

## HIGHLIGHT

# Asia Pacific Regional Arbitration Group Conference 2011

### Interview

HE Professor Rahmat Mohamad,  
*Secretary General of AALCO*

### Feature

What is Adjudication?

KLRCAs Mediation/Conciliation Rules 2011

### Effective Resolution

*Settling Disputes Through Arbitration*

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# DIRECTOR'S MESSAGE

## *Dear friends,*

These past few months have indeed been a very busy period for KLRCA, as you can see for yourself in the following pages. It has been a non-stop ride from May and so far, we are not slowing down even as 2011 is coming to an end. In fact, we are already gearing up for 2012, and I am excited by our plans for the upcoming year.

The highlight for us so far has been the biennial Asia-Pacific Regional Arbitration Group (APRAG) Conference, where KLRCA was chosen to be the host, the first time a South-East Asian country was selected. There was an overwhelming response to the prestigious conference with more than 350 people attended. It was a good showcase of KLRCA's and Malaysia's capabilities in bringing together the legal and arbitration community from all over the world.

It has also been encouraging to receive visits from numerous parties who are interested in what we have to offer. I am also warmed by the welcome and hospitality given to KLRCA when we visited our counterparts in China and Singapore. Their great goodwill and friendship has brought us closer together, and I look forward to our collaborative efforts in the future.

But KLRCA is not just about events and visits. We are currently occupied with the preparation of our KLRCA Islamic Arbitration Rules. This set of rules is something that not only Malaysia is eager to see, but also the rest of the world who are involved in Islamic commercial contracts. In fact, it would be of interest to anyone who wants to adopt a dispute resolution methodology that not only adheres to Shariah principles but also complies with the New York Convention.

We are also in the midst of preparing the KLRCA Arbitration Rules for the maritime industry. Malaysia has been a sea-faring nation for hundreds of years due to our strategic location in the Straits of Malacca, and our aim now is to be an alternative venue for maritime arbitration, which is why the adoption of the KLRCA Rules for the maritime industry is apt. In addition, we are waiting for the Adjudication CIPA Bill to be passed in Parliament. When that happens, the Bill will revolutionise the Malaysian construction sector by introducing a fast track dispute resolution method that is designed to alleviate cash-flow issues in the construction industry. KLRCA hopes to play a key role in its promotion and ensuring that this dispute resolution process is implemented in a efficacious manner.

With all these exciting initiatives and programmes, KLRCA is pushing on to continue promoting arbitration and ADR not only in Malaysia but also in the region. Until next time, happy reading.



**Sundra Rajoo**

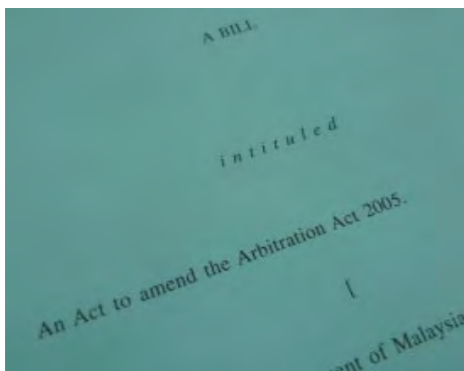
Director of KLRCA

# NEWS BULLETIN

## KLRCA Appoints Advisory Board

KLRCA has appointed an Advisory Board that is chaired by Malaysian Attorney General, Tan Sri Abdul Gani Patail effective 15<sup>th</sup> August 2011. The Board, which will advise on KLRCA's strategic direction, also comprises prominent international arbitrators, Tan Sri Cecil Abraham and Vinayak Pradhan from Malaysia, Professor Philip Yang from Hong Kong, Sumeet Kachwaha from India and Professor Robert Vorterra from UK.

## Amendments to the Malaysian Arbitration Act 2005



The Malaysian Arbitration (Amendment) Act 2011 was passed on 1<sup>st</sup> July 2011. The Bill amends the Arbitration Act 2005, which has been in force since March 2006 and aims to better facilitate arbitral proceedings and make Malaysia a more arbitration-friendly destination. Several amendments are pertinent for international arbitration. Specifically, Section 8 of the Arbitration Act now contains a provision which limits court intervention to situations specifically covered by the Arbitration Act and discourages the use of inherent powers.

Meanwhile, Section 11 empowers the court to make orders for any interim measures even if the seat of arbitration is outside of Malaysia. This will be of particular interest to parties involved in disputes relating to Malaysian assets that are being arbitrated in other jurisdictions, such as Singapore. In addition, the amendments also empower a Malaysian court to exercise admiralty jurisdiction to order the retention of vessels or the provision of security, pending the determination of arbitration proceedings related to admiralty disputes.

## LawAsia Moot 2012 uses KLRCA Rules

For the first time ever, the KLRCA Rules will be used in an international moot competition. The 6<sup>th</sup> LAWASIA International Moot, scheduled to be held in Seoul, Korea from 8<sup>th</sup> - 12<sup>th</sup> October 2011, will see about 18 leading Law Schools from all over the world taking part in the prestigious event. The teams will be using KLRCA Rules to discuss the Moot Problem, which is a great honour as it gives the opportunity for the next generation of lawyers to be familiarised with the KLRCA Rules. Director of KLRCA, Mr Sundra Rajoo will also be one of the judges of the competition's final round.



# EVENTS

## Sensitive Name Dispute Resolution Policy (SNDRP) Reference Panel Briefing

KLRCA and .my Domain Registry organised a briefing for the SNDRP Reference Panel to introduce and explain the policy and rules regarding sensitive domain name disputes. The policy was drawn up by .my Domain Registry, with KLRCA providing the Supplemental Rules. KLRCA has been appointed the administering body for such disputes.

Present to brief the panel was KLRCA Director, Mr Sundra Rajoo; Puan Norsuzana Harun, Senior Manager Operations (.my Domain Registry); Yeo Yee Ling, Senior Policy Executive (.my Domain Registry); and Mr Deepak Pillai (Partner, Haryati Deepak).



## VIAC-KLRCA Joint Seminar on Dispute Resolution in Malaysia and Europe

It was a full house when KLRCA and the Vienna International Arbitral Centre (VIAC) organised a joint seminar on effective dispute resolution for Malaysian businesses in Europe and for European businesses in Malaysia on 3<sup>rd</sup> June 2011.



Held at Renaissance Hotel, Kuala Lumpur, the seminar lined up a panel of arbitrators from Malaysia, led by Mr Sundra Rajoo and Vienna, led by the President of VIAC, Dr Werner Melis, who discussed case studies and took questions from the floor. The Austrian Trade Commissioner and Commercial Counsellor to Malaysia, Dr Franz Schroder, was also at hand to share his views on The Economic Role of Austria and Central Europe.



# EVENTS



## Visit from CIETAC

The Deputy Secretary General of China International Economic and Trade Arbitration Commission (CIETAC), Dr Li Hu and his colleagues recently visited KLRCA and were greeted by Mr Sundra Rajoo, Director of KLRCA.

The guests also had the opportunity to hold discussions with the President of the Malaysian Bar, Mr Lim Chee Wee (*left*) who was also at the meeting. The visit, which served to strengthen ties between the two centres, was later reciprocated when KLRCA visited CIETAC in Beijing later that same month.



## KLRCA-ACCCIM ADR Roadshow in Klang

Following the MOU signing in January, KLRCA and the Association of Chinese Chamber of Commerce and Industry (ACCCIM) organised a roadshow to educate local businesses on alternative dispute resolution (ADR). The first stop was in Klang, Selangor, where more than 70 people attended. Mr Lee Sack Choon, (*centre*) Deputy President of Klang Chinese Chamber of Commerce and Industry was at hand to welcome the delegates. The roadshow will be heading to Ipoh and then Kuala Terengganu before heading south to Batu Pahat, Johor and then to Sandakan, Sabah.

# NASAM Carnival at the Park

*As part of its Corporate Social Responsibility activities, KLRCA once again participated in the National Stroke Association of Malaysia (NASAM)'s "Carnival At The Park" at Taman Jaya, Petaling Jaya on 26th June 2011.*



Members of KLRCA staff were there bright and early on Sunday morning to set up a food stall and sell cupcakes, sandwiches, chicken nuggets, fruits and other snacks. The food was sold out and a total of RM858 was raised, which were then donated to NASAM in supporting their cause in helping stroke survivors in their rehabilitation programme.





# ASIA PACIFIC REGIONAL ARBITRATION GROUP CONFERENCE 2011

*For the first time ever, Malaysia was the venue of the prestigious Asia Pacific Regional Arbitration Group (APRAG) Conference.*

The event, which is participated by more than 30 arbitral institutions in the region, is held every two years. KLRC played host to the conference, which saw the attendance of more than 270 participants from all over the world and the involvement of 41 speakers.

*The opening ceremony* was officiated by former Chief Justice of Malaysia, Tun Zaki Tun Azmi. During the conference, KLRC Director, Mr Sundra Rajoo was appointed the President of APRAG for a two-year term with KLRC serving as its Secretariat.



*In his keynote address,*

Tun Zaki said that the growth of APRAG itself is a testimony to the growth and development of regional and global trade and investment needing the services of arbitration. He added, "The position of the Asia-Pacific region as the growth pole of the world economy means that the importance of regional economic integration cannot be over-emphasised. The time has come to take a broader approach which focuses not just on deepening integration within sub-regions but also on fostering trade and business links to build a seamless Asia-Pacific economic space."



## Conference Day 1 & 2





### Gala Dinner



YA Tan Sri James Foong, Judge at the Federal Court, Malaysia, giving his speech at the APRAG Gala Dinner



## EVENTS



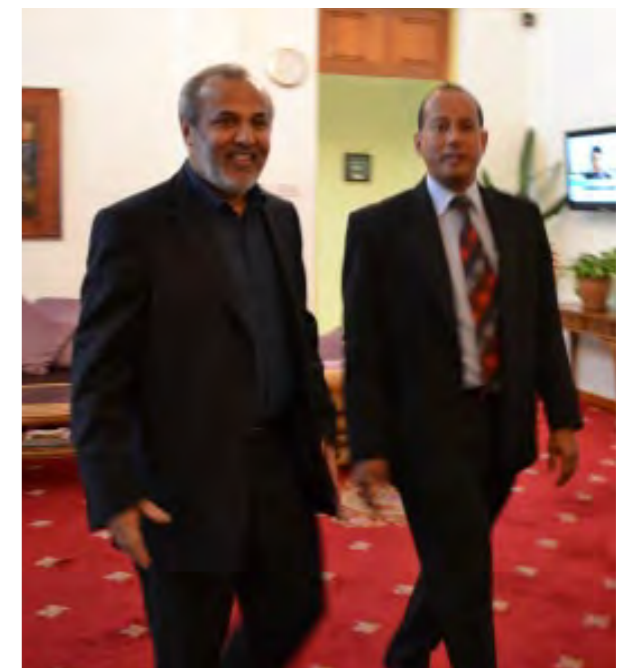
### Visit to Singapore's Maxwell Chambers

KLRCA, together with members from the Law Affairs Unit of the Prime Minister's Department and the Public Works Ministry, visited Singapore's Maxwell Chambers on 14<sup>th</sup> July 2011, where its CEO, Mr Ban (sixth from left) kindly gave a short briefing on the services and facilities offered.



### Visit by the Sri Lankan Minister of Justice and President of AALCO

KLRCA was honoured with a visit by the Sri Lankan Minister of Justice and current President of the Asia-African Legal Consultative Organisation (AALCO), His Excellency Rauff Hakeem.





# EVENTS

## Malaysian Legal Services Roadshow in China

Together with members of the Malaysian Judiciary and the Malaysian Bar, KLRCA embarked on a roadshow in Beijing and Shanghai to promote the Malaysian legal services from 18<sup>th</sup> - 22<sup>nd</sup> July 2011. In both cities, a seminar to increase awareness on the Malaysian legal services was conducted.

Aside from bilateral meetings with the China Law Society and Shanghai Bar, the KLRCA team also visited their counterparts at the China International Economic and Trade Arbitration Commission (CIETAC), the Beijing Arbitration Commission and the Shanghai Arbitration Commission for an exchanges of views and insight.



China Law Society



Dinner with China Law Society



Forum at Shanghai



CIETAC

# KLRCA Hosts LawAsia Moot

The Malaysian Rounds of the 6th LAWASIA International Moot Competition was held at KLRCA on 23<sup>rd</sup> - 24<sup>th</sup> July 2011.



The judges had a tough time as the teams were all convincing and competitive but in the end, the team from Universiti Islam Antarabangsa won the honour of representing Malaysia at the LAWASIA International Moot Competition in Seoul, Korea in October 2011. They will also be joined the first runner-up, the team from Advance Tertiary College.



**Champion: Universiti Islam Antarabangsa Malaysia (M1103)**

Represented by: Ainna Sherina Saipol Amin  
Izzan Ahmad Zairee  
Alia Abdullah



**Runner-up: Advance Tertiary College (M1101)**

Represented by: Alwin Rajasurya Anthony  
Chai Phing Zhou  
Mah Sue Ann



## KLRCAs-PCCCIM Joint Roadshow on Alternative Dispute Resolution (ADR) in Ipoh



KLRCAs headed north of Malaysia when it continued its ADR roadshow to Ipoh on 13<sup>th</sup> August 2011. The event, which is part of an ongoing joint venture with ACCCIM, saw more than 80 small business owners and legal counsels attending.



## Cross-Continent Co-operation

*KLRCAs was the first regional centre in Asia to be set up under the auspices of the Asian-African Legal Consultative Organisation (AALCO). His Excellency Professor Rahmat Mohamad, the Secretary General of AALCO, reveals the story between the two organisations and how AALCO is helping to drive arbitration in Asia and Africa.*



### **Can you explain to us what AALCO is and its relationship with KLRCAs?**

The Asian-African Legal Consultative Organisation (AALCO) is a regional inter-governmental organisation comprising 47 Member States from Asia and Africa. It was established in 1956, as an outcome of the historic Bandung Conference [note: In 1955, a meeting of representatives from 29 African and Asian nations, was held in Bandung, Indonesia, to promote economic and cultural cooperation and to oppose colonialism. The conference ultimately led to the establishment of the Non-Aligned Movement (NAM) in 1961.]

AALCO has its headquarters in New Delhi, India, and its primary aim is to develop Asian-African perspectives on international law. At present, we have 16 topics of international law in the agenda of the Organisation, such as the Work of the International Law Commission, World Trade Organisation, Law of the Sea, Environment and Sustainable Development.

Recently we convened the 50th Annual Session in Colombo, Sri Lanka. Sri Lanka is one of the founding members of the Organisation.

The first AALCO's Centre for Arbitration was established in Kuala Lumpur, Malaysia in March 1978. This was an important landmark in the movement to promote Asian-African solidarity in international legal matters and economic relations. The Centre was established for an initial period of three years by a formal exchange of

letters between the Malaysian Government and AALCO (then known as AALCC) before an agreement was signed between both parties in 1981. Subsequent agreements were further signed in 1989 and 2004 to formalise the continuing function of KLRCAs. The agreements stipulated that the Centre shall be administered by a Director under the supervision of the Secretary-General of AALCO.

### **Why is AALCO a key Organisation in the legal fraternity, especially in the Asian and African regions?**

AALCO is the only regional organisation, comprising both Asian and Africa countries, that is dedicated to the field of international law. It has made significant contributions in the progressive development and codification of international law and highlighting Asian-African concerns and perspectives, especially in the field of law of the sea, protection of refugees, migrant workers, International Criminal Court and so forth.

It has Observer status with the United Nations General Assembly and has a long standing relation with the International Law Commission. It has concluded cooperation agreements with several international and regional organisations, such as the International Criminal Court, World Intellectual Property Organisation, ICRC and UNHCR. AALCO is in a pivotal position to influence the international law making process by consolidating the views of the Asian and African countries.



Cross-continent Co-operation (continued)

**Currently, there are four regional centres for arbitration established under AALCO. What is AALCO's plan for arbitral institutions under its purview and are there any plans to expand the network?**

Regional Arbitration Centres established under the auspices of AALCO function as international institutions with the objectives to promote international commercial arbitration in the Asian-African region and provide for conducting international arbitrations under these Centres.

If we analyse the history of the AALCO Arbitration Centres, at the Kuala Lumpur Session (Malaysia) held in 1976, the Trade Law Sub-Committee requested the Secretariat to undertake a feasibility study for establishing Regional Arbitration Centres in the Asian-African region, to be placed before the Eighteenth Annual Session of AALCO. At the Eighteenth Annual Session, held in Baghdad (Iraq) in 1977, discussions were focused on the Secretariat study titled 'Integrated Scheme for Settlement of Disputes in the Economic and Commercial Matters', which envisaged inter alia, the establishment of a network of Regional Centres for Arbitration functioning under the auspices of the AALCO in different parts of Asia and Africa so that the flow of arbitration cases to arbitral institutions outside the Asian-African region could be minimised. The Integrated Scheme also represented an effort on the part of the developing countries for the first time to evolve a fair, inexpensive and speedy procedure for settlement of disputes. At the Nineteenth Annual Session, held in Doha (Qatar) in 1978, AALCO endorsed the Trade Law Sub-Committee's recommendations on the establishment of two Arbitration centres. In pursuance to the above decision, an Agreement was concluded in April 1978, between the AALCO and the Government of Malaysia in respect of the establishment of a Regional Centre for Arbitration in Kuala Lumpur. A similar Agreement was concluded in January 1979 with the Government of the Arab Republic of Egypt with respect to the establishment of a Regional Centre for Arbitration in Cairo.

The success of these two Regional Arbitration Centres prompted the Organisation to establish two more centres, one in Lagos (Nigeria), which was formally inaugurated in 1989. The other Centre was established in Tehran (Islamic Republic of Iran), for which an Agreement was concluded between AALCO and the Government of Islamic Republic of Iran in 1997 and subsequently the President of the Islamic Republic of Iran ratified the Agreement for implementation on 10<sup>th</sup> June 2003.

We are in the process of expanding the network of arbitral institutions within the Asian and African regions. A Memorandum of Understanding (MoU) between AALCO and the Government of Republic of Kenya was signed on 3<sup>rd</sup> April 2006 during the Forty-Fifth Annual Session of AALCO held in the Headquarters in New Delhi to establish a fifth Centre in Nairobi. The Agreement establishing the Nairobi Regional Centre for Arbitration was signed by the then Secretary-General of AALCO and the Attorney-General of the Republic of Kenya during the Forty-Sixth Annual Session of AALCO held at Cape Town, Republic of South Africa from 2<sup>nd</sup> to 6<sup>th</sup> July 2007. We are hoping that the Centre will be functional soon.



**How does AALCO promote arbitration and alternative dispute resolution?**

AALCO attaches highest importance to alternative dispute resolution since it saves money, time and resources. Our mandate is carried out mainly through the four regional arbitration centres. AALCO encourages other Member States to establish arbitration centres to cater to their region.

In this context, I would like to highlight that in the recently held 50th Annual Session of AALCO, a Special Meeting on International Commercial Arbitration was convened in Colombo, Sri Lanka on 1<sup>st</sup> July 2011.

In the above meeting, AALCO undertook to revitalise its arbitration centres to meet the present day challenges. Some of the ideas emerged during the meeting were: uniformity of rules in all regional centres-adoption of UNCITRAL Arbitration Rules, 2010; the development of a range of products in terms of rules to cater for both the domestic and international trade requirement within its setup; and to enter cooperation agreements with like-minded organisations and promote the use of model clauses in the contracts.

Cross-continent Co-operation (continued)

**Other than arbitration, what are the areas that AALCO is focusing on?**

The AALCO Secretariat is in the process of strengthening its current activities to be more responsive to Member States demands. These activities include:

- 1) Capacity building programmes for officials and diplomats of the Member States of AALCO to equip them to face the international negotiations on very technical areas such as WTO and UNCITRAL.
- 2) Meetings with legal experts to deliberate and consolidate the views of our Member States on very important topics such as ICC, and environment and sustainable development.
- 3) Strengthening the research base of the Organisation, including for publications and research papers.
- 4) Building a database of legal experts and legal system of AALCO Member States.
- 5) Making the AALCO website interactive, knowledge based and user friendly.

**Views On Arbitration**

**In your opinion, what are the factors that have caused arbitration to become increasingly important, not only in resolving commercial disputes internationally, but also in protecting the commercial interests of business parties?**

There are many factors which makes arbitration popular among business parties. When the subject matter of the dispute is highly technical, arbitrators with an appropriate degree of expertise can be appointed; arbitration is often faster than litigation in court; arbitration can be cheaper and more flexible for businesses; arbitral proceedings and an arbitral award are generally non-public and can be made confidential, thus protecting the parties' business interests; arbitration awards are generally easier to enforce in other nations than court judgments; in most legal systems, there are very limited avenues for appeal of an arbitral award, which is sometimes an advantage because it limits the duration of the dispute and any associated liability.

**How do you see the outlook for arbitration industry in the next five to ten years, in view of the increase in cross border transactions in the world?**

The growing flow of foreign investment to the Asian and African countries and also the growing economies in both our regions has emboldened the billionaires there to acquire Western companies. It is, thus, inevitable that business disputes arises as the cross-border transactions increase. This results in an increased need for the arbitration industry. AALCO's aim is to establish more arbitration centres in our regions with trained arbitrators from Asia and Africa. The arbitration industry also has to make use of development in the field of technology, particularly, in information technology.

**What is arbitration scene like in Africa compared to Asia?**

Africa has a long tradition in the prevention and amicable settlement of disputes. However, when it comes to the modern rules of arbitration, Africa is still catching up. At present, very few African states are parties to the New York Convention, ICSID Convention and UNCITRAL Model Law. Africa also has fewer numbers of Arbitration centres when compared to Asia.

In this context, I would like to share that in Africa, there is an Organisation for the Harmonization of Business Law in Africa (OHADA) which was established by treaty signed in 1993 and is made up of 16 sub-saharan African States. OHADA's purpose is to promote regional integration and economic growth and to ensure a secure legal environment through the harmonisation of business law among its Member States. It has the OHADA Uniform Act on Arbitration 1999, which provides for rules and enforcement of arbitral awards. Therefore, there is a great potential for arbitration industry in Africa and I am confident that Africa will soon emerge as a leading destination for arbitration.

In terms of geographical areas, South Asia, GCC countries and African continents has immense potential for growth in the arbitration industry.

**Please share the highlights of your experience so far as the Secretary-General of AALCO since your appointment in 2008.**

When I was elected for the post of Secretary-General in the year 2008, AALCO was in a deep financial crisis. With the co-operation of the member States, we have managed to recover partially from the crisis. During the last three years, my focus has been on revitalising AALCO and giving new depth and value to AALCO's activities, so that Member States would benefit more from us and would eventually raise the profile of AALCO amongst the community of international organisations.



# What is Adjudication?

The term '**adjudication**' is becoming a common term often used and referred to as of late in the legal as well as the engineering/construction fraternity. Harbans Singh K.S. sheds some light on to aid practitioners in appreciating its purpose, scope and effect.

## General

The term 'adjudication' has been prominently featured in conferences, seminars and professional workshops especially in the light of a pending legislation in Malaysia presently labelled as the Construction Industry Payment and Adjudication Act (or "CIPAA" in short).

Although the timing and final content of the said Act is still unclear, what is certain, however, is that it will materialise sooner than later and its main constituent is 'adjudication'. Be that as it may, adjudication may not be all that unfamiliar to most industry players as in many engineering/construction contracts, the contract administrator acts as the first line of dispute resolution between the employer and the contractor.

This role is normally expressly stipulated in some conditions of contract e.g. clause 65.1 and 65.2 JKR Forms 203 & 203A (Rev. 2007), clause 55(a) IEM. CE 1/89 Form, etc. Even if there are no such express stipulations in a particular contract, it can be implied that the contract administrator has to undertake this function, if need be, as part of his 'quasi-judicial' duty under the contract.

Notwithstanding the perceived impartiality of the contract administrator in discharging this duty, it is nonetheless obvious that owing to the very fact that he is engaged

## Nature and Characteristics

The term '*adjudication*' is derived from the verb '*adjudicate*' which has been held in the Longman Dictionary of Contemporary English to mean '*to officially decide who is right in an argument between two groups or organizations*'. In the context of engineering/construction related disputes, the term has a number of definitions or meanings ascribed to it; notable examples of which are listed hereunder:

Raymond L.H. Kuah defines 'adjudication' as:

*'..... a process which provides for a referral of a dispute arising under the contract at any time to a neutral third party who, unlike the architect or engineer, will not have any personal involvement in the contract..... its procedure is likely to be more summary and informal than arbitration.....'*



and paid for by the employer, it is difficult to avoid the latter's inclination in terms of his biasness. The situation is further exacerbated if, for instance, the contract administrator is himself either directly or indirectly the cause of the dispute or has a self-interest in the result of its resolution. Under such circumstances, it is necessary for there to be an independent third party who can impartially play the role of dispute resolution without any suspicion of bias.

In addition to the above, as part of the dispute management process, it is imperative for such an independent intervenor to help resolve disputes as and when these arise and not to wait until the works are completed, determined or abandoned to effect the same as occasions in arbitration, litigation, etc.

At least the disputants would focus their resources in completing the works with the benefit of an interim decision instead of directing their efforts in furthering or entrenching their relative positions; a wasteful process that not only delays the works but generates further acrimony between the parties. In view of the above reasons, there has developed the necessity for adjudication to be one of the methods of resolving disputes, albeit under the label of Alternative Dispute Resolution (ADR).

In the authoritative text entitled '*Freshfields Guide to Management Contracting*', the authors explain adjudication as: *'..... a form of intermediate dispute resolution procedure whereby an adjudicator (whose identity is normally agreed in the contract) will arrive at a decision on a dispute or difference. The adjudicator's decision is final and binding (unless it is referred to arbitration within a stipulated period) and is implemented immediately. The procedure leading up to the adjudicator's decision will vary from case to case but will not usually be as lengthy as arbitration or court proceedings.....'*

Bruce Bentley in the paper entitled '*Adjudication Procedures: A Temporary Diversion?*' proffers the following working definition of the term:

*'Adjudication is a procedure where power is given by the contract to an independent third party to make interim decisions on disputes between the parties arising under the contract.....'*

From the definitions listed hereabove, the following essential characteristics of adjudication can be elicited:

- It is a form of dispute resolution procedure which complements but not replaces the traditional methods e.g. arbitration, etc.;
- Adjudication is, in addition to its resolution role, also a means of managing disputes arising during the currency of the contract i.e. it minimizes the adverse effects of disputes by preventing these from aggravating further, etc.;
- It is in most cases merely an interim or intermediate mechanism for resolving disputes and operates during the course of the contract and not after it. Parties may resort to any other form of dispute resolution i.e. arbitration, litigation, etc. to obtain a final, binding and enforceable decision;
- In contrast to an arbitrator or a judge, an adjudicator can play an inquisitorial role, seeking relevant information, details, etc. before making a considered decision;
- The process itself from reference to the publication of the adjudicator's decision involves a relatively short time period;
- Once made, the adjudicator's decision is binding on the parties until it is either confirmed or set aside by a different forum e.g. litigation or arbitration;
- In adjudication, in contrast to mediation/conciliation and negotiation, there is no room for negotiations between the parties as the matter is resolved by an independent third party through an opinion/decision; and
- It involves on an overall basis a procedure that is essentially summary and informal.

## Types of Adjudication

The three most common forms of adjudication encountered in practice are namely:

- Consensual or voluntary adjudication;
- Contractual adjudication; and
- Statutory adjudication

Often equated with the label 'ad hoc' adjudication, consensual or voluntary adjudication is rarely used in the local engineering/construction industry. Here, the parties may agree either orally but more often in writing to submit their dispute or difference to adjudication. Such an agreement may stipulate the nature of dispute or difference to be referred to adjudication, the method of appointing the adjudicator, the preferred adjudication procedure and any default provisions.



## What is Adjudication? *(continued)*

The bulk of the adjudications undertaken thus far are of the second category, i.e. contractual type where a clause is incorporated in the contract between the parties governing adjudication. Most international forms of conditions of contract e.g. JCT, ICE, FIDIC, etc. do contain such provisions. Even if the form is of the ‘ad hoc’ or ‘bespoke’ type, a properly drafted adjudication clause can be incorporated to give effect to the parties’ intentions. Most local standard forms of conditions of contract have so far failed to incorporate such adjudication clauses. However, the PAM Contract 2006 (With Quantities) has included a clause on adjudication; this being Clause 34.0 which reads:

### 34.1 Set-off disputes referred to adjudication

*Reference to adjudication is a condition precedent to arbitration for disputes under Clause 30.4. The parties by written agreement are free to refer any other disputes to adjudication. Any dispute under Clause 30.4 after the date of Practical Completion shall be referred to arbitration under Clause 34.5.”*

Statutory adjudication is mandated by law where legislation dictates what disputes need to be adjudicated, the adjudication procedure, the default provisions, etc. Some examples of such statutory enactments include, inter alia, the following:

- Housing Grants Construction and Regeneration Act 1996 (United Kingdom);
- Building and Construction Industry Security of Payment Act 1999, amended in 2002 (New South Wales, Australia);
- Building and Construction Industry Security of Payment Act 2002 amended in 2006 (Victoria, Australia);
- Construction Contracts Act 2002 (New Zealand);
- Building and Construction Industry Payments Act 2004 (Queensland, Australia);
- Construction Contracts Act 2004 (Western Australia);
- Construction Contracts Act 2004 (Isle of Man);
- Construction Contracts (Security of Payment) Act 2004 (Northern Territory, Australia); and
- Building and Construction Industry Security of Payment Act 2004 (Singapore).

If the CIPAA becomes law in Malaysia, it will set the statutory framework for adjudications undertaken within its ambit.

### General Procedure

*The procedure involved in a typical adjudication is usually stipulated either by the parties in consensual/ voluntary adjudication or contractual adjudication or by law in statutory adjudication. Without going into specifics, the general procedure vis-à-vis adjudication encompasses the following principal steps:*

- **Appointment of the Adjudicator**

The adjudicator may be appointed in three main ways, namely:

- a) Mutually agreed upon by the parties and named in the contract itself; or
- b) Jointly agreed upon by the parties and appointed within a reasonable period of the commencement of the contract; or
- c) If a) and b) above do not apply, by default, by an independent third party

The essential qualifications of the person being appointed the adjudicator are usually:

- a) He must be conversant with the particular discipline of works;
- b) He must not be connected in any way to either party; and
- c) He must be impartial

The terms of appointment of the adjudicator including his duration of employment, scope of work, extent of authority and remuneration must be mutually agreed upon by the parties or established by the appointing body. As for payment, each party normally pays one-half of the remuneration; the contractor either paying this directly or it is deducted from his preliminaries.

- **Occurrence of a Dispute**

For the adjudication process to be invoked, there must occur a dispute on a matter that has been mutually agreed expressly by the parties to be permitted to be adjudicated. Such matters generally include a host of issues as depicted below. It should be noted that unless and until the dispute in question falls within the official list, it may not be subjected to adjudication; the disputants being left to resolve it through another suitable forum. The matters normally adjudicated include:

- a) Payments
- b) Adjustments/alterations of Contract Sum e.g. set-offs, etc.;
- c) Extensions of time;
- d) Claims for loss and expense;
- e) Whether works are being properly executed;
- f) Validity of instructions;
- g) Withholding/delay of consents/approvals, etc.;
- h) Variation Orders and their valuation;
- i) Defects;
- j) Quality of workmanship, goods or design; and
- k) Any other specific matter stipulated in the agreement/contract or statutory enactment.

- **Reference to Adjudication**

The adjudication process is invoked by either party giving to the other and the adjudicator a written notice spelling out:

- a) The fact that a dispute has arisen; and
- b) Furnishing relevant details on the said matter.

If there are any time limits prescribed for the above, these should be complied with.

- **Commencement of Adjudication**

Upon the official receipt of a notice of reference to adjudication, the adjudicator has to establish a preliminary point i.e. whether the matter in dispute falls under the list of permissible issues for adjudication. If he is of the opinion that it is not, he must forthwith inform the parties accordingly. However, should his review point towards a positive result he must on the other hand, commence with the adjudication process within the time stipulated in the contract or if there is none, within a reasonable period. Either through a written request or a preliminary meeting, the adjudicator can require both parties to provide him with:

- a) Oral or written statements setting out the matters in dispute on which his decision is required; and
- b) All other relevant documents or information to assist him reach a decision.

- **Notification/Clarification**

Within a reasonable period of receipt of the relevant submissions from the parties, the adjudicator has to undertake the following:

- a) Inform the parties when he expects his decision will be given;
- b) Request any other information, clarification or document he may reasonably require; and/or
- c) Ask any relevant questions or queries that he may feel are necessary to assist him.

Should there be a necessity for the adjudicator to seek the advice of any specialist to enable him to form his decision, he may proceed upon the agreement of the parties to pay for the specialist 18 services.



## What is Adjudication? *(continued)*

- **Adjudicator Makes and Publishes Decision**

Having reviewed all relevant submissions, details, clarifications, etc. the adjudicator must make a considered decision in the capacity of an expert and not an arbitrator. This decision must then be communicated to the parties in writing within any time frame expressly stipulated in the contract or in its absence within a reasonable time. Should no decision be given within the stipulated time, either party may give a notice of arbitration upon the expiry of the time within which it should have been given.

- **Post Publication of Decision Procedures**

If any party is dissatisfied with the decision, then either within a prescribed period or within a reasonable time thereof, such party may refer the dispute to arbitration by giving the necessary notice. However, until the matter is dealt with by the arbitrator, the adjudicator's decision remains in force i.e. binding on the parties.



### Benefit

Adjudication offers disputants the whole range of advantages involving ADR. In addition to these, it boasts of a number of additional benefits such as 21:

- Adjudication is not only a dispute resolution procedure but a means of managing disputes before they become serious. This dual role is a premium to the parties;
- It permits a speedy resolution of a dispute as and when it arises; not until the completion of work. Hence, parties are able to get on with their work following adjudication instead of wasting energy, resources and time in pursuing their respective claims;
- Adjudication involves the input of an expert who is independent and disinterested in the outcome except for ensuring that work progress is not impeded;
- It allows the adjudicator to delve deeper into the dispute through his inquisitorial role in contrast to the normal adversarial forums thereby permitting a more considered decision to be made;
- Adjudication provides a means of resolving disputes where there is otherwise no short term remedy available to the parties except in extreme cases to resort to the courts for assistance; and
- It is relatively fast, cheap and effective in the short term and in certain instances also on a long-term basis.

### Drawbacks

Adjudication has, in tandem with the other ADR methods, its fair share of disadvantages; a sprinkling of which are adumbrated herebelow:

- Adjudication looks at disputes not as a whole but in isolation. Hence, decisions made may not be complete and conclusive;
- By its interim nature, it does not finally resolve a dispute but merely manages it for the time being to minimise its adverse effect on the overall work;
- Generally an adjudicator's decision is not enforceable in a similar vein to an arbitration and/or litigation award. Unless it is statutorily mandated, it is dependent upon an action in contract, which ultimately requires arbitration or the courts to render it enforceable;

- Generally an adjudicator's decision is not enforceable in a similar vein to an arbitration and/or litigation award. Unless it is statutorily mandated, it is dependent upon an action in contract, which ultimately requires arbitration or the courts to render it enforceable;
- Where it is a contractual procedure, it requires not only the contractual provision involved to be clearly drafted but also properly incorporated to render it valid and effective;
- Unlike the other ADR procedures, there is no room for the parties to negotiate; but merely to depend upon the expertise of a third party specialist to reach a decision following an inquisitorial approach. Hence, parties are at no times in control of the course and direction of the proceedings;
- There is a very limited time scale for the adjudicator to reach a decision. This impacts upon the quality of a decision reached thereof with its attendant ramifications on the parties' various rights and obligations;
- Despite its apparent non-adversarial image, adjudication tends to breed acrimony especially when the process involves opposing parties submitting their cases to an independent third party; and
- There is a fear that it encourages, instead of minimising potential disputes even on trivial technical matters as contract administrators abdicate this role since they have an adjudicator on board.

### Conclusion

There is a worldwide trend as of recent to move away from the rigours of traditional forms of dispute resolution such as litigation and arbitration towards methods grouped under the umbrella label of ADR. Adjudication belongs to this latter category. Although being promoted as a contemporary form of dispute resolution by its proponents, adjudication has been practiced by contract administrators for the last century or so whether in technical disputes or commercial ones. However, owing to the gradual erosion of the contract administrator's traditionally independent and impartial roles, this adjudication obligation of his has ebbed in tandem leading to its present resurgence and repackaging into what is being now marketed as 'adjudication'.

Despite all the hype surrounding its new form, in essence, it is merely 'old wine in a new bottle'. Having said that, an average practitioner must accept that adjudication is not only making its mark, albeit in its new form, but will be here to stay especially if it is statutorily mandated by a piece of legislation such as the CIPAA. Hence, such a practitioner must be both mindful and conversant with its scope, procedure and effect as it is meant to impact upon most if not all aspects of the engineering/construction industry. It will be especially so in relation to payment disputes where the old adage pertaining to arbitration which says 'argue first, pay later' is being transmogrified by adjudication to 'pay first, argue later'. The rest is left for time to tell.

**IR. HARBANS SINGH K. S.** is a Professional and Chartered Engineer, Arbitrator, Mediator, Advocate & Solicitor (non-practising). He commenced his career in Malaysia before working in Germany and then locally in various professional capacities. He is presently domiciled in Malaysia where he is active in construction law and dispute resolution. Ir.Harbans is the recipient of IEM's Tan Sri Hj. Yusoff Prize (2001), the Cedric Barclay and the Chartered Institute of Arbitrator's Awards for the Diploma in International Commercial Arbitration Examination (Oxford 2003). He is also the author of a series of four books entitled 'Engineering & Construction Contracts Management', coauthor of the book 'The PAM 2006 Standard Form of Building Contract', contributor to the 'Malaysian Standard Forms & Precedents: Construction & Engineering Contracts', 'The Ingenieur' and the 'Malayan Law Journal'.



# KLRCA Hosts Ramadhan's Breaking of Fast

*It was a cosy affair at KLRCA's "buka puasa" event for our friends and supporters at the Westin Kuala Lumpur on 18<sup>th</sup> August 2011. The event was made more meaningful when it was graced by Minister in the Prime Minister's Department, YB Dato' Seri Nazri Abdul Aziz. (third from left) Others in attendance were KLRCA panelist arbitrators, stakeholders, vendors and friends of KLRCA.*



## Talk on Amendments to the Arbitration Act



KLRCA and the Malaysian Bar organised a talk on 3 August 2011 to discuss the recent amendments to the Malaysian Arbitration Act 2005, which came into effect on 1<sup>st</sup> July 2011. Renowned arbitrator and counsel, Dato' William Davidson, who was the Chief Draftsman of the Bar Council Draft on the Arbitration Act, was the key speaker at the talk.



## KLRCA's Mediation Rules



A special forum on the KLRCA Mediation/Conciliation Rules 2011 was held on 23<sup>rd</sup> August 2011 to introduce and discuss the rules. The rules, which are based on the UNCITRAL Conciliation Rules 1980, were derived with modifications made upon consultation with the Malaysian Judiciary and the Malaysian Mediation Committee of the Bar Council. Datuk Kuthubul Zaman Bukhari, (on right) Chairman of the Malaysian Mediation Centre and President of the Malaysian Bar, Mr Lim Chee Wee, together with KLRCA Director, Mr Sundra Rajoo, was on hand to lead the discussion and take questions from the floor.





## UPDATE

***In support of mediation as an increasingly popular alternative dispute resolution mechanism, KLRCA has revised its mediation rules with assistance from the Malaysian Judiciary and the Malaysian Mediation Centre's Committee Members. Here are some of the key highlights.***



## KLRCA Mediation / Conciliation Rules 2011

The all new Rules for Mediation/Conciliation of the Kuala Lumpur Regional Centre for Arbitration 2011 (KLRCA's Mediation Rules) were adapted in modification of the UNCITRAL Conciliation Rules 1980.

The KLRCA's Mediation Rules provides a competitive fee structure for mediation/conciliation proceedings which is similar to that of the Malaysian Mediation Committee. Parties who choose to mediate in accordance to the KLRCA's Mediation Rules can be rest assured of efficient and smooth mediation proceedings as the KLRCA's Mediation Rules is based on the time-tested UNCITRAL Conciliation Rules.

Some of the salient features of the KLRCA's Mediation Rules are as follows:

### **Rule 3.2 - Appointment of Conciliator**

In the event of parties' failure to appoint a conciliator within 14 days of a written request to KLRCA to initiate a conciliation proceeding, KLRCA will appoint the Conciliator and Parties would be deemed to have approved to the said appointment made.

### **Rule 4 - Submission of Statements to Conciliator**

The KLRCA's Mediation Rules provides a prescribed time limit of seven (7) days prior to the conciliation session, where each Party is to submit a concise summary of its case and copies of all documents referred to in the summary (if necessary).

This provision was not available in the earlier 2003 Conciliation Rules and would prevent unnecessary delay by Parties in the submission of their summary of case and relevant documentations.

### **Rule 8.2 - Confidentiality**

The confidentiality of the mediation proceedings will be maintained and shall not rely or use or introduce anything disclosed in the said proceedings as evidence in any arbitral, judicial or other proceedings. This would ensure that both parties would not be later on prejudiced by the evidence tendered in the mediation proceedings.

### **Rule 9.2 - Termination of Conciliation**

The Conciliator has the power to suspend or terminate the Conciliation or withdraw as Conciliator should he have reasonable grounds to suspect that the parties are involved in illegal/fraudulent conduct, the parties are unable to participate meaningfully and reasonably in negotiations or the continuation of the conciliation process would cause significant harm to the any party or a third party.

### **Rule 16 - Interpretation**

**Rule 16.1** - The definition of conciliation would include international and domestic conciliation (which are defined in Rules 16.4 and 16.5 respectively). The words "conciliation" and "mediation" are deemed interchangeable by the KLRCA's Mediation Rules.

**Rule 16.2** - Conciliator applies to two conciliators or mediators as the case may be. It is hope with the new revised mediation rules, institutionalised mediation will continue to grow as a preferred alternative dispute resolution mechanism.



# Effective Resolution Settling Disputes Through Arbitration

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**Man on a Mission** - The Director of KLRCA, Mr Sundra Rajoo, is the consummate arbitrator. Trained in law and architecture, this author of several academic books on arbitration, has for many years, been an ardent advocate for a greater role to be given to the arbitration process in Malaysia.

*The rapid growth of the Malaysian economy and its increasing interconnectivity with global trade, has seen a corresponding rise in commercial disputes. In order to circumvent expensive and long drawn-out litigation in the courts - which can sometimes take up to two years - arbitration is being increasingly resorted to as an expedient way of resolving disputes involving trade, commerce, and investment.*

*Although there is no national arbitration centre in Malaysia, there exists a non-profit non-governmental organisation which provides a forum to settle disputes of a commercial nature. Known as the Kuala Lumpur Regional Centre for Arbitration (KLRCA), it functions under the auspices of the Asian-African Legal Consultative Organisation (AALCO), and enjoys a unique legal status in Malaysia.*

*Despite being neither an agency nor a branch of the government, KLRCA, has the full support of the state, and has been accorded independence, privileges, and a degree of immunity for the purposes of executing its functions as an international institution of integrity. With the help of its Director Sundra Rajoo, International Business Review gets an insight into KLRCA, which is fast gaining a reputation as a neutral, efficient, and dependable platform for arbitration.*

## Forum for Resolutions

If there ever was such a thing as the perfectly conducive environment for the congenial resolution of disputes, then the premises of KLRCA would certainly serve as an example. Situated in a refurbished colonial-era bungalow (whose past residents include a former Chief Justice) at No.12 Jalan Conlay, the KLRCA headquarters stands out as a calm island of serenity within the hustle and bustle of Kuala Lumpur city.

However, the sedentary setting belies an organisation which is, in the words of Mr Rajoo, “on a mission.” A lawyer and architect who has been a leading light in the field of arbitration in Malaysia for many years, Mr Rajoo described KLRCA as a “unique creation”.

Established in 1978 under the auspices of AALCO – an inter-governmental organisation with 47 members, encompassing almost all the major states in Asia and Africa – KLRCA carries an impressive mandate. After all, AALCO, which has roots dating back to the hey-day of the Non-Aligned Movement of the 1950’s, is an international organisation created specifically to coordinate laws pertaining to international trade.

Adding to its mandate, and its credibility as a promoter of the Rule of Law, is the fact that KLRCA’s Rules of Arbitration are derived from the United Nations Commission of International Trade Law (UNCITRAL) Arbitration Rules, with modifications. (In fact, KLRCA is the first centre in the world to adopt the UNCITRAL rules, which have become the most widely used in the world.) Furthermore, the “uniqueness” which Mr Rajoo referred to was emphasised by the passing of the Malaysian Arbitration Act 2005, which included a provision which gave statutory authority to the Director of KLRCA to appoint arbitrators independent of the courts. As such, the public perception of his independence and sense of integrity have been enhanced. (At present, he has 600 people – all specialists in a particular field – on the list of arbitrators.)

## Functional Purpose

A firm believer in the bottom-line of efficiency, and benchmarking of an organisation against the results it produces, the Director of KLRCA emphatically referred to the KLRCA Fast Track Arbitration rule of ensuring the conclusion of all arbitrations within 140 days of commencement. The expediency of choosing the route of speedy arbitration over the judicial process, is after all, one of the core rationales behind the very existence of KLRCA. Mr Rajoo also underlined that the KLRCA Arbitration Rules 2010 require the awards are to be given within three months of settlement.

KLRCA has other roles too. It provides the valuable purpose of co-ordinating and assisting the activities of existing arbitral institutions in the Asia-Pacific region. It also renders assistance in the conduct of ad hoc arbitrations, “particularly those held under the UNCITRAL Rules.

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## The Syariah Niche

In line with the rapid progress of Islamic banking in Malaysia, a comprehensive legal infrastructure has been developed to govern the regulatory regime for Islamic banks, Takaful operators, the Syariah Council for Islamic Finance, as well as Islamic financial windows into conventional banks and the various forms of bond and money market instruments. As a result, several successive regulations pertaining to Islamic banking in Malaysia, for example, the Central Bank of Malaysia Act 2009, have cast their influence on how Islamic arbitrations may be conducted.

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## Integrity and Stature

Mr Rajoo, who administers KLRCA under the supervision of the Secretary General of AALCO, based in Delhi, has been accorded certain privileges, which are tantamount to the status of diplomatic immunity, by the Government of Malaysia, and is covered by the International Organisations (Privileges and Immunities) Act 1992 and the Kuala Lumpur Regional Centre for Arbitration (Privileges and Immunities) Regulations 1996. This is to enhance his ability to perform with integrity, in a manner which will be devoid of fear or favour. He went on to emphasise the honour that had been bestowed upon the nation with the appointment of Kuala Lumpur as one of only five AALCO regional centres in the world (the others being in Cairo, Lagos, Tehran and Nairobi).

Crucially, it provides alternative options for the settlement of disputes such as conciliation and mediation

KLRCA also administers international and domestic domain-name disputes. At the very highest level, top-level generic domain-name disputes are administered under an MOU signed with the Asian Domain Name Dispute Resolution Centre (ADNDRC) and the Hong Kong International Arbitration Centre (HKIAC).

Another important role played by KLRCA is to appoint arbitrators for disputing parties as and when requested under the KLRCA Rules and the Malaysian Arbitration Act, 2005.

As a result, KLRCA now has an enhanced role as a forum for Islamic arbitration, in a regional sense – something which was lacking in the past. With a Muslim majority population, in a Muslim majority region, Malaysia, with its secular traditions, is perfectly poised to serve as an interface between both Islamic and secular legal systems. In the words of Mr Rajoo, “There is no better candidate in the region to fit into this role than Malaysia.”

Crowning this rise in KLRCA’s status as a recognised bastion of regional arbitration, is the awarding of the right to host the upcoming Asia Pacific Regional Arbitration Group Conference (APRAG) in Kuala Lumpur on the 9<sup>th</sup> to 10<sup>th</sup> of July, 2011. This achievement was all the more satisfying as Malaysia had won the bid in the face of stiff competition from other countries in the region. (APRAG, which was founded in 2004, is a regional federation represented by 30 arbitration associations which aims to improve the standards of international arbitration. Its existence reflects the growing importance of international arbitration in Asia and Australasia – the fastest growing economic area in the world.)



## Effective Resolution Settling Disputes Through Arbitration *(continued)*

### ***Vision and Mission***

Mr Rajoo has a vision of Malaysia being the preferred venue of choice for alternative dispute resolutions. In fact, under his direction, KLRCA has already prepared a template for a recommended model clause to be incorporated in any contract. It states:

***“ Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof shall be settled by arbitration in accordance with the Rules of Arbitration of the Kuala Lumpur Regional Centre for Arbitration. ”***

As arbitration, and the choice of venue for its proceedings are dependent upon the mutual consent of the disputing parties, it is imperative that KLRCA, and Malaysia, gain international recognition as a forum of integrity for the administration of impartial and efficient dispute resolution.

Mr Rajoo believes that Malaysia is well positioned strategically, to achieve this objective, as it has strong fundamentals to fall back upon. For example, he cited Malaysia's tradition of a strong Common Law System dating back to Independence, its large pool of highly qualified lawyers who are familiar with both local and overseas environments, and the long experience Malaysia has had in dealing with international commercial transactions, all of which will serve the country well in performing the role of being a hub for regional arbitration.

According to Mr Rajoo, the enormous growth in business activities in the Asia-Pacific will inevitably lead to a rise in the number of commercial disputes. This in turn will place Malaysia, with its well qualified professionals, modern infrastructure, and convenient logistics, in a position to create a niche for itself as a regional arbitration venue. This vision will perhaps be all the more forthcoming in the field of Islamic commercial arbitration.

A realist, Sundra Rajoo also said that while strategies were already being practiced, it would take at least five to six years for his hopes to bear fruition. Malaysia, and KLRCA, in his view, will do well even if there were to be parallel developments in the region to create other arbitration hubs elsewhere. In his words, “There's a place for everybody in this world. We are not competing with anyone.” Sage words indeed, considering that KLRCA has perhaps, already created a brand name - and a legacy - for itself.

# MARK YOUR CALENDAR!

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

### **LawAsia Moot**

Date : 8<sup>th</sup> - 12<sup>th</sup> October 2011  
Venue: Seoul, Korea

### **Seminar on Dispute Resolution for Korean Businesses in Malaysia**

Date : 12<sup>th</sup> October 2011  
Venue: Seoul, Korea

### **Visit by the Brunei Attorney-General's Chambers**

Date : 12<sup>th</sup> October 2011  
Venue: KLRCA

### **Visit by the Kedah Shariah Court**

Date : 13<sup>th</sup> October 2011  
Venue: KLRCA

### **IFN 2011 Issuers & Investors Asia Forum**

Date : 17<sup>th</sup> - 19<sup>th</sup> October 2011  
Venue: Kuala Lumpur Convention Centre

### **Seminar on Malaysian and Hong Kong Arbitration Law and Practice**

Date : 20<sup>th</sup> October 2011  
Venue: Ritz-Carlton, Kuala Lumpur

### **KLRCA-ACCCIM Joint Roadshow on Alternative Dispute Resolution (ADR)**

Date : 22<sup>th</sup> October 2011  
Venue: Seremban

### **KLRCA-ACCCIM Joint Roadshow on Alternative Dispute Resolution (ADR)**

Date : 29<sup>th</sup> October 2011  
Venue: Batu Pahat

### **International Bar Association (IBA) Annual Conference 2011**

Date : 30<sup>th</sup> October - 4<sup>th</sup> November 2011  
Venue: Dubai, UAE

### **Talk on Islamic Financial Arbitration**

Date : 9<sup>th</sup> November 2011  
Venue: KLRCA

### **Seminar on Recent Developments in Alternative Dispute Resolution (ADR)**

Date : 12<sup>th</sup> November 2011  
Venue: Kota Kinabalu, Sabah

### **KLRCA-ACCCIM Joint Roadshow on Alternative Dispute Resolution (ADR)**

Date : 19<sup>th</sup> November 2011  
Venue: Sandakan



# Advantages of Arbitrating

## at the Kuala Lumpur Regional Centre for Arbitration

- ▶ Malaysia is a signatory to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards which enable KLRCA's arbitral awards to be enforceable in countries that are also signatories to the Convention.
- ▶ KLRCA is internationally recognised as an experienced, neutral, efficient and reliable dispute resolution service provider since 1978.
- ▶ KLRCA has a panel of experienced domestic and international arbitrators from diverse fields of expertise.
- ▶ Costs of arbitration proceedings in KLRCA are comparatively lower than other established arbitral jurisdictions.
- ▶ No visa and withholding tax imposed on arbitrators.

### recommended model clause to be incorporated in any contract:

“Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof shall be settled by arbitration in accordance with the Rules for Arbitration of the Kuala Lumpur Regional Centre for Arbitration.”

#### KUALA LUMPUR REGIONAL CENTRE FOR ARBITRATION

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