



Newsletter of Kuala Lumpur Regional Centre for Arbitration

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## HIGHLIGHT

The IFN 2011 Issuers &  
Investors Asia Forum

Effective Dispute Resolution  
*A Malaysian - Korean Perspective*

KLRCa - HKIAC Joint Seminar

## Interview

Tan Sri Dato' Cecil Abraham

*Top Malaysian Arbitrator*

## Feature

Maritime Arbitration in Malaysia

*A Practitioner's Perspective*

Kuala Lumpur Regional Centre for Arbitration

*A Dynamic & Upcoming Institution*

REGIONAL RESOLUTION GLOBAL SOLUTION

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The Centre invites readers to contribute articles and materials of interest for publication in future issues. Articles and materials that are published contain views of the writers concerned and do not necessarily reflect the views of the Centre.

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# DIRECTOR'S MESSAGE

*Dear friends,*

The end of the year is usually a time for review and reflection. The year 2011 saw the Centre riding the cusp of change. With strong support from the Malaysian Government and the legal fraternity, we continued to aggressively market and position KLRCAs as an alternative arbitration hub in the Asia-Pacific region. Our activities and initiatives have already been chronicled in the pages of this newsletter, but I believe the most important thing that we have achieved in these past 12 months is the recognition and awareness amongst the international arbitration community. I would like to think that those in the arbitration world who did not know that Kuala Lumpur had an arbitration centre, they would have heard of us by now.

Looking ahead to 2012, I foresee that it will be our busiest year yet. Aside from business-as-usual activities, such as updating our Fast Track Rules to cater to the maritime, commodities and sports communities as well as coming up with Islamic Arbitration rules, we will also be occupied with Statutory Adjudication. The Construction Industry Payment & Adjudication (CIPA) Bill 2011 had its first reading in the Malaysian Parliament on 1 December 2011, and when it is passed in 2012, Malaysia will join a small select group of countries that have a similar enactment. Projected Malaysian GDP growth for 2012 shows the construction sector taking the lead, with growth anticipated to double to 7% from 3.4% in 2011, partly to support from the acceleration of projects under the 10th Malaysia Plan. The Malaysian construction industry, like other construction industries in developing nations, has had a long history of lengthy payment times, which has caused many contractors to suffer from cash-flow problems. The CIPA Bill therefore is timely. The proposed legislation provides for compulsory statutory adjudication and will have a great impact as it seeks to provide a speedy and inexpensive process of resolving disputes to regularise cash flow in the industry.

KLRCAs will play a very key role as it has been named as the default appointing and administrative authority under CIPA. We have been entrusted to set the competency standards and criteria required of an adjudicator; determine the standard terms of their appointment and fees; and provide administrative support for the efficient conduct of adjudication. In addition, we will also conduct training and courses for those who want to be adjudicators.

2012 promises, therefore, to be a very exciting year. Our continued achievements, of course, could not have come without the strong backing of our friends and stakeholders. I would like to take this opportunity to thank our stakeholders for their unwavering and continuous support in 2011, namely, the Asian-African Legal Consultative Organisation (AALCO), the Prime Minister's Department, the Attorney-General's Chambers, the Malaysian Judiciary, and the Malaysian Bar.

I look forward to greater things as we herald 2012 and begin another journey of challenges, achievements, lessons and changes in the year ahead. Until next time, happy reading.



**Sundra Rajoo**

Director of KLRCAs



# EVENTS



## 5<sup>th</sup> China - ASEAN Forum on Legal Cooperation and Development (CAFTA 2011)

Mr Sundra Rajoo, Director of KLRCA was one of the panellist speakers for the session entitled "Arbitral Institutions in CAFTA Region Opportunities and Challenges" at the 5th China-ASEAN Forum on Legal Cooperation and Development (CAFTA 2011). Held at the Shangri-La Hotel Kuala Lumpur on 26<sup>th</sup> - 27<sup>th</sup> September 2011, the Conference was attended by nearly 500 corporate counsels and lawyers from all over the world. The event was co-hosted by Bar Council Malaysia, China Law Society and ASEAN Law Association of Malaysia with KLRCA being one of the major sponsors.



# EVENTS

## The KLRCA Fast Track Rules 2010

On 28<sup>th</sup> September 2011, KLRCA organised a talk at the Centre to introduce and provide a practical commentary on the KLRCA Fast Track Rules 2010. The speakers were Mr Emerson Holmes for Nabarro LLP Singapore and Mr Mohanadass Kanagasabai, former President, Malaysian Institute of Arbitrators, who co-drafted KLRCA's Fast Track Rules. The rules were developed to help settle commercial disputes within 90 to 140 days and apply to disputed amounts of up to RM1 million.



## Arbitration in Islamic Finance

It was a great turnout at the Arbitration in Islamic Finance talk held on 10<sup>th</sup> November 2011 at KLRCA, organised with the aim of introducing and discussing the KLRCA Islamic Banking and Financial Services Rules. Dr Aida Othman, partner at Zaid Ibrahim & Co. and Director of ZI Shariah Advisory Services was on hand to discuss Alternative Dispute Resolution in Islamic Finance at length.





# Visitors Hall of Fame

*KLRCAs always looks forward to visits from various organisations and the arbitration community within and outside Malaysia as it is a wonderful platform to exchange views and strengthen ties.*

## ■ Visit by China Law Society 28<sup>th</sup> September 2011



## ■ Visit by the Brunei Attorney-General's Chambers 12<sup>th</sup> October 2011



## ■ Visit by the Kedah Shariah Court 13<sup>th</sup> October 2011



# Maritime Arbitration In Malaysia: A Practitioner's Perspective

*In anticipation of the launch of the revised KLRCA Fast Track Rules that will cater to maritime arbitration in February 2012, **Sitpah Selvaratnam** provides an overview of the maritime arbitration landscape in Malaysia.*



A chemical plant is under construction in Northern Peninsular Malaysia. A long term charter-party is concluded for the carriage by sea of steel from China. A glitch in the steel supply results in the early termination of the charter-party. A Rig is commissioned for operation off-shore the east coast of Malaysia, to be loaded-out of Korea by end of July 2011. Time and costs are overrun, culminating in allegations of non-performance. Diverse circumstances give rise to dispute.

The manner of settlement of disputes reflects, to a large extent, the degree of maturity of its disputants. Asserting a choice over the method of resolving a dispute draws on confidence. Confidence commensurate with experience, knowledge and bargaining strength, in knowing precisely how a controversy should be managed, and in taking control of the mechanism of settlement.

As commerce evolves, so too does the nature of disagreements. With this ascent of men in business, the confidence to take charge of their disputes gains momentum. Greater attention is focused upon the choice of experts selected to resolve differences; of laws and rules that are to govern rights and obligations; and the country where the dispute is to be settled. To the seasoned business negotiator, the choice of forum clause in an agreement is no redundant straggler. The Malaysian maritime industry, engaged in active international maritime, oil and gas trade, equally exercises this choice, when stipulating the seat of arbitration of its maritime disputes.

As surely as there are contracts, there are disputes. The maritime sector enjoys no immunity. The vast maritime cluster of ship-owners, charterers, commodity traders, ports, oil and gas majors, suppliers, shipyards, agents, managers, hauliers and financiers work out of contracts. Claims for demurrage, freight, unpaid services rendered, short delivery, damage to commodities, loss or contamination of cargo, premature termination of charter-parties, breach of specifications in shipbuilding, ship repair or supply contracts, are common facets of the industry. In short, taking charge of disputes is integral to maritime trade.



The confidentiality over the dispute afforded by arbitration, the specialist eye of the arbitrator specially chosen to resolve the discord, and the parties' autonomy over the process, lend support to arbitration as the preferred choice of dispute resolution. Increasingly though, costs have assumed greater significance. The industry thirsts for expert resolution at reasonable costs, within an acceptable system of laws and procedure. In effecting a choice of forum, parties desire viable options. To be a serious contender, a dispute resolution forum needs to meet the "credibility" due diligence.

Are the arbitration laws of the seat familiar and internationally accepted? Do the domestic courts of the seat interfere with decisions made by the arbitrators? Can an arrest of ship or cargo be effected as security for the maritime claim to be arbitrated? Will the arbitration award be recognised and enforced by other countries?

In arbitrating their maritime disputes in Malaysia, parties are free to appoint whomsoever they desire as their arbitrators, and indeed their legal representatives. They are equally free to choose the laws that give them most comfort, to determine their rights and obligations<sup>1</sup>. Hence, selecting Kuala Lumpur, or any other city in Malaysia, as the seat of arbitration combines economic benefits with top of the range skills and expertise. Three foreign arbitrators, applying English substantive law, deciding upon allegations of breach of duties of an Indonesian ship-owner under the Hague-Visby Rules for the contamination of a consignment of corn loaded by an Indian merchant, can perfectly well sit in Kuala Lumpur, provided the parties agree to this forum.

The Malaysian arbitration law would govern matters of procedure pertaining to the arbitration. This arbitration law is now prescribed by the Malaysian Arbitration Act 2005, as amended in 2011, which is based on the internationally prescribed and accepted UNCITRAL Model law. As Malaysia is a party to the New York Convention 1958, a maritime arbitration award handed down in Malaysia will readily be recognised and enforced not just in Malaysia, but in more than 140 countries around the world. The courts in Malaysia would stay court proceedings brought by one party in breach of an arbitration clause, to give effect to the parties' choice for arbitration.

Notwithstanding such stay of court proceedings, by virtue of the recent amendments to Sections 10 and 11 of the Arbitration Act 2005, the Malaysian court will support the arbitral process by arresting a ship as security for the maritime claim, where circumstances in line with the international Arrest Convention 1952 are met. In the same vein, it would appear that the right of a maritime claimant to inspect a ship and her logs, relevant to the arbitration claim, is equally preserved in the powers conferred by Sections 11 and 29 of the Arbitration Act 2005.



Let's take the instance of the dispute over the contaminated corn. The ship carrying the damaged corn, or a sister ship under the same owner, may be arrested by the Malaysian High Court should the vessel enter Malaysian waters. The ship will be maintained in the custody of the Malaysian High Court as security for the claim, while the arbitrators proceed to hear and determine the merits of the maritime claim. The arresting party, though, would need to bear the costs of maintaining the ship under arrest, until the ship is either released from arrest or sold under judicial process. The ship-owner is at liberty to offer alternative security in the form of a P&I Club Letter of Undertaking, a Bank Guarantee or a Bail Bond, to obtain the release of the ship from arrest.

When invoking this right of arrest, the Malaysian High Court exercises its admiralty jurisdiction that is identical to the admiralty jurisdiction of the High Court of England prescribed under the English Supreme Court Act 1981. The legal basis of enforcing arrest rights in Malaysia is accordingly, founded upon settled and acceptable international maritime practices and principles. With the establishment of the Admiralty Court in Kuala Lumpur on 1<sup>st</sup> October 2010, maritime claimants are assured of specialist consideration of their maritime issues not only by their privately nominated arbitrators, but by the Malaysian Admiralty Court that supports the arbitral process where ancillary relief is required. In a recent decision, the Malaysian High Court affirmed the common law principle of parties' freedom to contract in declining to interfere with, or re-write, the terms of security privately negotiated between the parties of a maritime dispute to avert an arrest of a ship<sup>2</sup>. Whilst honouring the parties' contractual freedom, the Malaysian High Court is nevertheless astute to oppressive conduct, and will moderate security albeit privately negotiated to prevent an abuse of process. A ship-owner who can establish that the security demanded by the maritime claimant is excessive, will succeed in having the quantum of security provided reduced by Court<sup>3</sup>.

Applications to set aside a Malaysian award may be advanced on limited grounds, similar to that internationally recognised under the New York Convention pertaining to enforcement of awards. Delays in setting aside awards are not condoned by the Malaysian Courts, affording the arbitration award the finality it deserves. Public policy as a ground for challenge of an award is scrutinised in the context of international norms and standards, removing fears of domestic or cultural nuances. The High Court in Kuala Lumpur recently exemplified that *"unless the most basic notions of morality and justice would be offended"* public policy would not readily be used to set-aside an award. *"This approach is very restrictive, being grounded in the upholding of international comity"*<sup>4</sup>.

To the confident negotiator in search of a viable forum for a maritime dispute resolution, Malaysia stands to be counted.

**SITPAH SELVARATNAM** qualified with a First Class Honours degree in law from the University of Wales, Cardiff, in 1988 and in 1991 with an LLM from the University of Cambridge. She was conferred a Diploma in International Commercial Arbitration by the Chartered Institute of Arbitrators in 2008, upon completion of study at Keble College Oxford.

Sitpah has been practising law in Malaysia since 1991, focused on corporate insolvency, commercial and shipping litigation and disputes. She represents diverse Malaysian and foreign corporations and commercial interests; including ship owners, commodity traders, port operators, Protection and Indemnity Clubs, insurers, financial institutions, Malaysia's national asset management corporation, the Malaysian deposit insurance corporation and securities commission. She sits on KLRCA's Maritime Working Committee.

<sup>2</sup> Sabah Shell Petroleum Co. Ltd v The Owners of the ship "Borcos Takdir" [2011] 6 MLJ 562

<sup>3</sup> Shell Refining Company (Federation of Malaya) Bhd v Neptune Associates Shipping Pte Ltd [2008] 7 CLJ 87

<sup>4</sup> Infineon Technologies (M) Sdn Bhd v Orisoft Technology Sdn Bhd [2011] 7 MLJ 53

# THE IFN 2011 ISSUERS & INVESTORS ASIA FORUM

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*The IFN 2011 Issuers & Investors Asia Forum*, recognised as the industry's leading and largest annual event, was held from 17<sup>th</sup> - 19<sup>th</sup> October 2011 in KLCC Convention Centre, which saw an impressive turnout of more than 1000 delegates. KLRCA had been invited to share with the audience its roles and specialties, where the Centre's Director, Mr Sundra Rajoo spoke at a breakout session on Mitigating and Managing Disputes as well as Investment Protection and Dispute Resolution with KLRCA.



# EFFECTIVE DISPUTE RESOLUTION: A MALAYSIAN KOREAN PERSPECTIVE

## *Ahn-nyung-ha-se-yo!*

KLRC visited Seoul, Korea on 12<sup>th</sup> October 2011 on a mission to introduce the legal system in Malaysia and highlight the modernisation of Malaysian courts. The seminar, organised collaboratively with the Korean Commercial Arbitration Board, discussed effective dispute resolution from the Malaysian and Korean perspective. Mr Tom Moxham, the International Counsel from KCAB, discussed international arbitration in Korea and the revised KCAB rules, whereas Mr Sundra Rajoo spoke on international commercial arbitration in Malaysia and its benefits for Korean businesses. Justice Mah Weng Kwai, High Court of Judge of Malaya and Mr Lim Chee Wee, President of the Malaysia Bar were of part of the Malaysian delegation and shared their insight on the legal system in Malaysia.





# KLRCAs - HKIAC

## JOINT SEMINAR ON MALAYSIAN & HONG KONG ARBITRATION LAW PRACTICE

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Leading *Malaysian & Hong Kong* arbitration experts joined forces and exchanged views on Malaysian and Hong Kong law and practice at a seminar held on 20<sup>th</sup> October 2011 at The Ritz-Carlton Kuala Lumpur. Luminaries from Malaysia included Tan Sri Dato' Cecil Abraham, Mr Sundra Rajoo and Mr Lim Chee Wee while Hong Kong was represented by Mr Huen Wong, Professor Philip Yang and Mr Daniel Lam. Towards the end of the seminar, the eminent panellists discussed a case study on Hong Kong and Malaysian Practice Procedure – Current Trends and Hot Topics, and took questions from the floor. The evening ended delightfully with a cocktail reception and warm banter.





# In the Seat: Tan Sri Dato' Cecil Abraham



*Top litigator **Tan Sri Dato' Cecil Abraham** stands out as a giant of Malaysian arbitration, having recently been named as one of the best Malaysian arbitrators in **The International Who's Who of Commercial Arbitration 2012**. He shares his journey in arbitration as well as his insights on the arbitration scene in Malaysia in this exclusive interview.*

## ***How has arbitration grown in Malaysia?***

I commenced practising in the 1970s when arbitration was mainly confined to disputes arising out of insurance policies under the 1952 Arbitration Act (1952 Act). There were very few commercial or construction disputes as arbitral institutions were not active in promoting arbitration at that time. The Courts were not that efficient then and there was a backlog. This resulted in the commercial world looking at alternative dispute resolution and there was a steady increase in commercial and construction disputes and more practitioners began to act as arbitration counsel or arbitrators.

The 1952 Act was in dire need of reform. There was frequent interference by the Courts in arbitrations and also it was abused by parties who wished to delay arbitral proceedings by making frequent applications to the Courts.

The stakeholders such as the Bar Council and other arbitral institutions were of the view that the 1952 Act should be replaced by the Model Law, and the Bar Council led the movement to repeal the 1952 Act, resulting eventually in the 2005 Arbitration Act (2005 Act) and also the present Arbitration (Amendment) Act 2011.

The 2005 Act was an excellent example of the stakeholders working together with the Attorney-General's Chambers in proposing the change.

The other factors that have contributed to the growth of arbitration in Malaysia was the setting up of the Kuala Lumpur Regional Centre for Arbitration (KLRC) in 1978 and despite being one of the early arbitral institutions in this part of the world, it unfortunately did not capitalise on transforming Malaysia into a major arbitral institution. However, this situation has been remedied to a large extent by the appointment of Mr. Sundra Rajoo as the Director of the KLRC in 2010. He has transformed the KLRC into a major player in this part of the world.

The setting up of the Chartered Institute of Arbitrators (CIArb) and the Malaysian Institute of Arbitrators (MIArb) has also resulted in the growth of arbitration as they have been instrumental in conducting educational courses in arbitration and encouraging their members to sit for the examinations and to become Fellows. The two institutions have also organised seminars and conferences which have guided arbitrators and counsels. Other arbitral institutions such as the Persatuan Akitek Malaysia (PAM) and the Institute of Engineers Malaysia (IEM) have also contributed to the increase in construction disputes. The National Committee of the International Chamber of Commerce (ICC) set up in 2004, has also encouraged international commercial arbitration. With the growth of commerce, Malaysian companies are writing foreign arbitration clauses such as ICC, LCIA, SIAC and KLRC clauses into their agreements resulting in an increase in commercial arbitration.



***What is the outlook for arbitration in the next few years?***

In the next few years, there will be an increase in commercial arbitrations especially as Malaysian companies are now venturing to invest in foreign countries and if disputes arise, this will give rise to international commercial arbitrations. Malaysian companies are also becoming aware that when they invest in high risk countries, and if their investments are jeopardised, then they could resort to investment arbitration. That is another growth area especially since a number of Malaysian companies have already been involved in investment arbitrations. There has also been an increase in domestic arbitration in the areas of construction and commercial arbitration in Malaysia. The KLRCAs is promoting arbitration and is also looking at new areas such as maritime arbitration, Islamic arbitration and commodity arbitration. These would be areas in which there would be an increase in arbitration.

***What would be the key challenges for arbitration in Malaysia?***

We need to make Malaysia an arbitration hub. The KLRCAs was set up in 1978 but we missed the opportunity to make Malaysia a hub. However, with the new Director, this can be remedied. Malaysia is cheaper to arbitrate in terms of arbitration costs and other infrastructure costs. However, in order to make Malaysia an arbitration hub, it is important that we have a judiciary which is arbitration-friendly so that there is less interference by the Courts. The appointment of specialist Arbitration Judges in Kuala Lumpur is a step in the right direction. There should also be a specialist Arbitration Bar, with a change in their mindset of arbitration counsel, namely that arbitration is quite different from litigation and they must adapt to the new techniques that are being used in arbitrations such as witness-conferencing of experts and witness-conference of witnesses of fact.

***Tell us about your journey to the top. What were the challenges that you faced?***

I started my arbitration career as counsel in domestic arbitration in the 1970s. I decided the way forward

in my legal career after some 30 years in the litigation arena in Malaysia was to get involved in commercial arbitration and started attending international conferences on arbitration abroad and to get acquainted with members of the arbitration fraternity. This led to my appointment as a Vice-Chair of Committee D, (the then Arbitration Committee of the International Bar Association (IBA)), the LCIA Court and the ICCA Council. I was Chairman of CIARB (Malaysia Branch) from 2002 to 2004.

I also became counsel for Malaysian parties in international commercial arbitration and also for the Malaysian Government in an ICSID arbitration. I am now on the panel of a number of arbitral institutions and act frequently as an arbitrator in international commercial arbitration and investment disputes. It was difficult to obtain that first international arbitration but once I excelled in it, the appointment from arbitral institutions and parties came regularly. Now I am kept busy in both domestic and international arbitrations besides my litigation practice.

***What would you say have been the major changes in the arbitration market compared with when you began practising?***

There were very few experienced arbitrators at that point in time and the arbitrators were also not very familiar with arbitration practices which we now consider second nature. They regarded arbitration as an extension of court proceedings and hence tendered to import many of the litigation practices into arbitration. However, as more practitioners became interested in arbitration, they began to acquire training and qualifications in arbitration such as Fellowships under CIARB and some even obtained Post-Graduate degrees in arbitration and hence arbitration counsels and arbitrators began to adopt the new practices of arbitration from other parts of the world. There was also an increase in the number of Malaysian lawyers and arbitrators attending arbitration conferences and speaking at such conferences which resulted in them gaining very useful knowledge as to how arbitration operated in other jurisdictions. They also began to appreciate the differences of arbitrating in the Common Law world and the Civil Law world. They became familiar with the IBA Rules on the Taking of Evidence in International Arbitration and also the IBA Guidelines on Conflicts of Interest.

## In the Seat: Tan Sri Dato' Cecil Abraham *(continued)*

### *What do you enjoy most about working in the arbitration field?*

Arbitration is conducted, in most instances, in an informal way and I enjoy the many opportunities to work abroad and to interact with lawyers from different legal traditions and cultures and also with arbitrators from both the Common Law and Civil Law worlds whose approach in dealing with issues and procedures, is unique. The international exposure to arbitration has been intellectually challenging. The arbitration community is quite a closely knitted one and I have, by working with them, formed many friendships professionally and socially.

### *What has been your most memorable case (if you are able to share)?*

My most memorable case was an institutional arbitration in an Asian country where I was appointed as Sole-Arbitrator. I was faced with innumerable obstacles and impediments in the arbitration by the party who wanted to delay the arbitration. I had to be patient but firm in ensuring the arbitration proceeded. It was also a cultural experience, having to interact with counsels from different legal traditions.

### *What are three important qualities or traits that an arbitrator should have?*

An arbitrator should be independent, honest and make full disclosure of conflicts when he is appointed. He must be impartial and treat all parties fairly and ensure that they get a fair hearing. He must have experience and knowledge of arbitration procedures and be expeditious in rendering a Decision or Award.

### *Did you have a mentor and what was the essence of their advice?*

My mentor in so far as litigation is concerned, was Dato' Mahadev Shankar, my pupil master and a former Judge of our Court of Appeal. He gave me many opportunities to interact with the leading lawyers of that day in Malaysia and he also gave me many opportunities to work on important cases relatively early in my career. I was able to observe him at close quarters and learn many useful tactics in cross-examination and advocacy. Dato' Mahadev Shankar's advice to me was to master the facts in any litigation and to have a thorough knowledge of the law – 'work hard and be fully prepared' was his motto.

In so far as arbitration is concerned, Michael Hwang S.C., and Neil Kaplan Q.C. were the two most important persons in my early career as an arbitrator. They were very supportive and encouraging. I would also like to mention Yves Fortier Q.C. whom I met at the LCIA gatherings at Tynley Hall. Michael, Neil and Yves believed that one should be fair and equitable as an arbitrator.

### *What would be your own advice to upcoming arbitrators?*

Arbitrators should know their law and arbitral practices and keep up-to-date. They should attend arbitration conferences and seminars and be transparent in their conduct of proceedings and above all, they must be independent and efficient.



**TAN SRI DATO' CECIL ABRAHAM** is a Chartered Arbitrator and a Fellow of the Chartered Institute of Arbitrators U.K., Malaysian Institute of Arbitrators, Singapore Institute of Arbitrators and the Australian Centre for International Commercial Arbitration Limited. He has been involved as Arbitrator and Counsel in more than 100 arbitrations under the ICC, SIAC, KLRCA, LCIA and ICSID Rules and also in Ad Hoc arbitrations. He sits on the Advisory Board of KLRCA. He has represented the Government of Malaysia in an ICSID arbitration and is presently involved in arbitration and annulment proceedings under the ICSID Convention. He is also a Member of the Permanent Court of Arbitration in The Hague.

# KLRCAs: A Dynamic & Upcoming Institution



**Sundra Rajoo**, Director of KLRCAs shares his insights from the session on 'Young Arbitration Institutions in the Middle East and Asia - Perspective of Providers and Users' at the recent IBA Annual Conference 2011 in Dubai.

The IBA Annual Conference in Dubai recently hosted a stimulating session on aspects of arbitration applied in the Middle East and Asia with a unique combination of representations from both providers and arbitral users. Arbitral institutions which had participated in the session were the Bahrain Centre for Dispute Resolution (BCDR-AAA), the Dubai International Arbitration Centre (DIAC), the Dubai International Financial Centre (DIFC), the Chinese European Arbitration Centre (CEAC), the Kuala Lumpur Regional Centre for Arbitration (KLRCAs) and the Singapore International Arbitration Centre (SIAC). I represented the provider perspective whilst the user perspective for arbitrations closer to home was contributed by Mr Lim Chee Wee, the President of the Malaysian Bar.

I enjoyed the session thoroughly and it was an eye-opener on a number of aspects, mainly where KLRCAs stood compared to other institutions in the region. It gave me the opportunity to critically assess and analyse the impact of the Centre's rebranding and transformation efforts and helped me identify areas on which to capitalise and improve.

The session also presented a case study on the fees and costs of an arbitration matter in each of the institutions participating. It was noticeable that fees and costs of arbitration as set by KLRCAs under the arbitration rules are considerably lower than other institutions in this Region.

**“ In fact, KLRCAs scale of arbitration fees and administrative costs put together are about 20% less than that of the other leading institutions in the region. KLRCAs also charges a minimum registration fee and most importantly, there are no hidden costs. ”**

I was made to understand that the topic of the session was motivated by the significant rise of international trade and investment in the Middle East and Asia in the last twenty years that resulted in the emergence of new arbitration institutions. These institutions can still be described as “young” arbitration institutions compared to other arbitration institutions that have been established long ago.



## KLRCAs: Dynamic & Upcoming *(continued)*

The session looked at the role of these young arbitration institutions in trade and investment within the Middle East and Asia. Interesting line of questions were posed relating to the aspects of the rules, services and organisational structures of the institutions compared to the more established ones in Europe and North America. Issues raised included whether there was a need for such young institutions, and if so, why and what role does location or cultural issues play in their success.

Having participated in the session, it is necessary for me to clarify KLRCAs history and its roles. KLRCAs is certainly not a “young” institution. It came into existence in 1978 following a decision taken by the Asian-African Legal Consultative Organisation (AALCO) at its Doha Session held in January that year and was part of AALCO’s integrated disputes settlement system in the economic and commercial field. The establishment of regional centres was the result of efforts by developing countries at the 1947-48 Havana Conference to provide a fair and adequate system for settlement of international commercial disputes.

As a regional centre, KLRCAs was and is entrusted with several broad-based functions as a coordinating agency in AALCO’s integrated disputes settlement system. This includes the creation of stability and confidence in international economic transaction within the region; the promotion of the institution of arbitration as an effective means for settlement of disputes; the wider use and application of UNCITRAL Arbitration Rules within the region; the establishment and growth of national arbitration institutions; and encouraging inter-institutional cooperation. The Centre’s activities in relation to these matters are expected to cover most of the countries in Asia and the Pacific including Australia which agreed to be served by KLRCAs.

In this regard,

***whilst many of the “young” institutions are either private initiatives or a government set up, KLRCAs is clearly ‘mission based’.***

Overall, at the end of the session, I was pleased to observe that KLRCAs was considered as a **‘dynamic and upcoming’** institution.

The past year or so has been extremely interesting, beginning with the decision to revise the Centre’s Arbitration Rules, being the first to adopt UNCITRAL Rules 2010 and thereafter introducing a number of rules to cater for specific commercial needs.

The revised Arbitration Rules certainly helped bring KLRCAs up to speed with current times. Our position was further strengthened by the amendments made to the Malaysian Arbitration Act 2005. The amendments which came about on 1<sup>st</sup> July 2011 bridged important gaps of the previous Act which caused concerns to parties in international arbitrations seated outside Malaysia. The courts now have limited powers of intervention, expansion in the list of interim measures, and higher likelihood of enforcement of awards by the courts.

KLRCA also introduced Fast Track Rules 2010, aimed at providing an expedited arbitral procedure, settling disputes and producing the award within a short time frame. It is intended to be cost effective by offering competitive fixed fees and targets disputes involving smaller quantum (less than RM1 million). In addition, KLRCA has also produced Mediation / Conciliation Rules 2011 to further widen our alternative dispute resolution (ADR) services.

We are currently revising the Fast Track Rules 2010 to encourage its application to other industries. Initially, it was the problems in the construction industry that sparked the initiative to introduce the expedited arbitration procedures. However, there is now a need to apply the expedited procedure to other industries, such as maritime and for any other commercial disputes. The rules allow for a summary process through documents-only proceedings, thereby ensuring a shorter duration. It is also considerably cheaper than the scales that apply to normal arbitration.

Speaking of the maritime industry, KLRCA is scheduled to launch its set up for Maritime Arbitration in the first quarter of 2012. We have in place a vibrant and dedicated Maritime Working Committee, comprising legal experts from within the maritime industry. It is our aim to offer Malaysia as another alternative to the more established centres in Singapore and Hong Kong for maritime arbitration.

At the other end of the spectrum, we have also started to work closely with the Central Bank of Malaysia to revise the 2007 Islamic Banking and Financial Services Rules, and a new set of general Islamic Arbitration Rules is expected to be ready in 2012.



To complement our efforts in keeping up with current rules revisions and being up to date, KLRCA also ensures that only the best of arbitrators sit on our panels. KLRCA currently has almost 700 arbitrators, all of whom are experts in their own field.

KLRCA allows the parties to choose their arbitrators from a transparent open list that is published on our website and categorised by specialisation. In order to ensure quality, KLRCA insists that not only should the arbitrators be specialists in their respective fields, but they must also be equipped with the proper Chartered Institute of Arbitrators (CI Arb) qualifications.

Currently, we are in the process of migrating arbitrators' curriculum vitae from our system to our webpage in a standardised form so that parties can review and consider the panellists' expertise and professional qualifications.

With the growing global need for fast efficient practices, coupled with the advent of technology and better arbitration procedures, it cannot be denied that there is an increasing demand for more modern facilities and sophisticated physical infrastructure. Partitioned break-out rooms and snail mail are slowly being replaced by modern facilities with video conferencing and wireless Internet.

## KLRCA: Dynamic & Upcoming *(continued)*

Realising this need, the Malaysian government is in the process of renovating the five-floor Kuala Lumpur Shariah Court building to house KLRCA's administrative office and up to 20 or more hearing rooms, as well as support and office facilities, breakout rooms, a business centre, an arbitrators' lounge and an auditorium. The new building promises to be a 'state of the art' facility that offers a dedicated arbitration and ADR services.

***Following recent endeavours, the government of Malaysia is also scheduled to sign a host country agreement with the Permanent Court of Arbitration in The Hague to enable the latter to make use of KLRCA's facilities.***

Currently, the Centre has facility-sharing agreements with the International Centre for Settlement of Investment Disputes (ICSID) and other arbitral centres across the world, and regularly administers domain name disputes under a memorandum of understanding with the Asian Domain Name Dispute Resolution Centre and the Hong Kong International Arbitration Centre.

KLRCA as a developing arbitral institution is very fortunate to have a very stable foothold, from the governing laws to the strong support system comprising the Malaysian Government, the Judiciary and the Malaysian Bar, in our efforts to ensure that arbitration is seen as an equally important alternative to courts. We believe that we have positioned ourselves well in this globalised world, by capitalising on the borderless market and we are on the right path in pinning Malaysia up on the map as one of the sought-after arbitration seats.

**SUNDRA RAJOO** is the Director of the Kuala Lumpur Regional Centre for Arbitration. He is also the President of the Asia-Pacific Regional Arbitration Group which is a regional federation of arbitration associations. He is a Chartered Arbitrator, and an Advocate and Solicitor of the High Court of Malaya (non-practising). Earlier, he had practised as an Architect and Town Planner. He has been appointed as chairman, co-arbitrators of 3-man panels and sole arbitrator in international and domestic arbitrations and serves on the panel of leading arbitral institutions, such as CIETAC, HKIAC, SIAC, KCAB, CIArb (UK), ACICA, WIPO and the Indian Council of Arbitration.

He is the founding President of the Society of Construction Law (Malaysia), past Chairman of the Chartered Institute of Arbitrators, Malaysia Branch and past Deputy President of the Malaysian Institute of Arbitrators. He is the author of The Law, Practice and Procedure of Arbitration (2003); The Malaysian Standard Form of Building Contract (The PAM 1998 Form), [2nd Edition, 1999]; the Arbitration title of the Halsbury Laws of Malaysia (2002) and was also co-author of "The Arbitration Act 2005 - UNCITRAL Model Law as applied in Malaysia" (2007), and "The PAM 2006 Standard Form of Building Contract" (2010).



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

*KLRCa continued on its quest to promote and encourage the adoption of ADR among ACCCIM members, travelling to Terengganu, Seremban, Batu Pahat, Sandakan and wrapping up the roadshow for 2011 in Penang. Overall, more than 500 members from the various constituents benefitted from the awareness campaign. Successively, KLRCa plans to conduct a series of sequels at the same venues for the year 2012 and also to explore untapped territories. More details coming up in our next edition, so watch this space!*

**Terengganu 23<sup>rd</sup> August 2011**



**Seremban 22<sup>nd</sup> October 2011**



**Batu Pahat 29<sup>th</sup> October 2011**



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

*Sandakan 19<sup>th</sup> September 2011*



*Penang 2<sup>nd</sup> December 2011*





# MARK YOUR CALENDAR!

## Introduction to

## The Construction Industry Payment and Adjudication (CIPA) Bill 2011



This special talk, organised by KLRCA, will introduce participants to the provisions of the ***Construction Industry Payment and Adjudication (CIPA) Bill 2011*** and seeks to discuss its ramifications to the construction industry.

For more information, log on to [www.klrca.org.my](http://www.klrca.org.my) or register your interest at [events@klrca.org.my](mailto:events@klrca.org.my).

### Nationwide Roadshow

Date : 11<sup>th</sup> February 2012  
Venue : Kuala Lumpur

Date : 5<sup>th</sup> March 2012  
Venue : Ipoh

Date : 24<sup>th</sup> March 2012  
Venue : Johor

Date : 18<sup>th</sup> February 2012  
Venue : Penang

Date : 17<sup>th</sup> March 2012  
Venue : Kota Kinabalu

Date : 28<sup>th</sup> March 2012  
Venue : Kuantan

Date : 25<sup>th</sup> February 2012  
Venue : Kuching

Date : 21<sup>st</sup> March 2012  
Venue : Miri

# SAVE THE DATE!

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

### Launch of Revised KLRCA Fast Track Rules

Date : 27<sup>th</sup> February 2012  
Venue : Kuala Lumpur

### 22<sup>nd</sup> Annual Meeting & Conference of the Inter-Pacific Bar Association - IPBA 2012

Date : 29<sup>th</sup> February - 3<sup>rd</sup> March 2012  
Venue : New Delhi, India

### The 15<sup>th</sup> Annual International Arbitration Day

Date : 8<sup>th</sup> - 9<sup>th</sup> March 2012  
Venue : Stockholm



# 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**

(ESTABLISHED UNDER THE AUSPICES OF THE ASIAN-AFRICAN LEGAL CONSULTATIVE ORGANISATION)

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