: +603 2271 1000
Email: events@klrca.org

REGISTER NOW!

Kindly complete the registration form as below and send it together with your payment by **21 NOV 2016** via:
FAX: +603 2271 1010 **EMAIL:** events@klrca.org
COURIER: KLRCA, Bangunan Sulaiman, Jalan Sultan Hishamuddin, 50000 Kuala Lumpur, Malaysia

Full Name: _____

Company/Organisation: _____

Designation: _____

Address: _____

Tel: _____ Fax: _____ Email: _____

Dietary Requirements: *(Please tick one)*

☐ **Vegetarian** ☐ **Non-vegetarian**

Forum Fee: *(Inclusive of GST)*

☐ **RM 300** — Day long event + evening cocktail ☐ **RM 250** — Early Bird fee. To be registered before 1 October 2016

Mode of Payment: *(Please tick one) (Please ensure that payments are free of any bank charges)*

☐ **Cheque payable to "KLRCA Events"**

☐ **Bank Transfer/ Account Deposit**
Bank details: Maybank Berhad, Wisma Genting SSC, Jalan Sultan Ismail, 50250 Kuala Lumpur
Account Number: **5143-5650-4056** Swift Code: **MBBEMYKL**

Payment by bank transfer or account deposit must be evidenced by a copy of the bank-in slip or transaction reference and submitted with the registration form.

Registration will be confirmed after receipt of payment. No cancellations allowed after confirmation but you may send another person to attend in your place. The organisers reserve the right to (1) postpone or change the timing and content of the programme and venue at any time; or (2) cancel the event at any time and under such circumstances, will refund the registration fee in full.

_EVENTS

CIPAA Conference – Gaining Strength

18th May 2016

KLRCA continued its commitment towards empowering the public and relevant stakeholders on pertinent aspects relating to the CIPAA 2012 Act that was enforced on 15th April 2014; by conducting its annual CIPAA Conference. This conference was jointly organised with the Malaysian Society of Adjudicators (MSA) and attracted a capacity crowd at KLRCA's Auditorium.

This conference was the fifth of its kind following the succesful inaugural CIPAA Conference back in 24th October 2012 and its follow ups titled, 'Getting Paid: CIPAA Updates' and 'CIPAA in Practice' held in 2014 and 2015's edition themed, 'Aligning with CIPAA'.

The CIPAA 2016 Conference was opened by the Minister in the Prime Minister's Department, Yang Berhormat Puan Hajah Nancy Haji Shukri, and was followed by a comprehensive CIPAA 2012 Status Report by KLRCA's Director Datuk Professor Sundra Rajoo. Three sessions covering pertinent CIPAA issues and updates made up the core of this year's conference. Each session consisted of a strong panel line-up of experienced and learned moderators and speakers. Closing remarks were delivered by Wilfred Abraham, President of the Malaysian Society of Adjudicators.

STATUS REPORT

By Datuk Professor Sundra Rajoo (Director of KLRCA)

The much awaited CIPAA Status Report 2016 was released by Datuk Professor Sundra Rajoo. Last year's edition proved succesful in capturing comprehensive data showcasing adjudication, case statistics, nature of disputes, enforcement and adjudicated amounts amongst other statistics giving a true snapshot of the success of CIPAA. This year's report contained newer data including rates of adjudication involving Government entities and also featured all current developments and practice issues.

* A copy of this report can be found on KLRCA's website (www.klrca.org) under Announcements, *"CIPAA Conference 2016 Booklet – E Copy Available".*

SESSION 1 Hard Talk – Legal and Practical Challenges in Adjudication Practice

The session commenced with the Panel Speakers sharing their insights on the extent of the rules of natural justice applicable to adjudication proceedings, and situations which may or would constitute of a breach of these rules. They also proceeded to share their experiences, problems and hardships encountered during an adjudication proceeding, either as the adjudicator, or a representative of a party in an adjudicaton. The session concluded with the panel speakers elaborating their views, ideas and techniques to resolve such problems.

SPEAKERS:

- Lam Wai Loon | Partner, Harold & Lam Partnership
- Ir. Harbans Singh | Professional and Chartered Engineer, Arbitrator, Adjudicator, Mediator, Advocate & Solicitor (non-practicing)
- Chong Thaw Sing | Chartered Arbitrator, Mediator & Adjudicator
- Steven Shee | Master Builders Association Malaysia & General Manager of Legal, Sunway Construction Sdn. Bhd.
- Alan Stewart | Director of Stewart Consulting, Chartered Quantity Surveyor & Chartered Project Management Surveyor & Adjudicator

SESSION 2 Mock Adjudication – A Look at the Adjudication Process

This session took the audience through an entire adjudication process from instructions to file the payment claim and payment response to the appointment of the adjudicator, the filing of the various adjudication papers and possible hearings to the delivery of the adjudication decision and the enforcement and setting aside proceedings in court. The roles of the adjudicator, counsel, clients and the KLRCA's administration were played out by the panel speakers.

SPEAKERS:

- Ivan Loo | Partner,Skrine
- Daniel Tan | Proprietor, Messrs Tan Chun Hao
- Kamraj Nayagam | Partner, Mah-Kamariyah & Philip Koh
- Danaindran Rajendran | Senior Case Counsel, KLRCA
- Shannon Rajan | Partner, Skrine, Adjudicator & Mediator
- Janice Tay | Senior Associate, Skrine

SESSION 3 Recent Developments in the Law

The session commenced with the Panel Speakers sharing their insights on the extent of the rules of natural justice applicable to adjudication proceedings, and situations which may or would constitute of a breach of these rules. They also proceeded to share their experiences, problems and hardships encountered during an adjudication proceeding, either as the adjudicator, or a representative of a party in an adjudicaton. The session concluded with the panel speakers elaborating their views, ideas and techniques to resolve such problems.

SPEAKERS:

- Wilfred Abraham | Partner, Zul Rafique & Partners
- Chang Wei Mun | Partner, Raja, Darryl & Loh
- Rodney Gomez | Partner, Shearn Delamore & Co
- P. Gananathan | Partner, Messrs Gananathan Loh
- Sanjay Mohanasundram | Partner, Mohanadass Partnership

_EVENTS

KLRCA Certificate in Adjudication

28th May – 1st June 2016

The KLRCA held its first of two 'Certificate in Adjudication' courses of 2016 in the month of May, with the second edition already scheduled for November later this year.

The latest edition attracted more than 80 aspiring adjudicators from various professional backgrounds including engineers, lawyers, surveyors, contractors, government officials and employees of NGO's that are engaged in the design and procurement of construction contracts. The course structure included four days of intensive lectures focusing on substantive and technical issues, along with sets of tutorials and practical exercises. The course concluded with a series of examinations on the final day.

The lectures were broken down into five units; Unit 1 (The Application of Statutory Adjudication to the Construction Industry), Unit 2 (The Practice and Procedure of Adjudication under CIPAA 2012), Unit 2A (CIPAA Regulations), Unit 3 (The Fundamentals of Construction Law), Unit 4 (The Construction Process) and Unit 5 (Writing an Adjudication Decision). Familiar and eminent faces from the Malaysian construction law industry; Ir Harbans Singh, Lam Wai Loon, Chong Thaw Sing and Michael Heirhe were on hand to guide the aspiring adjudicators throughout the entire comprehensive course.

This course is recognised by the CIPAA Regulations as a required qualification to be an Adjudicator under the Construction Industry Payment and Adjudication Act (CIPAA) 2012.

At conclusion of the KLRCA Certificate in Adjudication course, should participants pass the adjudication decision writing examination, they would then be able to apply for empanelment into the KLRCA's panel of adjudicators. Upon empanelment, they may be considered for appointment by the Director of KLRCA to adjudicate any potential cases administered by the KLRCA. The appointment process however, is a stringent one that involves the consideration of other external factors such as suitability, merit and experience levels.

KLRCA CERTIFICATE IN ADJUDICATION

This programme is recognised by the CIPAA Regulations as necessary qualification to be a CIPAA Adjudicator under CIPAA 2012

SAVE THE DATE!

19–23 NOV 2016

8.30am–6.00pm

Kuala Lumpur Regional Centre for Arbitration
Bangunan Sulaiman, Jalan Sultan Hishamuddin
50000 Kuala Lumpur

KLRCA Certificate in Adjudication is conducted by KLRCA and is open to everyone, especially those in the construction industry. Aside from training future adjudicators and providing them with the necessary skills to conduct an adjudication, the programme is also suitable for those who do not want to become adjudicators but would just like to seek more knowledge on the subject. This programme is recognised by the CIPAA Regulations as necessary qualification to be a CIPAA Adjudicator under CIPAA 2012.

CPD POINTS

Bar Council Malaysia	*pending approval*
Board of Engineers Malaysia (BEM)	*pending approval*
Board of Architects Malaysia (LAM)	*pending approval*
Construction Industry Development Board (CIDB)	*pending approval*
Land Surveyors Board	*pending approval*
Board of Valuers, Appraisers and Estate Agents Malaysia (IPPEH)	*pending approval*
Board of Quantity Surveyors Malaysia (BQSM)	*pending approval*

The training is conducted over five days by experts from the construction industry and consists of five units.

UNIT 1 The Application of Statutory Adjudication to the Construction Industry
Enables the participants to acquire knowledge and develop a better understanding of adjudication and the effects of the Construction Industry Payment and Adjudication Act (CIPAA) 2012 on the construction industry.

UNIT 2 The Practice & Procedure of Adjudication under the CIPAA
Gives participants a deeper knowledge of the important provisions of CIPAA and understand the necessary requirements of the adjudication process.

UNIT 2A CIPAA Regulations
Introduces participants to the Regulations of the Act which will give full effect and the better carrying out of the provisions of CIPAA 2012.

UNIT 3 Fundamentals of Construction Law
Introduces the participants to the Malaysian Legal System and provides the basic knowledge of construction law, which includes basic concepts of the law of contract, tort and evidence.

UNIT 4 The Construction Process
Introduces the participants to the basic knowledge of the construction process in particular procurement, processes and contractual arrangements.

UNIT 5 Writing Adjudication Decisions
Provides participants the skills necessary to write an adjudication decision in accordance with the provisions in CIPAA.

For more information please contact
Paul Savuriar at **03 2271 1000** or email **cipatraining@klrca.org**

_HIGHLIGHT

Dispute Resolution in Asia – Recent Developments and Future Directions

*By **Datuk Professor Sundra Rajoo,** Director, KLRCA*

Editorial Note:

Datuk Professor Sundra Rajoo originally delivered this paper at an ADR Conference organised by the Chartered Institute of Arbitrators, North America Branch on 22nd January 2016 in San Francisco. This article has been suitably edited for the sole purpose of publication in KLRCA's Newsletter.

I am indeed privileged to pen down my thoughts for you not just as an active stakeholder in dispute resolution in Asia, but also for the first time as the President of the Chartered Institute of Arbitrators, committed to ushering in the new century for the Chartered Institute of Arbitrators. Lord Neuberger in his address in the Centenary Celebration of the Chartered Institute in 2015 cited this most perspicacious sentence from the Institute's 1915 records, "the tendency of all commercial matters is in the direction of complexity" and that "beyond the most complete knowledge and experience [in the subject matter of arbitration], special knowledge, training and experience, together with acquaintance with the laws of evidence, the rules for construction of written documents, the principles of law and some degree of judicial capacity are equally important."

In my opinion, these words resonate deep and true at many levels as not much has changed since then. Just as the Queen Mary survey of International Arbitration in 2015 serves as testament to the continuing validity of those words, so does the topic of this article: "Resolving Disputes with Companies from Asia: What is the Best Approach?". Undoubtedly, the fundamental foundation of this particular topic as well as the development of dispute resolution in Asia stems from the on-going process of transformation that the economy and dispute resolution in Asia has witnessed in the past few years.

I consider myself blessed to have personally borne witness to this transformation and to have been accorded the opportunity to assume presidency of the CIArb at such a pivotal stage in Asian Arbitration, where all future developments must be sure to embrace reflections on the past, present and future. The Chartered Institute of Arbitrators is no doubt the leading contributor to education, scholarship, standard-setting and law reform in the world of dispute resolution. I am well aware that the journey ahead is long and arduous, but I need to look no further than the radical development of the CIArb for inspiration. I believe that the growth from a small humble organisation founded in 1915 to a power house that houses over 12,000 members in over six continents is a remarkable feat that is only set to surpass itself.

It is my firm belief that the past, present and future in dispute resolution in Asia is profoundly linked to a common fabric. Development has been achieved through innovation, education and capacity building. Unquestionably,

the diaspora in Asia is unique where harmonisation and internationalisation blend seamlessly with regionalism. Enough has been said and analysed in the past in respect of the instrumental role played by Alternative Dispute Resolution; in particular, arbitration has become an indispensable tool to international commerce and the world at large. Today however, I appeal that arbitration is poised to fulfil an even greater purpose. The world stands at a pivotal point in time, having reached a critical juncture in its development, where international arbitration may be definitively proclaimed "the premier mode of transnational commercial dispute resolution."

To the general statement above I would add, however, that nowhere is this reality more manifest than in Asia. I believe, in Asia, more than anywhere else, the development of dispute resolution has occurred by virtue of an unwavering focus on harmonious development, universal adherence (i.e. to UNCITRAL precepts), cultural receptivity and continuous capacity building. Cost effectiveness, expeditiousness and innovation remain the cornerstones and hallmarks of Asian arbitration.

I truly hope that these fundamental tenets never be forgotten in such a rapid phase of expansion and growth that the world of ADR is undergoing. To this end, it is also my humble opinion that all future developments in Asian alternative dispute resolution should be underpinned by sustainability. This is such to ensure that the development of alternate dispute resolution does not merely culminate in arbitration morphing into the shadow of litigation.

Having briefly alluded to the guiding principles and overarching vision and ethos of Asian arbitral development above, I will now turn to contemplate the more practical dimensions of development in Asia. On the whole, the robust arbitral regime and framework in most parts of Asia and South Asia may be analysed as both a cause and a consequence of the burgeoning Asian economy. Indeed, it is an indisputable fact that economic and legal development go hand in hand. This is to say, only nations possessing well-established laws, a standardised legal profession and a reliable legal system will ultimately be assured of economic development and growth. In particular, such factors ensure the cultivation of a conducive business climate and will serve to elevate the reputation of the individual nation.

A nation which acquires the coveted title of "a preferred destination for foreign direct investment" will inevitably and unquestionably witness palpable growth in both economic and social sectors. Such extensive growth will be realised as, amongst other things, a general expansion of the region's institutional and regulatory arbitration infrastructure. As such, the existing systems and growing case-loads of many countries have in fact made it crucial for commercial entities in Asia and across the world to opt for alternate dispute resolution. I believe it is interesting to note that Asian regions adopted a particularly unique and innovative way to surge ahead of its counterparts while maintaining its focus on development of dispute resolution.

In respect of the region's institutional arbitration infrastructure, one may readily cite the enduring, and in some instances, increasing success of established centres, such as the China International Economic and Trade Arbitration Commission (CIETAC), the Hong Kong International Arbitration Centre (HKIAC), the Kuala Lumpur Regional Centre for Arbitration (KLRCA) and the Singapore International Arbitration Centre (SIAC).

Notably, in 2015 a highly esteemed and authoritative international arbitration survey[1] (White & Case) ascertained that Hong Kong and Singapore[2] constituted the third and fourth[3] most preferred and widely used seats in the world respectively. I believe apart from these renowned names, widespread development has also spurred the inception of other arbitral institutions, namely BANI in Indonesia and the Thai Arbitration Institute – though these remain as yet relative neophytes in the international arbitration arena, they are indisputably steadily growing in repute.

The developments in the regulatory structures of Asian arbitration are equally important. Regular undertaking of revisions to the arbitral rules and laws of Singapore, Hong Kong,

1 The 2015 International Arbitration Survey: Improvements and Innovations in International Arbitration was conducted by Queen Mary University of London (QMUL). It is the third survey carried out in partnership with White & Case.

2 According to the Survey, Respondents were of the opinion that the most improved arbitral seat (taken over the past five years) is Singapore, followed by Hong Kong.

3 According to the Survey, the five most preferred and widely used seats are London, Paris, Hong Kong, Singapore and Geneva. It is also stated in the Survey that the primary factor driving the selection of a seat is its reputation and recognition.

Malaysia and India evince a steadfast commitment to innovation and collectively signify indefatigable efforts to keep abreast of international best practices, norms and standards. In fact, even countries such as India, which were previously resistant, have now realised the importance of a solid regulatory structure for alternative dispute resolution as being one of the key reasons for an increase in the economy. Inevitably, the arbitration systems in different countries have undergone different stages of developments. A definite trend towards convergence has been sparked by the advent of the UNCITRAL Model Law. As a result, I believe, these jurisdictions offer some of the most up-to-date and progressive arbitration legislation in the region.

Institutions such as KLRCA and SIAC with the constant support of their governments look to innovate their rules regularly. In fact, it is good to note that the SIAC is currently revising its arbitration rules to implement changes to provisions on consolidation and joinder, emergency arbitrators and expedited procedures and investment arbitration, with the revised rules to be released mid-2016. The KLRCA, too, is in the midst of revising its Rules and is looking to release the same later this year.

Similarly, Malaysia stands on the cusp of significant change, and the next year or so will see the introduction of crucial amendments to the Arbitration Act and the KLRCA Arbitration Rules. In addition, Hong Kong's Law Reform Commission highlighted in a report published on the 19th of October, 2015 the need for amendments to the laws of Hong Kong in order to accommodate third party funding of arbitrations and as a necessary corollary to develop appropriate ethical and financial standards for funders. It seems to me that third party funding remains a recurring topic of debate which has generated much interest and discussion in the region, particularly since many other leading dispute resolution centers4 already permit some form of third party funding. Singapore, on the other hand, has resolutely declined to legislate in favour of third party funding.

As a whole, the end product of this continuous process of upgrading and refinement has been a substantial convergence between the arbitration laws and institutional rules in Singapore, Hong Kong, Malaysia and other jurisdictions throughout the region. These institutions and jurisdictions serve as an effective platform, not just for western nations but also other countries within the region that are rapidly jumping onto the bandwagon of development.

4 Third party funding is increasingly utilised in arbitration proceedings held in major arbitration centres around the world such as London, Paris and Geneva.

I believe in this journey chronicling the development of dispute resolution in the region, it is of course but natural to allude to the role that the governments of countries like Japan, Singapore, Hong Kong and Malaysia have played in promoting and promulgating the impression of their countries as a "safe seat." In fact, these constant initiatives have resulted in not just the internationalization of arbitration, but also the proliferation of arbitration countries across Asia. I am of the opinion that this is perhaps the most important lesson that can be gleaned from Asian arbitration. The development of arbitration in the region has been heavily reliant on the harmonious nature of arbitral institutions and the countries that promote arbitration.

Recent developments in the Asian region also, of course, include a focus on other methods of Alternate Dispute Resolution. Mediation has become a key area that is being focused on and with good reason, undoubtedly. The Singapore International Mediation Centre was launched on the 5th of November 2014. KLRCA, on the other hand, launched its own set of revised Mediation Rules in 2013.

Hong Kong, via the HKIAC, highly consolidated the presence of mediation as well as hybrid MED-arb processes. For example, the facilitation of the settlement of disputes can be found in recent promulgated rules, such as the Practice Direction on Mediation, the Civil Justice Reform in 2009 or the new Hong Kong Arbitration Ordinance (henceforth, "the Ordinance"). Under the Ordinance, if an arbitrator acts as a mediator, the arbitration proceedings shall stop to allow the mediation to exhaust all its resources and thus, try to be effective. Apart from Hong Kong, the SIAC and SIMC have also developed important "hybrid" innovations regarding the Arb-Med-Arb clause which also provides divergence between institutional rules. I am of the opinion that this linking of institutions is an important concept going forward, and it is something I will address much later in this article.

Singapore, Kuala Lumpur and Hong Kong all provide for measures such as emergency arbitrators and expedited arbitration, thus putting them on par with the best arbitral institutions in the world. As for the KLRCA, being one of the oldest regional institutions, I believe it has also proven to be extremely innovative. At the 2012 Global Islamic Finance Forum, the KLRCA launched an adapted set of its Arbitration Rules for Islamic arbitration, otherwise known as the "i-Arbitration Rules". In addition, KLRCA also constantly strives to create new niche markets and has as such delved into Adjudication, Sports Arbitration, Maritime arbitration, medico-legal mediation and other developmental projects.

Accordingly, the collective success of these Asian arbitral institutions in expanding their internal rules, services and facilities which are targeted at both generic and specialist market shares will undoubtedly enlarge the pool and give parties the possibility to select institutions with closer cultural affinity and greater geographic or linguistic convenience. As a matter of fact, with the surfacing of regional economic centres around the world, there has been a trend towards referring disputes to arbitral institutions closer to home.

It is my firm belief that Asia and arbitration in Asia will no longer be a stranger to the Western world. In fact, I am of the opinion that it is here to pose as a legitimate option and a true alternative to the "Traditional seats" of arbitration. This of course, is the most opportune moment for me to delve into the future of arbitration and alternate dispute resolution in Asia.

While some countries in the region are ahead of the others, it is essential to ensure that the region in itself grows and a uniform robust system is developed across the region. For this to occur, it is crucial to engage in introspection and create a mechanism that will assist in overcoming the barriers that exist in relation to the growth and development. The Hon'ble Chief Justice Sundaresh Menon[5] in his keynote address at the CIArb Centenary Conference in London[6] articulately summarised it as "though international arbitration is in a golden age, the task of building a successful arbitral seat is only going to get tougher."

In Asia and its regions, there exists a need to maintain an equilibrium between regional interests and international harmonisation, which is felt more strongly now than ever before. It would not be a far stretch to say that the success of development thus far has been on the successful managing of regional interests while ensuring harmonisation.

Of particular significance, I believe, will be the problems that will arise from rapid development in the region, such as a) the prospect of a multiplicity of proceedings leading to inordinate delays in on-going matters, (b) escalating costs, (c) a proliferation of arbitral centres throughout Asia, and the corresponding fear that many of these may constitute mere duplicates of one another and (d) the definite possibility of increased competition both between and amongst established and emergent institutions. There are also cautionary tales to be learnt from other jurisdictions, such as sanctions and political instability which will cast a shadow over the continued growth and development.

5 The Honourable Sundaresh Menon is the Chief Justice of Singapore and a former Attorney-General of Singapore.

6 The Chartered Institute held the London Centenary Conference from the 1st to the 3rd of July 2015

Asia has always prided itself on its interesting trajectory of growth for the developed and developing arbitral institutions in Asia. It is of course undeniable that this growth is particularly non-traditional and unique to the continent as it is dictated by the various economic, cultural and region specific demands. However, as a whole, the one lesson that has stemmed from the various growth trajectories, that is key to sustainable development is diversification of services through a focus on innovation. For example, at KLRCA, innovation has always been targeted at International best practices whilst also serving the regional demand. This has been achieved through (i) regional cooperation with other arbitration centres (ii) sustainable growth that goes hand in hand with economic growth and (iii) constant revision of goals in keeping with national policies and international best practices.

I am of the opinion that given its unique diaspora, the "battle of seats" has been a near common phenomenon in the world of arbitration. However, Asia has unquestionably led the way in overcoming this particular "battle of seats" issue. I am happy to proclaim that the KLRCA – the first regional centre established by the Asian African Legal Consultative Organisation in 1978 – paved the way for interinstitutional collaboration. Since its establishment, the KLRCA has signed collaboration agreements with the most important arbitral institutions in the world.

The other key area of development that Asia should be focusing on, and will definitely indicate the heralding in of the future, would be the equal development of dispute resolution in all its regions. Towards this end, other countries that are still developing in the field of dispute resolution such as Indonesia, Thailand and Philippines to name a few, are to be developed in order to be on par with the best countries within the region such as Singapore, Malaysia and Hong Kong. This is a joint effort that is to be undertaken by the region and I am indeed delighted to note that such efforts have already resulted in greater inter-institutional co-operation.

The Chartered Institute of Arbitrators has played a key role in the development of ADR in the region and I am of the firm belief that it will continue to play a very crucial role in the years to come. Towards this end lies one of our key focus areas for this year; Membership and Capacity building. Capacity building and inter-regional co-operation will be the clear and decisive indicators of the continued success of alternate dispute resolution in Asia. In fact, education, awareness and capacity building is the first step forward for ensuring that the developing jurisdictions in Asia are on par with the more developed dispute resolution regimens within Asia. The membership and education drive will be focused on areas where the CIArb presence needs to be increased, that is in areas such as Philippines, Indonesia and certain provinces of China. This will ensure that the development of ADR in this region is strong and based on a solid foundation.

To recapitulate, economic development in the region has ensured that Asia constantly endeavours to improve its legal infrastructure to develop the sound climate that exists today for efficient international dispute resolution. Despite the trend of harmonisation, its uniqueness lies at the innovations undertaken whilst bearing in mind the varied cultural differences and unique focus on regionalism. This is also a key reason as to why the notion of "sustainable development" is most important in Asia while looking to the future. Sustainable development will ensure that the evolution of dispute resolution in Asia and its many innovations are done without any compromise to the basic and fundamental principles of the alternate dispute resolution.

I am of the opinion that the success of the Chartered Institute of Arbitrators has been in its ability to look to the future with a strategic concept plan since its inception. Professor Doug Jones Centennial Lecture in Kuala Lumpur in May[7] aptly summed this up as "Looking Back-Moving Forward." From my point of view, the future of arbitration lies in a zone that transcends domestic and international legal regimens. On the whole, such a herculean task can only be accomplished with collaboration, co-operation and capacity building. It is equally crucial to note that boundaries in the world of Alternate Dispute Resolution are rapidly shrinking. Unquestionably, the future of dispute resolution therefore also lies in the successful harmonisation between the East and the West, the traditional and the innovative so on and so forth.

To sum up this article, I appeal that the future is not just filled with exciting prospects, but also features many challenges. Hence, there is a need for constant endeavours to ensure that all developments in Asia observe the right trajectory and are undertaken with a keen, mindful eye of not leaving any particular area in the region behind. It seems to me that in order to gain inspiration for such a herculean task, I need to look no further than to the history of the venerable organisation that is the Chartered Institute of Arbitrators. In short, a small humble organisation founded in 1915 to raise the status of arbitration, today houses over 14,000 over members in over six continents while still rapidly expanding and growing.

In fact, education, awareness and capacity building is the first step forward for ensuring that the developing jurisdictions in Asia are on par with the more developed dispute resolution regimens within Asia.

ABOUT THE AUTHOR

Datuk Professor Sundra Rajoo is the Director of the Kuala Lumpur Regional Centre for Arbitration (KLRCA). He is also the President of the Chartered Institute of Arbitrators (CIArb) 2016. Sundra's roll of honour includes being Founding President of the Society of Construction Law, Malaysia and the Past President of the Asia Pacific Regional Arbitration Grouping (APRAG), which is a federation of nearly 40 arbitral institutions in the Asia Pacific region.

Sundra is a Chartered Arbitrator with extensive arbitration experience that includes over 200 appointments locally and internationally. He serves on the panel of numerous international arbitral institutions and organisations. Sundra is also an Advocate & Solicitor of the High Court of Malaya (non-practising), a Professional Architect and a Registered Town Planner. He is a visiting professor at the Faculty of Built Environment, University of Technology Malaysia and a visiting professor and external examiner at the Faculty of Law, National University of Malaysia.

He was the principal draftsperson of the PAM 1998 Standard Form of Building Contract which was widely used in the construction industry in Malaysia. He has authored and co-authored a number of authoritative books on construction law and arbitration. In July 2015, Sundra was conferred an Honorary Doctorate in Laws from the Leeds Beckett University in England.

7 The CIArb Centennial Lecture: Looking Back Moving Forward by Professor Doug Jones on the 7th of May 2015 at KLRCA.

_FEATURE

Arbitration in Asia – The Good, The Bad and The Ugly!

By **Peter Godwin**
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Editorial Note:

This article is adapted from a presentation delivered by Peter Godwin as part of KLRCA's Evening Talk Series. The presentation, entitled "Arbitration in Asia – The Good, The Bad and The Ugly!", was held on 23 June 2016 at KLRCA's seminar room.

International arbitration is now widely accepted in Asia as the preferred form of dispute resolution in cross border transactions. Gone (mainly) are the days when arbitration was seen as a new process of which clients should be suspicious.

The Good and The Bad

These days arbitration is part of the mainstream of dispute resolution as evidenced by the number of lawyers in the region making their living from arbitration. It is easy to forget how quickly the arbitration scene has developed in Asia and consequently, in many cases, how steep the learning curve has been and here I am just talking about for the lawyers. For the clients, in many cases, the curve remains steep as, happily for them, most have less exposure.

All of this leads to a situation where at a high level Asia now looks to the outside world to be a place of sophistication in arbitration terms. However, scratch the surface and unsurprisingly, one discovers that the level of expertise, whether at client, counsel or arbitrator level varies enormously.

This leads to a situation whereby:

- The common misconceptions around arbitration being quick, cheap and confidential are still commonly heard;

- The real advantages of arbitration are overlooked and/or undermined where commercial compromise is allowed to trump the law; and
- Emerging arbitration markets with small local bars can be vulnerable to the influence of one or more dominant players. Ambitious counsel seeking to develop market leading positions in relatively new arbitration markets are picking up some bad habits and sadly Asia is starting to produce its very own 'guerillas' in unlikely places.

Dealing first with the misconceptions:

Speed – whether arbitration is quicker than litigation will depend upon what you are comparing but I would suggest that if you compare obtaining an arbitral award to obtaining a first instance judgment in most courts, arbitration will rarely be quicker and often will be slower. There will be exceptions, and the position changes if you factor in appeals but, as a general rule, I would suggest that choosing arbitration because you believe it will be quicker than litigation is rarely correct.

Cost – similarly it is rarely the case that arbitration will be cheaper than litigation. Whilst having to pay for your arbitrators and your hearing room (c.f. a judge and the court room) adds to the cost, the bulk of the costs are those of the lawyers and any expert witnesses they may retain. Whilst much has been written in recent years on controlling these costs, the fact remains that they are substantial and at least on a par with the equivalent fees incurred in litigation.

Confidentiality – certainly amongst clients, and among some lawyers, there is a belief that the arbitration process is confidential. Of course, it often is but that is a function either of the law of the seat of arbitration, the rules of arbitration or a separate confidentiality agreement. Absent confidentiality being provided in one of these ways, arbitration is not a confidential process, merely a private one.

Having cleared up the misconceptions, it is worth briefly reminding ourselves what are the real benefits of arbitration:

Enforceability – the New York Convention is arguably the most successful multi-lateral treaty ever conceived allowing for the enforcement of arbitral awards in 150 countries worldwide. This is at the heart of arbitration's popularity as the equivalent processes for enforcement of court judgments across borders are far more cumbersome, if indeed they exist at all.

Neutrality – human nature is such that where parties come from different jurisdictions, they are reluctant to provide their counterparty with 'home court advantage' for dispute resolution. The ability to pick a neutral third country is therefore attractive. The same is also often true of the governing law.

Procedural flexibility – in a national court one is bound by the local civil procedural rules; are bound to litigate in the local language; and are required to use a counsel qualified in that jurisdiction. By comparison, in arbitration, one can design the procedure to best suit the case at hand and, importantly, in all major arbitration centres, can choose to arbitrate in the language of your choice using the counsel of your choice.

Experienced tribunal – when in court, the judge is assigned. He may or may not have specific experience in the type of dispute that you face. In arbitration, the parties have control, or at least a significant degree of influence, over who is appointed to their tribunal so allowing for the tribunal to be made up of people with directly relevant experience for the matter in issue.

Final and binding – in most jurisdictions there are very limited grounds on which to set aside an arbitral award (c.f. the position with a court judgment where one (often two) appeals are permitted as of right). This is an advantage of arbitration so long as you win!

The Ugly

All of the above sounds straightforward and the misconceptions are easily corrected so you may ask 'what can go wrong?' Quite a lot is the answer!

Poor drafting of the arbitration agreement: A good arbitration agreement does not usually need to be long. Every major arbitration institution has a model clause it recommends, often in multiple languages. These clauses are tried and tested; they work. Your starting point should be such a model clause not a blank sheet of paper. I call the latter having your own recipe for disaster.

Having started in the right place, remember to 'KISS' – Keep It Short and Simple. As a rule of thumb, if an arbitration clause in a contract exceeds half a page, there is a good chance it is too complicated and contains an error.

Finally, add a sentence clearly stating the language (one only please!) of the arbitration. The model clauses do not contain this but, in my view, it is essential so as to (i) avoid lengthy arguments about language when a dispute arises; and (ii) avoid very significant bills for translation, etc.

Over–complication: Sometimes, a short and simple arbitration agreement will not suffice and something more complex is required e.g. an umbrella agreement where there are multiple parties and contracts in play or preferred e.g. a tiered agreement (i.e. one with multiple stages from negotiation through mediation and ultimately to arbitration).

Having asked yourself 'is this really necessary?", if you find yourselves needing more complex agreements such as these, seek expert advice. The fees involved in getting that advice will pale into insignificance compared to the fees you will pay if the drafting goes wrong and you find yourself with the efficacy of your arbitration agreement being challenged.

Despite these challenges, there should be no doubt that the future of arbitration in Asia is a bright one. The sooner some of these lessons are learned and applied in practice, the brighter it will be.

Horrible compromise: whilst we all understand that compromise is the key to any successful negotiation, I would respectfully suggest there are some compromises that should be avoided. An example of one to avoid are what are known as 'finger pointing clauses'.

A finger-pointing clause is one which says something like 'if Party A (from Japan) claims against Party B (from the U.S) the arbitration will be in New York; if Party B claims against Party A, the arbitration will be in Tokyo. Commonly the arbitral institution may also change depending upon the venue too.

Whilst it is easy to understand how such compromises are reached, and I know, for example, that many Japanese companies used to use them routinely as they always expected to be the defendant in any claim and they felt that the Claimant being forced to arbitrate in Tokyo would act as an additional deterrent. However, I strongly recommend they be avoided as they can easily go wrong in the drafting leading to jurisdictional challenges and/or parallel arbitrations in different jurisdictions which, in turn, will lead to challenges upon enforcement.

It is easy to pick one place of arbitration and one set of arbitration rules. I would suggest that is always a better option than finger-pointing.

More horrible compromise: Not satisfied with finger-pointing arbitration clauses, I have also encountered finger-pointing governing law clauses. If the former should be avoided, finger-pointing governing law clauses must be avoided. Effectively not knowing what law governs your contract until one party commences a dispute is as mad as it sounds. Whilst it is true that the vast majority of contractual disputes depend far more on the contractual language than the governing law, it is by no means the case that the language of every contract means the same thing regardless of the governing law.

Even more horrible compromise: The favourite governing law clause that I have stumbled across in my career read something like this:

> *'This contract shall be governed by principles of law common to England and Azerbaijan and, if no such common principles exist, by the laws of Alberta, Canada'.*

I trust no commentary from me is required!

Dabblers as counsel: As Asia sees an increase in arbitration more and more lawyers are seeing an opportunity to make a career as arbitration counsel. Most have started life as litigators as indeed I did myself more years ago than I now care to remember!

Whilst arbitration is on one level no more than another form of dispute resolution, in style and practice it has developed quite differently from litigation so there are 'rules of the game' to be learned. This leads to the classic Catch-22 as you can only learn by being involved. Where possible, I would simply encourage counsel looking to learn to seek opportunities to co-counsel with others who have already learned. When such opportunities arise, learn what the experienced counsel do well; try not to learn their bad habits too!

As the arbitration community in Asia learns together, as we have in other parts of the world where the arbitration community is at different stages of development, we inevitably see inexperienced counsel defaulting to what they know best, which is usually their domestic litigation system. This can undermine the advantages of arbitration.

By way of example, as US counsel learned the international arbitration way, one would regularly get requests for depositions, procedural motions, etc none of which, I would suggest, have any place in a genuine international arbitration process. Whilst thankfully depositions have never been part of the vernacular in Asian litigation systems, the same principles apply that we should all seek to avoid importing too much of our litigation backgrounds into arbitration.

Procedural game playing: Perhaps a function of the learning experience the arbitration community in Asia is going through, or perhaps just a function of the competitive nature of many lawyers, or perhaps (in a very few cases) a function of some over-zealous clients, we are seeing, in my opinion, too many counsel focus on time consuming procedural point scoring or what have become known as guerrilla tactics rather than focussing on the speedy and efficient determination of the substance of the dispute. Some counsel seem to think such tactics illustrate how clever and experienced they must be but seemingly ignore the negative impact it has on the tribunal who will ultimately decide their client's fate.

The other consequence of this is that it is increasing costs. Much has been written in recent years about the costs of arbitration. I firmly believe that, in many cases, it is arbitration counsel that are most to blame and a key element of this is that there are very few tools available to tribunals to control counsel misbehaviour. This is a separate subject for another day but one that we will doubtless continue to hear much about.

Inexperienced arbitrators: another Catch-22. Everyone has to start somewhere and the temptation is to ask new young arbitrators to learn as sole arbitrators on small cases. This is understandable but in the same way as I encourage counsel to learn by co-counselling initially with experienced practitioners, so ideally would a young arbitrator learn by working alongside an experienced arbitrator on a panel of three, or if that is impractical, by working as the tribunal secretary before taking appointments of their own.

Dissenting opinions: Whilst I have not seen empirical evidence, there is a sense that we see more dissenting opinions in Asia than elsewhere. If this is indeed correct, is it because some party appointed arbitrators consider it their duty to find in favour of the party appointing them. Indeed, I have attended conferences in Asia where arbitrators have stated that expressly from the floor!

The dissenting opinions are then being used to mount challenges to awards. This is an unhealthy trend that has the potential to undermine arbitration in Asia.

Approach to memorials: This is by no means confined to arbitration practice in Asia but the traditional approach that memorials are designed to narrow the issues in dispute seems to be getting lost in the mists of time with memorials getting longer; reply memorials often being longer than initial memorials, etc. We all need to remember that the tribunal will only remember so much of what they read. A long document is not the same as a strong document.

Within these ever-longer documents, there appears a growing belief that using hyperbole alongside plenty of bold underlining somehow strengthens one's case. More likely it risks insulting the tribunal.

The Future

Despite these challenges, there should be no doubt that the future of arbitration in Asia is a bright one. The sooner some of these lessons are learned and applied in practice, the brighter it will be.

ABOUT THE AUTHOR

Peter Godwin is the managing partner of Hebert Smith Freehills' Tokyo office and head of the firm's dispute resolution practice in Asia, with extensive experience in arbitration, litigation and other forms of dispute resolution. Peter has been practising in Japan for over 15 years. Peter is considered a leading figure in Japan for arbitration, and is highly regarded within the market. Independent legal directories have described him as a *'disputes guru'* (Who's Who Legal), a *'real expert in dispute resolution'* and *'a superstar of the Japanese dispute resolution space'* (Chambers Asia Pacific). He is ranked in the top tier for dispute resolution in Japan by both Chambers Asia Pacific and Asia Pacific Legal 500.

Peter has recent experience representing clients under ICC, LCIA, HKIAC, SIAC, TAI, JCAA, UNCITRAL and ad-hoc rules. He has represented clients in numerous arbitral centres around the world, including in London, Paris, New York, Stockholm, Oslo, Tokyo, Bangkok, Mumbai, Hong Kong and Singapore in disputes under English and other common and civil law systems. He also sits as an arbitrator and has recent experience under both ICC and JCAA rules.

He is qualified as a solicitor in England and Wales and Hong Kong, and is licensed to advise in Japan as a *Gaikokuho Jimu Bengoshi.*

MALAYSIAN SPORTS TRIBUNAL

KLRCA CERTIFICATE PROGRAMME IN SPORTS ARBITRATION

19–22 SEPTEMBER 2016

8.30am–6.00pm

Seminar Room 1
Kuala Lumpur Regional Centre for Arbitration
Bangunan Sulaiman, Jalan Sultan Hishamuddin, 50000 Kuala Lumpur

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KLRCA CERTIFICATE PROGRAMME IN SPORTS ARBITRATION

The Kuala Lumpur Regional Centre For Arbitration has identified the need for resolution of disputes in the sports industry in Malaysia. Arbitration has been known to be an effective medium to resolve disputes amicably and that conviction remains a principal catalyst that led to the inception of the **Malaysian Sports Tribunal (MST)**. With the upcoming establishment of MST, the sports ministry and associations alike will be able to pass on the intricacies of dealing with sporting disputes to the newly formed body and in turn focus on the development and capacity refinement of their respective portfolio.

To this end, a specialised set of MST Arbitration Rules is currently being finalised, along with a specialist panel of Sports Arbitrators drawing on both arbitration and sports communities, and the drafting of a flexible cost structure. Accordingly, there will exist a need for sports stakeholders to familiarize themselves with the technical aspects of MST's framework, which to an extent mirrors the CAS system.

In Malaysia, sporting dispute resolution remains at its infancy, where knowledge and experience in the theoretical and practical aspects of sports dispute resolution at national and international levels amongst sports stakeholders throughout Malaysia has been scarce at best.

The KLRCA Certificate Programme in Sports Arbitration is endorsed by The Olympic Council of Malaysia.

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Paul Savuriar at **03 2271 1000** or email **paul@klrca.org**

DIRECTOR'S MESSAGE

DATUK PROFESSOR SUNDRA RAJOO
Director, Kuala Lumpur Regional Centre for Arbitration

The KLRCA Certificate Programme in Sports Arbitration is the first of such certification courses in the Asia Pacific region. It is the first step towards creating the pioneering batch of specialised sports dispute resolution individuals to be a part of the Malaysian Sports Tribunal (MST).

This course also caters to sporting enthusiasts who are just interested in knowing more about the mechanisms involved in sports dispute resolution on a personal capacity without having intentions to be involved directly with the MST.

I would like to take this opportunity to thank the course directors of the KLRCA Certificate Programme in Sports Arbitration for all their assistance in shaping the course programme and preparing the course materials.

You will leave the programme empowered, to lead at the edge, knowing the ins and outs of the industry and its policies, structure and frameworks; and contribute towards upholding the honour and goodwill of the game through the skills and knowledge imparted.

Thank you.

COURSE DIRECTORS

PAUL J HAYES FCIArb
Barrister & Arbitrator, 39 Essex Chambers (London, Kuala Lumpur & Singapore);
Senior Fellow (Melbourne Law Masters), University of Melbourne

Paul Hayes commenced practice as a Barrister at the Sydney Bar in 1990 (read with Bernard Coles QC, University Chambers), before relocating to the Melbourne Bar in 1997 and was called to the Bar in England and Wales as a member of Lincoln's Inn in 2005.

He advises and appears in cases at interlocutory, trial and appellate levels, (commercial & equity litigation, international law & arbitration, large scale/complex litigation, common law litigation, sporting disputes, and constitutional & administrative law), conducted in multiple jurisdictions, but primarily in Melbourne, Sydney, Perth, London, Singapore and Kuala Lumpur. He also appears in jury cases, particularly in civil matters and especially in the field of defamation. He was appointed a Senior Fellow at the University of Melbourne (Faculty of Law, Melbourne Law Masters) in 2010 and was named in *Who's Who Legal* (2016) as a leading international lawyer in the specialty of sports law.

In 2013, Paul received the *Denis Callinan Award* for commendable community service in sports law from the Australian and New Zealand Sports Law Association (ANZSLA) and also in 2013, he was appointed by the Kuala Lumpur Regional Centre for Arbitration (KLRCA) in Malaysia as its Honorary Counsel for Sports Arbitration.

PROFESSOR RICHARD MCLAREN OC
Senior Fellow (Melbourne Law Masters), University of Melbourne;
Western University Canada, Canada;
Member, Court Of Arbitration For Sport, Canada

Richard McLaren is a Professor in the Faculty of Law at the Western University, Canada. He has published in a wide range of areas, including dispute resolution and bankruptcy. He has extensive practical experience as a commercial lawyer and a labour and commercial arbitrator and mediator.

He is involved in the adjudication of sports-related disputes at both the amateur and professional level. As a member and Arbitrator of the Court of Arbitration of Sport (CAS), he has arbitrated key sport cases throughout the world. As an Ad Hoc Panel Member of CAS, he has participated in five Olympic Games during which he resolved disputes pertaining to anti-doping, athlete eligibility and intellectual property rights. He is a Member of the Anti-Doping Panel for the International Cricket Council and is currently the President of the Basketball Arbitral Tribunal. He researches, writes and speaks on anti-doping cases, legislation and enforcement.

On 18th May 2016, The World Anti-Doping Agency (WADA) engaged Professor McLaren, as an Independent Person, to investigate allegations of state manipulation of the doping control process that took place during the 2014 Sochi Olympic and Paralympic Games. His report, the 103-page McLaren Investigation Report (McLaren Report) was released by WADA on 18th July 2016.

_FEATURE

The Need for Evolution of Commercial Arbitration to become the Future of Commercial Justice

By **Datuk Professor Sundra Rajoo**, Director, KLRCA

Editorial Note:
Datuk Professor Sundra Rajoo originally delivered this paper at the London 2016 International Commercial Law Conference 'The Future of International Commercial Dispute Resolution' on 29th-30th June 2016. This article has been suitably edited for the sole purpose of publication in KLRCA's Newsletter.

It is an absolute honour and privilege to share my thoughts on a topic of such importance and prominence in the global scenario. Commercial Arbitration and Commercial Justice are both works of evolution and also one of constant evolution. We have heard many great speeches and literature on this topic with many views surrounding the same. However, my take on it will be different and address how decentralisation, supplemented with capacity building and regional collaborations or knowledge sharing along with coordinated functioning with the commercial courts as a surety, has and will continue to, influence the growth and advancement of this branch of law as the vanguard of commercial justice.

I would like to quote Lord Neuberger in his address in the Centenary Celebration of the Chartered Institute of Arbitrators in 2015. His Lordship cited this most perspicacious sentence from the Institute's 1915 records. I quote:

> *"the tendency of all commercial matters is in the direction of complexity"*

and that

> *"beyond the most complete knowledge and experience [in the subject matter of arbitration], special knowledge, training and experience, together with acquaintance with the laws of evidence, the rules for construction of written documents, the principles of law and some degree of judicial capacity are equally important."*

His words resonate deep at this moment as they encapsulate the essence of both commercial arbitration and commercial justice. I believe the future is one of transformation and also one of competitive collaboration and growth. Commercial arbitration has indeed become an indispensable tool to international commerce and the world at large. However, the question we seek to answer today is if it is all set to be the future of commercial justice. I am of the firm opinion that the future of commercial justice transverses beyond the boundaries of merely commercial arbitration. There is no doubt in my mind that the future of commercial justice is deeply rooted in the evolving genre that is Alternative Dispute Resolution. The world stands at a pivotal point in time, having reached a critical juncture in its development, where with

constant sustainable development, it can be proclaimed as the premier method of transnational commercial dispute resolution. My learned colleague and esteemed friend, Honourable Sundaresh Menon from Singapore, echoing similar sentiments, recently stated that the term ADR, in the future, should stand for "Appropriate Dispute Resolution."

It is an undeniable fact that commercial Arbitration has served its purpose of reconciling the differences between informality and formality in international legal practices and the differences between systems of laws, jurisdictions, countries and their public policy. Luke Nottage coined the term "**Glocalisation**" to describe commercial arbitration[1]. Realistically, the term encompasses the spirit of international arbitration as it stands today, the harmoniser and harbinger of globalisation with localisation. This in effect is also the course that evolution of arbitration and ADR must adopt to be sustainable and also be the future of commercial justice.

I would like to propose a theory that we, as stakeholders, must work together in order to ensure sustainable development of arbitration and ADR to cement its future as the future of commercial justice. I am reminded of a quote I read on sustainable development which read that "*Sustainable development requires human ingenuity; people are its most important resource.*" Development must at all times not just be exponential but also sustainable. The continued success of arbitration and its subsequent expansion into all fields of ADR will still lie in its strong foundation. Harmonious development, universal adherence, cultural receptivity and continuous capacity building will play a crucial role in the coming years. I have reiterated this in many forums and I do so again in this article, that the London Safe Seat Principle, new findings in the Queen Mary Survey[2] are all indicative of this expansive growth and changing dimensions which need to be accounted for. The recent setting up of the Commercial Courts in Singapore and in Dubai (where the Commercial court of DIFC in Dubai has already been established) are all indicative of this growth. In fact, contrary to the popular myth, expansion into commercial courts is not just part of the new era of "judicialised arbitration", but a response to the varying market needs arising from different quarters of the world. Initiatives such as this foster a competitive environment in which different states and systems and commercial actors seek to create optimal conditions to encourage use of their particular dispute resolution mechanisms.

Notions of tradition and non-traditional seats are fast disappearing. Undeniably, contemporary arbitration has given parties, countries and institutions a wide latitude to respond to the changes in economies and capitalize on the same to provide competitive services to stakeholders across the globe. However, it is worth noting that commercial Arbitration should be wary of being a victim of its own success. It is an unfortunate truism that success of this magnitude will come with its challenges to be overcome.

The key here is to ensure diversification of ADR through a focus on innovation. One only has to look at the recent changes such as med-arb clauses, expedited arbitration, and hybrid clauses to see that we have already consciously imbibed this as part of the ADR psyche. Institutions such as LCIA, HKIAC, KLRCA and even countries like Hong Kong, United Kingdom and Malaysia are well on their way to encompass hybrid evolutions of ADR. I submit that another key area to focus would be the decentralisation of ADR. Allow me to clarify. ADR and arbitration should break free from the traditional barriers of territory and be available and accessible across the globe. Initiatives such as the One-Belt-One-Road will go a long way in promoting this "decentralisation", auguring in a positive step forward for the development of ADR.

Regional collaborations and capacity building by the developed regions and institutions in the field of ADR will help bridge the definite gap between the new entrants in the field of ADR. As such, Institutions across the world such as the LCIA, SIAC, KLRCA and ICC will all play a crucial yet unique

1 Nottage, Luke R., *In/formalization and Glocalization of International Commercial Arbitration and Investment Treaty Arbitration in Asia* in '*Formalisation and flexibilisation in dispute resolution*', J. Zekoll, M. Baelz and I. Amelung, eds., Brill, 2014, pp. 211-49

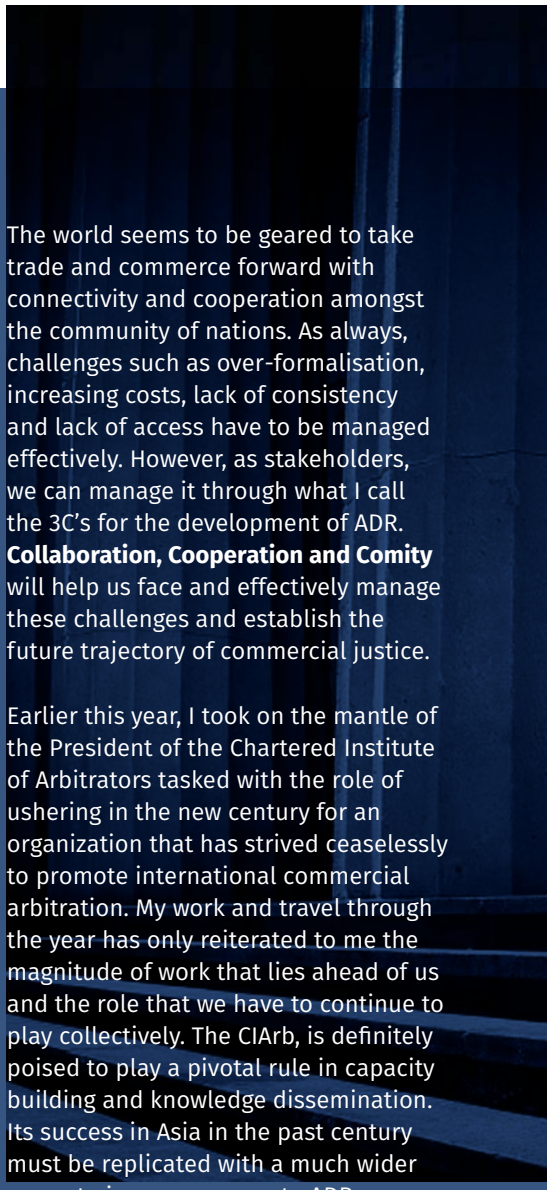
2 Available at http://www.arbitration.qmul.ac.uk/docs/164761.pdf

role in the coming years as part of the continuous work of evolution ensuring commercial justice. Besides providing the neutral forum for dispute resolution, institutional ADR eliminates the risks of expending unquantifiable resources to secure compliance with a web of national laws and regulations by navigating through unfamiliar foreign legal systems and relying on unfamiliar foreign counsels.[3] Building of expertise and capacity is also a crucial part of this continuous evolution. Capacity building strategies and harmonisation would entail a necessary process of engaging with the stakeholders, judiciaries and arbitrators. This in turn will work to build the trust in the system in achieving commercial justice. It is here that international bodies such as the Chartered Institute of Arbitrators, International Bar Association and many other ADR bodies, fulfil its missions. In a nutshell, greater access to international commercial justice through ADR can easily be realised through targeted capacity building and knowledge sharing.

I am of the firm belief that one of the many successes of ADR and commercial arbitration remains in its flexibility and also the specialisation of the dispute resolver. And one of the shortcomings, can be said, the lack of certainty, the risk element in the process and this brings me back to the topic of this session, whether commercial arbitration is the future of commercial justice. Without going much into the jurisprudential values or debate, it is undeniable that soft law has its own power of influencing the buy in from arbitration users. It has evolved and developed its web of the practices and processes which is an essential element in ensuring that commercial justice is achieved. Taking an active role in creating soft law such as the IBA Guidelines, CIArb guidelines are also a huge step in promoting this knowledge sharing and creating a uniform standard that keeps in mind that the formula for ADR can never be "one size fits all." Much like the shift from commercial litigation to commercial arbitration in the past, the future will see a shift towards ADR which answers the core questions of addressing the needs and wants of the stakeholders.

Now, globalisation might be a clichéd and oft used term, however, it is an undeniable truth that globalisation will continue to dictate the developments in this field. Developments in the other fields of ADR such as negotiation and mediation have taken the forefront. The recent UNCITRAL Convention on the Enforcement of Mediated Settlements is yet another positive step to accommodate the changing landscape of dispute resolution.

The future of commercial justice systems will look at healthy competition, not only within the field of arbitration, but throughout the entire network. In fact, we are seeing the growth and evolution of commercial courts and national legislations, each gearing up towards appealing itself to the needs of the litigants. This is not to be seen as a threat, but a positive sign that should be encouraged and reinforced. Undeniably, a more effective judiciary and legislation in any country will only seek to reinforce the principles and practice of ADR. The recently proposed 2016 Hague Draft Text on the Recognition and Enforcement of Foreign Judgments too is a welcome move as it seeks to ensure legitimacy to the dispute resolution process, either alternative or traditional.

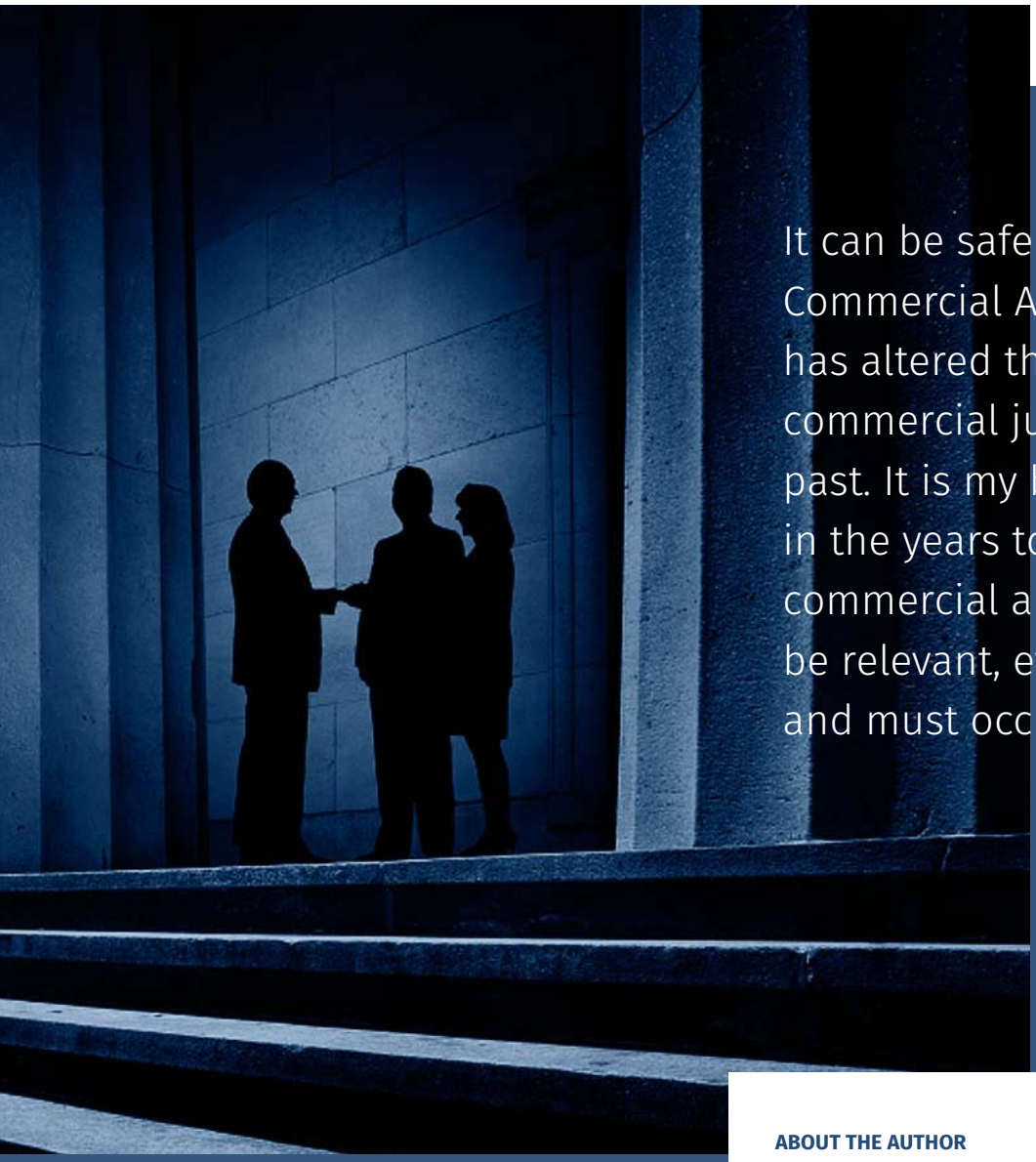


The world seems to be geared to take trade and commerce forward with connectivity and cooperation amongst the community of nations. As always, challenges such as over-formalisation, increasing costs, lack of consistency and lack of access have to be managed effectively. However, as stakeholders, we can manage it through what I call the 3C's for the development of ADR. **Collaboration, Cooperation and Comity** will help us face and effectively manage these challenges and establish the future trajectory of commercial justice.

Earlier this year, I took on the mantle of the President of the Chartered Institute of Arbitrators tasked with the role of ushering in the new century for an organization that has strived ceaselessly to promote international commercial arbitration. My work and travel through the year has only reiterated to me the magnitude of work that lies ahead of us and the role that we have to continue to play collectively. The CIArb, is definitely poised to play a pivotal rule in capacity building and knowledge dissemination. Its success in Asia in the past century must be replicated with a much wider scope to increase access to ADR across the globe.

It can be safely said that Commercial Arbitration has altered the notion of commercial justice in the past. It is my belief that in the years to come, for commercial arbitration to be relevant, evolution will and must occur. It is for this reason that after careful thought, I am pleased to pen down my thoughts on the topic of this article, namely on the need for continuous evolution of commercial arbitration to become the future of commercial justice. There is no doubt in my mind that ADR will grow to become the future of commercial justice. However, it is our responsibility and duty to ensure that this growth remains sustainable and true to the foundation of Alternative Dispute Resolution as envisaged in the past.

3 Sundaresh Menon, at the *Global Pound Conference Series 2016-Singapore on 'Shaping the future of Dispute Resolution & Improving access to justice', para 13, available at http://www.supremecourt.gov.sg/Data/Editor/Documents/[Final]%20Global%20Pound%20Conference%20Series%202016%2020'Shaping%20the%20Future%20of%20Dispute%20Resolution%20%20Improving%20Access%20to%20Justice'.pdf*



It can be safely said that Commercial Arbitration has altered the notion of commercial justice in the past. It is my belief that in the years to come, for commercial arbitration to be relevant, evolution will and must occur.

I am of the opinion that all growth and development in the CIArb has been a collective effort that is undertaken seriously with a sense of deep purpose, privilege and gratitude. The growth of a robust, accessible and effective system of commercial justice is incumbent on all of us as stakeholders of the future. In fact, the evolution of ADR must be inclusive to be successful. Inspiration for this can be drawn from the recent past where International Commercial Arbitration as it stands today had altered the definition of commercial justice. Undeniably, As history repeats itself and with a targeted sustainable development policy, ADR as an automatic extension of international commercial arbitration will become the future of commercial justice.

ABOUT THE AUTHOR

Datuk Professor Sundra Rajoo is the Director of the Kuala Lumpur Regional Centre for Arbitration (KLRCA). He is also the President of the Chartered Institute of Arbitrators (CIArb) 2016. Sundra's roll of honour includes being Founding President of the Society of Construction Law, Malaysia and the Past President of the Asia Pacific Regional Arbitration Grouping (APRAG), which is a federation of nearly 40 arbitral institutions in the Asia Pacific region.

Sundra is a Chartered Arbitrator with extensive arbitration experience that includes over 200 appointments locally and internationally. He serves on the panel of numerous international arbitral institutions and organisations. Sundra is also an Advocate & Solicitor of the High Court of Malaya (non-practising), a Professional Architect and a Registered Town Planner. He is a visiting professor at the Faculty of Built Environment, University of Technology Malaysia and a visiting professor and external examiner at the Faculty of Law, National University of Malaysia.

He was the principal draftsperson of the PAM 1998 Standard Form of Building Contract which was widely used in the construction industry in Malaysia. He has authored and co-authored a number of authoritative books on construction law and arbitration. In July 2015, Sundra was conferred an Honorary Doctorate in Laws from the Leeds Beckett University in England.

_EVENTS

KLRCA Talk Series

KLRCA Talk Series returned in the second quarter of 2016 with numerous engaging talks by ADR experts. Below are talks that were held from April – June 2016.

18 APR

CONFLICT OF INTEREST IN ARBITRATION: RECENT DEVELOPMENTS

Speaker: Khawar Qureshi QC (Serle Court Chambers London & McNair Chambers Qatar)

Moderator: Dato' Arief Emran bin Arifin (Wong & Partners)

As arbitration increases to gain favour amongst business users, there is greater concern that arbitrators need to be scrupulously independent and impartial. Mr Qureshi presented and discussed on the areas below:

- What are the applicable institutional and domestic law standards?
- Why is the relevance (if any) of the IBA Guidelines and why were they amended in 2014?
- How should arbitrators respond to questions and challenges related to conflict of interest?
- What is the approach of ICSID?
- What is the approach of the English Courts?

6 APR

MEDIATING OIL, GAS, ENGINEERING AND CONSTRUCTION DISPUTES

Speaker: Dr Robert Gaitskell QC (Keating Chambers, London)

Moderator: Tan Sri Dato' V.C George (Skrine)

Role Players/ Panel : Andrew Merrilees (Hilll International) & David Mildon QC (Essex Court Chambers)

The fluctuating oil price has generated a significant number of disputes as projects get cancelled prematurely. Informed parties are aware that there are 7 dispute resolution procedures available to them: besides arbitration and court litigation there is (in appropriate cases) adjudication under the CIPAA 2012 , and also expert determination for specific technical and financial issues, dispute boards where the FIDIC form is used, early neutral evaluation and, most interestingly, mediation. This presentation by Dr Robert Gaitskell QC, C.Eng, of Keating Chambers, London, commenced with a mock mediation, before moving onto an overview of how mediation fits into the range of procedures from which parties may choose when tackling a dispute. The pay-off for choosing the right procedure is enormous: a mediation costs a tiny fraction of the expense of an arbitration, and takes only a day or two, and there is a success rate of 70 – 80%.

26 MAY

THE LATEST TRENDS IN INTERNATIONAL ARBITRATION AND SELECTING THE RIGHT TRIBUNAL FOR YOUR CASE

Speaker: Mark Goodrich (White & Case, Seoul)

Moderator: Dato' Anantham Kasinather

The QMUL (Queen Mary University of London) / White & Case 2015 survey on international arbitration demonstrates the latest trends in international arbitration. Mark, a member of White & Case's international arbitration group and member of the working party which developed the survey introduced the survey, its key themes and insightful results. He then moved on to discuss the vexed issue of arbitrator selection and presented several case studies.

23 JUN

ARBITRATING IN ASIA – THE GOOD, THE BAD AND THE UGLY!

Speaker: Peter Godwin (Hebert Smith Freehills, Tokyo)
Moderator: Lam Wai Loon (Messrs. Harold & Lam Partnership)

Peter is known in the Asia arbitration world for being a straight talker and, consequently, is a popular choice for institutions, universities and the like when seeking out speakers.

Drawing on nearly 20 years of experience acting as counsel for Asia's leading companies and also sitting, periodically, as an arbitrator, Peter discussed what is considered best practice when presenting a case in an international arbitration. He also shared some perspectives on how not to present a case if one wishes to avoid upsetting arbitrators. In doing so he drew on real examples from recent cases in which he has been involved where he has seen poor strategies and procedural game playing leading to, at best, increased and wasted costs, and in the worst case, poor outcomes.

30 JUN

IN THE SEAT: 60 MINUTES WITH STEPHEN FIETTA – MARITIME DELIMITATION, SOVEREIGNTY DISPUTES AND INTERNATIONAL ARBITRATION – A PRACTITIONER'S PERSPECTIVE

Speaker: Stephen Fietta (Fietta Law)
Moderator: Dr. Ioannis Konstantinidis (KLRCA)

Maritime delimitation and territorial sovereignty disputes are as numerous today as they ever have been. Pursuant to Article 2(3) of the UN Charter and customary international law, such disputes must be settled peacefully. International arbitration has a central role to play in the resolution of such disputes between sovereign States, whether via ad hoc proceedings or institutional proceedings under UNCLOS. This talk addressed that role, from the perspective of a leading public international law and arbitration practitioner who was counsel to Barbados in the first ever UNCLOS maritime boundary arbitration. The talk explored the advantages and disadvantages of arbitration of such disputes as against with other options (such as litigation at the ICJ or ITLOS), the challenges and practicalities of managing a major boundary and sovereignty arbitration and the practical questions that can arise in the context of post-award implementation.

International Malaysian Society of Maritime Law sets sail

11th April 2016

The International Malaysian Society of Maritime Law (IMSML) was launched on 11th April 2016 at the Kuala Lumpur Regional Centre for Arbitration (KLRCA). The KLRCA will serve as the society's official secretariat as well as provide arbitratory guidance on maritime disputes.

IMSML will serve two main purposes; first, to raise awareness among maritime lawyers and the shipping industry about domestic and international maritime laws, regulations, standards and practices. Second, to provide training towards enhancing skills and expertise in the context of maritime law, maritime arbitration and other areas associated with the maritime industry.

Datuk Professor Sundra Rajoo, Director of the KLRCA delivered the welcome address at the launch. "We're honoured to be given the opportunity to contribute toward's the inception and growth of the IMSML. It is without doubt that both the Society as well as its members will play a prominent role in the Malaysian and regional maritime industry for years to come, as the IMSML seeks to establish a strong platform that focuses on knowledge sharing, peer edification, collaboration, reform, dispute resolution and the collective drive towards industry excellence." said Datuk Professor Sundra during his address.

While maritime matters remain imperative to international trade and security, there has been a lack of clarity when parties enter into maritime-related disputes.

"The law has always been the arbiter; influencing social advancement by bridging differences, unifying minds and setting standards. A society of maritime law must assume its responsibility within the maritime community. The International Malaysian Society of Maritime Law **(IMSML)** does just that. It completes the maritime fraternity." said Sitpah Selvaratnam, President of IMSML.

"IMSML draws in all maritime bodies, from the public and private sectors, across all industry disciplines; to study needs, dialog for change, harness talent, coordinate training, and stimulate excellence; for the collective good of Maritime Malaysia. To resound a Single voice for Maritime Malaysia," she added.

There to present the keynote address at the launch was IMSML's patron, YBhg. Tun Dato' Seri Zaki Tun Azmi, a former Chief Justice of Malaysia. In his address, he said, "The vision of IMSML is grand. It sees itself as adding value to an already magnificent group of associations, bodies, corporations and individuals. Its value lies not only in providing a forum for the exchange of needs and delivery of wants, but in creating an atmosphere of trust and collaboration that rises above the individual's agenda to satisfy the nation's interest, through domestic and international dialog, study and reform."

The launch was followed by a short seminar titled "The Maritime Strategy: Our Needs, Our Deeds – 2016-2020." Designed to help kick off discussions on maritime issues and strategies, the seminar featured some of Malaysia's leading shipping experts and industry players including Captain Hj Kamaruzaman Jusoh (Ministry of Defense Malaysia), Dato' Hj. Baharin Abdul Hamid (Marine Department Malaysia), Dato' Capt. David Padman (Port Klang Authority), Ir. Nordin Mat (Malaysian Shipowner's Association (MASA), Mohd Nazery Bin. Mohd Khalid (Marine Industries of Malaysia (AMIN)) and David Frederick Nathan (Akademi Laut Malaysia).

The society will be hosting regular meetings at the KLRCA building, Bangunan Sulaiman. Membership registration details and more information can be found on *http://imsml.org*.

KLRCA Signs Collaboration Agreement with Bangladesh International Arbitration Centre (BIAC) *13th May 2016*

The Kuala Lumpur Regional Centre for Arbitration (KLRCA) and Bangladesh International Arbitration Centre (BIAC) have signed a collaboration agreement. The agreement promotes co-operation between the two institutions in the area of arbitration and alternative dispute resolution (ADR).

The agreement was signed by the Director of KLRCA, Datuk Professor Sundra Rajoo and the Chief Executive Officer of BIAC Muhammad A. (Rumee) Ali and witnessed by KLRCA's Head of Legal of Services, Ms. Rammit Kaur on 13th May 2016 at Bangunan Sulaiman, KLRCA's state-of-the-art building.

Both organisations are looking forward to a successful collaboration, which will include knowledge and resource sharing as well as co-hosting of ADR themed events in the near future.

Seminar & Book Launch: Critical Issues on International and Domestic Arbitration: Judges Perspective + Majlis Berbuka Puasa *17th June 2016*

The Kuala Lumpur Regional Centre for Arbitration (KLRCA) hosted the launch of the latest book by Justice Datuk Dr. Haji Hamid Sultan Bin Abu Backer, a Judge in the Court of Appeal of Malaysia.

The book, titled "International Arbitration with a Commentary on the Malaysian Arbitration Act 2005" was authored to address the challenges faced when securing an international arbitration award. The book also reveals intricacies within the UNCITRAL Model Law and its importance towards ensuring awards rendered by the tribunal achieves recognition and enforcement under the New York Convention.

The book was launched by YAA Tun Arifiin bin Zakaria, the Chief Justice of Malaysia and Datuk Professor Sundra Rajoo, Director of the Kuala Lumpur Regional Centre for Arbitration (KLRCA).

A seminar on critical issues on international and domestic arbitration from judges' perspectives was also held in conjunction with the book launch. Speaking at the seminar were Dato' Mah Weng Kwai (Ret. Judge, Court of Appeal), YA Dato' David Wong Dak Wah, YA Dato' Setia Hj Mohd Zanawi Salleh, YA Dato' Umi Kalthum Abdul Majid, YA Justice Vernon Ong Lam Kiat, YA Datuk Dr. Prasad Sandosham Abraham, YA Dato' Mary Lim Thiam Suan, YA Justice Lee Swee Seng and YA Justice Azizul Azmi bin Adnan.

The seminar provided the audience of 200 delegates a rare opportunity to gather insights from a bench of senior judges.

The evening ended with a Majlis Berbuka Puasa hosted by the KLRCA.

_EVENTS

KLRCA around the globe

The Centre continued to enhance its international standing through its presence at conferences, training workshops and other knowledge sharing intiatives held at home and around the globe.

1 5th April 2016
Datuk Professor Sundra Rajoo pictured here at an event in India where he presented on, 'Ushering in Sustainable Development of Arbitration in Asia.'

2 8th April 2016
KLRCA's Head of Legal Services, Rammit Kaur presenting at the 2016 UNCITRAL Thailand Symposium: The Future of Legal Harmonization – New Horizons for International Commerce.

3 8th – 9th May 2016
Datuk Professor Sundra Rajoo presenting at the ICC YAF: 13th Annual Young Arbitration Practitioner's Colloquium in Mauritius, before proceeding to attend the International Council for Commercial Arbitration Conference (ICCA 2016) the following day.

4 17th – 20th May 2016
Datuk Professor Sundra Rajoo at the 55th Annual Session in New Delhi at the headquarters of the Asian-African Legal Consultative Organization (AALCO), where he presented KLRCA's Annual Report for 2015.

5 27th May 2016
KLRCA's Senior Case Counsel, Danaindran Rajendran (2nd from right) at a panel discussion on Sports Law organised by the Faculty of Law, National University of Malaysia (UKM).

6 20th June 2016
Datuk Professor Sundra Rajoo at the conclusion of the 2016 London Summit on Commercial Dispute Resolution in China where he moderated a session on International Trade.

7 30th June 2016
Datuk Professor Sundra Rajoo at the London 2016 International Commercial Law Conference. Pictured here at the beginning of Session 5: Is Commercial Arbitration the Future of Commercial Justice.

ICC INTERNATIONAL COURT OF ARBITRATION®

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WELCOME ADDRESS BY
YB DATO' SRI AZALINA OTHMAN SAID
Minister in the Prime Ministers Department

WELCOME ADDRESS BY
ALEXIS MOURRE
President of the ICC International Court of Arbitration

WELCOME ADDRESS BY
DATUK PROFESSOR SUNDRA RAJOO
Director of the Kuala Lumpur Regional Centre for Arbitration

ICC–KLRCA INTERNATIONAL ARBITRATION CONFERENCE

DATE:
10 OCTOBER 2016

VENUE:
KUALA LUMPUR REGIONAL CENTRE FOR ARBITRATION
Bangunan Sulaiman, Jalan Sultan Hishamuddin
50000 Kuala Lumpur, Malaysia

CONFERENCE FEE:
RM 270 (inclusive of GST)
Day long event + evening cocktail

REGISTER NOW!

For more information, please contact:
Business Development Team
Phone: +603 2271 1000
Email: events@klrca.org

The ICC International Court of Arbitration and the Kuala Lumpur Regional Centre for Arbitration (KLRCA) are pleased to announce a joint international arbitration conference which will be held on Monday, 10 October, 2016 at the KLRCA in Kuala Lumpur, Malaysia.

The full-day Conference will include three sessions on emerging issues and best practices in the fast-developing area of international commercial arbitration and one session on investment arbitration.

As Asia gains prominence on the world's investment stage, the rise of disputes and the need for effective dispute resolution is imperative. This first-of-its-kind Conference, co-organized by two of the world's leading arbitral institutions, reflects a joint effort to address key issues in international arbitration from an Asian perspective. Further, the Conference will foster discussion around the continuing changes in the international arbitration paradigm in Asia.

The Conference will witness the participation of leading international arbitration experts from around the world and will be attended by users, practitioners, and arbitrators.

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ICC–KLRCA INTERNATIONAL ARBITRATION CONFERENCE

PROGRAMME

9.30am **Welcome Address** by Datuk Professor Sundra Rajoo,
Director of the Kuala Lumpur Regional Centre for Arbitration

9.45am **Welcome Address** by Alexis Mourre,
President of the ICC International Court of Arbitration

10.15am **Inaugural Speech** by YB Dato' Sri Azalina Othman Said,
Minister in the Prime Minsiter's Department

10.30am **Keynote Speech** by Michael Hwang S.C
"How have Asian countries adopted and interpreted the UNCITRAL Model Law?"

11.00am Coffee break

11.15am Panel I — *'Transparency in Arbitration: A bird's eye view'*

Moderator: Abhinav Bhushan, Director, South Asia,
ICC Arbitration and ADR, ICC International Court of Arbitration

Speakers:
- Philip Yang, Member of ICC International Court of Arbitration, Immediate Past Chairperson (HKIAC)
- Abraham Vergis, Managing Director, Providence Law Asia LLC
- Christopher Lau, Senior Counsel (Singapore), Chartered Arbitrator (FCIArb, FSIArb)
- Sapna Jhangiani, Partner, Clyde & Co
- Ben Olbourne, Barrister, 39 Essex Chambers

1.00pm Lunch break

2.00pm Panel II — *'Cost Effective Arbitration: Myth or Reality?'*

Moderator: Datuk Professor Sundra Rajoo,
Director of the Kuala Lumpur Regional Centre for Arbitration

Speakers:
- Dr. Nicolas Wiegand, Partner, CMS Hasche Sigle
- Ing Loong Yang, Partner, Latham & Watkins
- Vinayak Pradhan, Consultant, Skrine
- Thavakumar Kandiahpillai, Group Head, Legal and General Counsel, SapuraKencana Petroleum

3.45pm Coffee break

4.00pm Panel III — *'Investor-State Arbitration in South East Asia and Pacific'*

Moderator: Tan Sri Dato' Cecil Arbraham, Senior Partner at Cecil Abraham & Partners (Kuala Lumpur), Member of the KLRCA Advisory Board

Speakers:
- Dr Jean Ho Qing, Assistant Professor, National University of Singapore
  "Investment Arbitration: The Importance Bringing Theory and Practice to Teaching";
- Alastair Henderson, Managing Partner, Head of international arbitration practice, Southeast Asia, Herbert Smith Freehills (Singapore)
  "The Proliferation of Bilateral and Multilateral Investment Treaties in South East Asia & Pacific"
- Robert Kirkness, Senior Associate, Freshfields Bruckhaus Deringer (Singapore)
  "Investment Claims in the Region: Recent Developments"
- Thayananthan Baskaran, Partner, Zulc Rafique & Partners (Kuala Lumpur)
  "Does Asia Need a Permanent Investment Court"

5.45pm Conference Summary and Thank You note by
Alexis Mourre, President of the ICC International Court of Arbitration

6.00pm Cocktail Reception

REGISTER NOW!

Kindly complete the registration form as below and send it together with your payment by **7 OCTOBER 2016** via:
FAX: +603 2271 1010 **EMAIL:** events@klrca.org
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Full Name: _____

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Dietary Requirements: *(Please tick one)*

☐ Vegetarian ☐ Non-vegetarian

Conference Fee: *(Inclusive of GST)*

☐ **RM 270** — Day long event + evening cocktail

Mode of Payment: *(Please tick one) (Please ensure that payments are free of any bank charges)*

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Registration will be confirmed after receipt of payment. No cancellations allowed after confirmation but you may send another person to attend in your place. The organisers reserve the right to (1) postpone or change the timing and content of the programme and venue at any time; or (2) cancel the event at any time and under such circumstances, will refund the registration fee in full.

_LEGAL UPDATES

Arbitration Case Law: Developments in Malaysia & The International Front

By KLRCA Legal Services

Transglobal Green Energy, LLC and Transglobal Green Panama, S.A v. Republic of Panama

COURT INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES (ICSID)

CASE CITATION ICSID CASE NO. ARB/13/28 (AWARD, JUNE 2, 2016)

BACKGROUND

The case concerns a termination of the concession to design, build and operate the hydropower plant in the Republic of Panama ("Concession Contract"). The Concession Contract required the concessionaire to meet the deadlines specified for the start of construction works. A request to extend the deadline for six months along with a failure to provide evidence related to financing of this project, resulted in termination of the Concession Contract by the Republic of Panama.

A concessionaire, Panamian citizen, filed an appeal before the Third Chamber of the Supreme Court of Panama ('the Court') seeking for review of the termination decision made by the Republic of Panama and stay the implementation of this decision. On 11 November 2010, the Court held that (i) the decision to terminate was not correct; (ii) Concession Contract remains in force; (iii) a concessionaire has the right to bring action arising from those judicial proceedings.

In 2011, a concessionaire assigned his rights to the Concession Contract to the US-registered company without requesting a prior approval of the Republic of Panama as mandated by law. In 2012, the Cabinet of the Republic of Panama authorised the *Ente Regulador de los Servicios Públicos to proceed to the rescate administrativo of the Concession Contract on grounds of urgent social interest. Subsequent valuation report prepared by the experts selected by the Ministry of Economy and Finance concluded that the concessioner was not entitled to compensation. On 19 September 2013, ICSID received a request for arbitration based on the alleged breach of the bilateral investment treaty between US and Panama.*

ISSUE

The Tribunal considered whether it has jurisdiction to hear the matter.

HELD

The Tribunal upheld the Respondent's objection of abuse of process, without needing to consider the other objections to its jurisdiction, because 'the existence of abuse of process is a threshold issue that would bar the exercise of the Tribunal's jurisdiction even if jurisdiction existed.'[1]

The Tribunal mentioned the existing consistency of case law on objections to jurisdiction based on abuse of the investment treaty system, and applied the following test: 'the timing of the alleged investment, the terms of the transaction in which it was to be effected, and some relevant incidents in the course of this proceeding.'[2] In doing so, the Tribunal relied on the following case law: *Phoenix Action Ltd v. Czech Republic, ICSID Case No. ARB/06/5, Award (April 15, 2009);Venezuela Holdings B.V. and others v. Bolivarian Republic of Venezuela, ICSID Case No.ARB/07/27, Decision on June 10, 2010; Tidewater Investment SRL and Tidewater Caribe, C.A. v. Bolivarian Republic of Venezuela, ICSID Case No. ARB/10/5, Decision on Jurisdiction, February 8, 2013.*

Arbitrators concluded that the Claimants abused the investment treaty system by attempting to create artificial international jurisdiction over a pre-existing domestic dispute. In particular, the Tribunal stated that Mr. Lisac had intention to remain in de facto control of TGGE Panama and 'to benefit from the foreign nationality of TGGE for the purpose of pursuing this arbitration.'[3]

Therefore, the Respondent was awarded the costs of the arbitration, legal fees and expenses.

1 Para. 100 of the Award
2 Para. 103 of the Award
3 Para. 111 of the Award

By KLRCA Legal Services

Sintrans Asia Services Pte Ltd v Inai Kiara Sdn Bhd

COURT	COURT OF APPEAL
CASE CITATION	[2016] 2 MLJ 660/ [2016] 5 CLJ 746 [CA]
CASE NUMBER	W-02(NCC) (A)-1539-09 OF 2014

BACKGROUND

An arbitration was commenced in relation to a Charter Hire Agreement provided for arbitration under the rules of Singapore Chamber of Maritime Arbitration. The appellant had agreed to hire out his vessel *'Gibraltar'* to the defendant under the charter party for a period of three months with an option to extend it further for three months subject to agreement by both parties. The charter party was extended for eight days and the respondent allegedly had failed to make the payment in breach of the charter party. Subsequently, a notice of arbitration was sent to the respondent. The respondent did not pay the sum awarded by the Arbitral tribunal.

The respondent resisted the appellant's application to register the award for purposes of enforcement in Malaysia alleging that, by commencing proceedings in the Admiralty Court in Kuala Lumpur, the appellant had waived the arbitration agreement. The High Court had accepted that by commencing the admiralty action, the arbitration agreement was rendered null and void and held that the arbitral tribunal had no jurisdiction to hear or determine the dispute, following which the appellant filed an appeal in the Court of Appeal (hereinafter 'the Court').

The Court relied on earlier decisions of the federal court in *Lombard Commodities Ltd v Alami Vegetable Oil Products Sdn Bhd* [2010] 2 MLJ 23. In the *Lombard* case, the federal court had refused to allow a challenge to the validity of the arbitration agreement at the enforcement stage of a foreign arbitral award.

ISSUE

The issue for determination was whether the respondent had made out an argument for non-registration of the award under S.39(1)(a)(ii) and (v) and S.39(1)(b)(i) and (ii) of the Arbitration Act 2005.

HELD

The Court allowed the appellant's application to register the arbitral award asserting the fact that the Malaysian court is 'purely an enforcement court' in this case. It was held that the parties had mutually consented to resolve any contractual disputes by arbitration and the arbitration agreement had not been waived. According to the judgment, since *lex arbitri* is Singaporean law, any challenge by the respondent to the validity of the arbitration clause should have been raised before the 'the courts having supervisory jurisdiction at the seat of arbitration i.e. the Singapore courts or in the arbitration proceeding itself.'

_EVENT CALENDAR

Save the date!

The following are events in which KLRCA is organising or participating.

August 2016

Date	**4 AUGUST 2016**
Event	KLRCA Talk Series: Securing Your Digital Assets
Organiser	KLRCA & MYNIC
Venue	Bangunan Sulaiman

Date	**29 AUGUST 2016**
Event	KLRCA Talk Series: Developments in UK Family Arbitration
Organiser	KLRCA & Malaysia Inner Temple Alumni Association
Venue	Bangunan Sulaiman

September 2016

Date	**8 SEPTEMBER 2016**
Event	2nd IPBA Asia Pac Arbitration Day
Organiser	KLRCA & Inter Pacific Bar Association
Venue	Bangunan Sulaiman

Date	**14–15 SEPTEMBER 2016**
Event	ASEAN Economic Integration Forum
Organiser	University Kebangsaan Malaysia, University of Oxford & World Trade Institute (Executive Partner, KLRCA)
Venue	Bangunan Sulaiman

Date	**19–22 SEPTEMBER 2016**
Event	KLRCA Certificate Programme in Sports Arbitration
Organiser	KLRCA
Venue	Bangunan Sulaiman

October 2016

Date	**10 OCTOBER 2016**
Event	ICC-KLRCA International Arbitration Conference
Organiser	KLRCA & The ICC International Court of Arbitration
Venue	Bangunan Sulaiman

November 2016

Date	**19–23 NOVEMBER 2016**
Event	KLRCA Certificate in Adjudication
Organiser	KLRCA
Venue	Bangunan Sulaiman

Date	**24 NOVEMBER 2016**
Event	KLRCA Mediation Forum
Organiser	KLRCA; Supporting Institutions: Chartered Institute of Arbitrators (CIArb), International Mediation institute (IMI) & ArbDB Chambers London
Venue	Bangunan Sulaiman

December 2016

Date	**1–2 DECEMBER 2016**
Event	Domain Name Dispute Resolution Conference & Course
Organiser	KLRCA & ADNDRC; Co-hosting Organisations: China International Economic and Trade Arbitration Commission (CIETAC), Hong Kong International Arbitration Centre (HKIAC) & IDRC
Venue	Bangunan Sulaiman

February 2017

Date	**4–12 FEBRUARY 2017**
Event	Diploma in International Commercial Arbitration
Organiser	KLRCA & Chartered Institute of Arbitrators (CIArb, Malaysia Branch)
Venue	Bangunan Sulaiman

klrca
REGIONAL RESOLUTION GLOBAL SOLUTION

ADNDRC

DOMAIN NAME DISPUTE RESOLUTION CONFERENCE & COURSE

CONFERENCE 1ST DECEMBER 2016

COURSE 2ND DECEMBER 2016

VENUE

SEMINAR ROOM
KUALA LUMPUR REGIONAL CENTRE FOR ARBITRATION
Bangunan Sulaiman, Jalan Sultan Hishamuddin
50000 Kuala Lumpur, Malaysia

TIME

9.00am–3.30pm

CONFERENCE FEE

RM 600 (inclusive of GST)

COURSE FEE

RM 800 (inclusive of GST)

CONFERENCE & COURSE FEE

RM 1,000 (inclusive of GST)

With the implementation of ICANN's new generic Top Level Domain (gTLD) programme, hundreds of new gTLDs are up and running in cyberspace. The best way to tackle online infringements in relation to these new gTLDs has become a matter of great concern to many intellectual property (IP) rights owners.

Since the first ADNDRC Conference took place in Kuala Lumpur in 2005, the ADNDRC Conference has been organized annually in different venues around the Asia-Pacific region, including Kuala Lumpur, Hong Kong, Beijing and Seoul with side support from professional bodies in the region. This event has been recognised as a unique and unrivalled forum for participants to exchange views on current and contentious topics on domain name dispute resolution, bringing together in-house counsels, barristers solicitors, arbitrators, domain name experts, and senior executives of major local and international corporations.

The Conference will be followed by a full day training course which will cover key topics in ADNDR and will be conducted by prominent lecturers and tutors. The conference and course will attract a considerable number of brand owners, IP practitioners as well as many other professionals from the international community.

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