

# ADR CENTURION

The bimonthly newsletter of the Asian Institute of Alternative Dispute Resolution

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ALTERNATIVE  
DISPUTE  
RESOLUTION  
Delivering Excellence in ADR

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### Asian Institute of Alternative Dispute Resolution (AIADR)

No.28-1, Jalan Medan Setia 2,  
Bukit Damansara, 50490,  
Kuala Lumpur, Malaysia.

T: (60) 3 2300 6032

E: [thesecretariat@aiadr.world](mailto:thesecretariat@aiadr.world)

URL: <https://aiadr.world>

KOD JALUR / BARCODE



### Editorial Sub-Committee

Dennis Wilson (Chairman)  
Dr. Lam Wai Pan, Wilson  
Ramalingam Vallinayagam  
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Philip Teoh Oon Teong  
Dr. Nur Emma Mustaffa  
Wilson Ho Sheen Lik

Editorial Enquires should be directed  
to: [aiadr.editor@aiadr.world](mailto:aiadr.editor@aiadr.world)

### ADR Centurion

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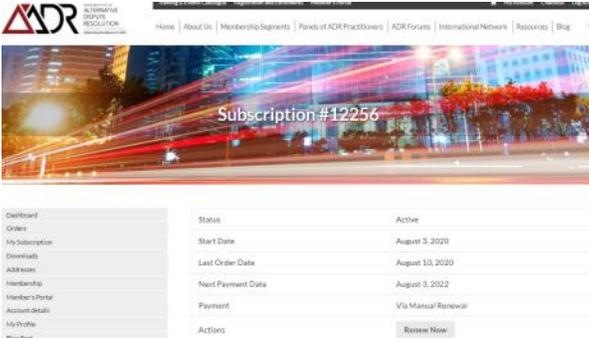
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# AIADR ANNOUNCEMENT



## RENEWAL OF MEMBERSHIP FOR 2021

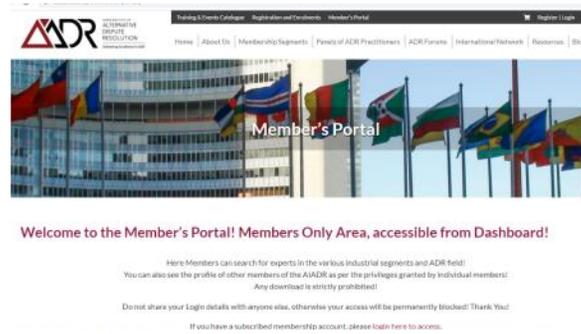
Please renew your membership for the new 2021 term by logging in to the website or contact the Secretariat at [aiadr.membership@aiadr.world](mailto:aiadr.membership@aiadr.world) for payment details.

Suspension of membership rights (e.g. access to facilities, voting rights, use of post-nominal letters) would automatically apply after 2 months' of membership expiry.

## UPDATE MEMBERSHIP RECORDS ONLINE

All existing members are urged to register online, update full particulars and create your public profile on our website.

Log in to our website or write to [aiadr.membership@aiadr.world](mailto:aiadr.membership@aiadr.world) should you need further assistance.



## MEMBERSHIP RULES UPDATE

The AIADR Membership Rules had been recently updated. Please download the latest copy from our website or you may request from the Secretariat by emailing [aiadr.membership@aiadr.world](mailto:aiadr.membership@aiadr.world)



## UPGRADE YOUR MEMBERSHIP & GET ACCREDITED AS CERTIFIED PRACTITIONER

With the recent amendments to the Membership Rules, members can now upgrade their membership level or get accredited as Certified Practitioner through our fast-track path by virtue of having comparable membership or accreditation from equivalent international ADR organisations (e.g. Chartered Arbitrator with CIArb).

Apply through our website or write to [aiadr.membership@aiadr.world](mailto:aiadr.membership@aiadr.world) for further clarification.



# AIADR ANNOUNCEMENT



## FREE COPY OF “LAW, PRACTICE AND PROCEDURE OF ARBITRATION” TEXTBOOK

Members are entitled to receive the Chinese-translated book entitled "Law, Practice and Procedure of Arbitration" authored by the AIADR President, Datuk Professor Sundra Rajoo for FREE!

Click [HERE](#) to download the digital copy.

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## EXPRESSION OF INTEREST FOR COLLABORATION OF WEBINARS

Members are welcome to reach out to the Secretariat for assistance or collaboration in organizing webinars on ADR topics of their choosing. No charges are levied.

Do not miss out on this great opportunity to enhance your resume by delivering a webinar for the benefit of other members and the ADR fraternity. Click [HERE](#) or email us to register your interest!

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## FEEDBACK FROM MEMBERS



We greatly welcome feedback from our members on their views and comments of AIADR activities, events and plans.

Click [HERE](#) to send your feedback to help us improve our services to our members.

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## ADJUDICATOR ACCREDITATION TRAINING

AIADR is pleased to become the supporting organisation for the HKICAdj's Adjudicator Accreditation Training which will be held virtually for 4 days starting from 20 February 2021. This course will provide construction professionals with insights about contractual and statutory adjudication. Benefits include listing on the HKICAdj list of adjudicators.

Click [HERE](#) for more information.

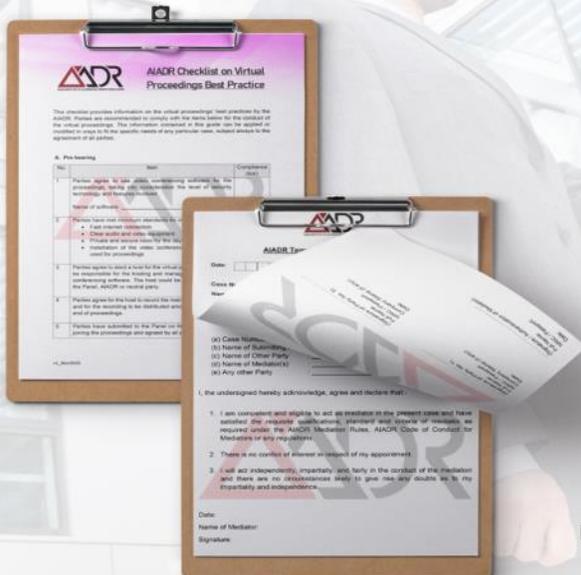


# AIADR Mediation Rules

Officially launched on 24 Nov 2020



Available in English & Chinese languages!



## Full set includes:

- Sample Mediator Disclosure Statement
- Sample Settlement Agreement
- Sample form of Agreement to Mediate
- Code of Conduct for Mediators
- FAQs on Mediation Rules
- Guidance Notes on Costs & Payments
- Guidance Notes on Venue & Virtual Proceedings
- Checklist on virtual proceedings best practices

Contact [thesecretariat@aiadr.world](mailto:thesecretariat@aiadr.world) for more info

## Message from the President

Datuk Professor Sundra Rajoo



### **Dear Members,**

I hope that you and your loved ones continue to be safe and healthy.

First and foremost, I hope it is not too late to wish you a very Happy New Year 2021! Despite a very challenging 2020 which surely impacted us on a personal and professional level, I believe that we should always have faith and hope that a brand new year is like a brand new beginning of a cycle. As Thomas Carlyle once said, *“He who has health, has hope; and he who has hope has everything.”*

On the Institute’s perspective, my belief that greater things shall come for us was not hinged on blind faith or empty dreams. If you had

followed the Institute’s progress through the past few months (via email, social media accounts or joining our events), you would also have noticed that our activities had been ever increasing and hopefully have had some impacts or benefits to your professional journey in the realm of ADR. Some of our recent and upcoming initiatives are as follows:

(1) The Institute was formally inducted as one of the founding members of the International Commercial Dispute Prevention and Settlement Organisation (ICDPASO) based in China and an Advisory Council member. ICDPASO as an international organisation jointly set up by various stakeholders including legal service providers, the chambers of commerce, research institutions, universities and other stakeholders from around the world, is a true game changer. Its global outreach particularly along the Belt and Road Countries will create a holistic dispute prevention, management and resolution structure aimed at achieving the aim of business efficacy. I have strong belief that ICDPASO’s impact will be far reaching and will ensure that the

benefit of the collaboration would be truly felt by our members.

(2) With the rising use of mediation and arbitration which are now being statutorily imposed by many countries fighting the pandemic, we have recently launched our own initiatives to assist our members and community at large with the recent publication of the AIADR Mediation Rules and future publication of AIADR Ad Hoc Arbitration Rules 2020. Together with the virtual assistance scheme, it is hoped that this initiatives would spur the use of mediation and arbitration, and benefit our members in their professional works.

(3) We have organised, collaborated with, or supported other organisations to deliver 6 webinars in the space of 5 months since August 2020 on topics of relevance to the ADR fraternity. We also organised a huge full day event entitled “COVID-19 Asian Mediation Forum” on 23 December 2020, bringing together multiple panelists from around the globe and broadcasted to our members and the ADR fraternity worldwide. We hope to be organising more events

## Message from the President

Datuk Professor Sundra Rajoo

*(Continued from page 6)*

and welcome our members to reach out to us on collaboration for webinars on topics related to ADR.

(4) We had launched our inaugural course for the Associate Entry Level Course Module 1 successfully in September 2020 with several graduates joining our Institute as Associate members. More courses and workshops are planned for the year 2021, starting with the 'Mediation Course' and I encourage members to join as participants or even as speakers for the courses.

(5) We had launched our inaugural quarterly journal, the AIADR Journal of International ADR Forum in August 2020. Together with our bimonthly newsletter, we aim to share and update our members on the happenings of ADR globally while also be the platform for our members to express themselves through their writings. Currently, our newsletter is on its 9th issue while the Journal is on its 2nd issue. I hope more members would be interested to share their writings with us to be published on our mediums.

(6) Our Working Committees have been set up to facilitate the growth of the Institute and to assist our members in their journey through the ADR forum.

(7) We had recently shared with all our members a FREE copy of my Chinese translated textbook on arbitration entitled “ 仲裁的规则、程序与实践 (Law, Practice and Procedure of Arbitration)”. The translated text was given free of charge so that the knowledge can be shared more widely with our Chinese speaking members and audience. If you missed out on the notification, you can still download the free copy [HERE](#).

As our valued member, I hope that you would be willing to contribute to the Institute's growth by participating actively in our initiatives such as being a Committee Member, publishing your articles on our newsletter and journal, or even reach out to us if you would like to co-organise a webinar on the ADR topic of your interest.

On a similar note, as a membership

organisation fully funded by its members, the Institute relies exclusively on our members' contributions in the form of membership fees. As such, we would be obliged if you would extend your support to the Institute by renewing your membership for the new 2021 term if you still have yet to do so. This would enable you to continue enjoying the benefits of membership including the use of post nominals letters and possession of the membership certificate. You may log in to our website or get in touch with our Secretariat if you have any queries or in need of any assistance.

Once again, I hope that you would continue to support our Institute and together, we would strive to enhance the professional quality of the ADR fraternity.

**Datuk Professor Sundra Rajoo**  
President, AIADR

president@aiadr.world

# AIADR HIGHLIGHTS

# COVID-19 ASIAN MEDIATION FORUM 2020

**The COVID19  
ASIAN MEDIATION FORUM**

23 December 2020  
9am - 5pm MYT (GMT+8)

**Jointly organised by:**

**Supported by:**

The Covid-19 Asian Mediation Forum 2020 was successfully held on 23 December 2020 between 9 am to 5 pm MYT (GMT+8) through Zoom, Facebook Live and AIADR website streaming. The Forum, which was held in conjunction with the launch of the AIADR Mediation Rules, explored and used mediation's recent development (domestic and regional) as a catalyst to help those economically affected by the Covid-19 pandemic. The Forum was most opportune in light of the COVID Act 2020 in Malaysia and similar statutory enactments in other countries.

AIADR had managed to jointly

organise the Forum together with Hainan International Arbitration Court (HIAC), China Asean Legal Cooperation Center (CALCC), Asian Law Students' Association Malaysia (ALSA Malaysia) and Asian Law Students' Association UKM (ALSA UKM).

It was further supported by a number of supporting organisations including Nanning Arbitration Commission (NNAC), Asia Pacific Corporate Counsel Alliance (APCCA), Thai-Chinese International Arbitration and Mediation Center (TCIAC), Legal Plus Sdn Bhd, Malaysian Mediation Centre (MMC), Hong Kong Malaysia

Business Association (HKMBA), Associated Chinese Chambers of Commerce and Industry of Malaysia (ACCCIM), China-ASEAN (Macao) Arbitration Association, China International Mediation and Arbitration Institute Ltd, School of Law, Hainan University, Singapore International Mediation Institute (SIMI) and XinJiang New Social Stratum Association.

The Forum witnessed the participation of leading international mediation experts from around the world and attended by regional users, practitioners, and arbitrators, divided into 4 highly informative sessions

# AIADR HIGHLIGHTS

(Continued from page 8)

throughout the day:

Session 1 - COVID19 Pandemic Response: Mediation the Appropriate Vaccine?



**Pic 1: Prof Kennedy Gastorn speech**

Session 2 - Global Pandemic Crisis: Regional Corporate Counsel Perspective on Contractual Performance and Dispute Resolution Concerns

Session 3 - Asian Covid-19 Pandemic Response: Institutional, Industrial and Community Mediation Perspective

Session 4 - Role Play of Mediation using AIADR Mediation Rules by ALSA Malaysia, ALSA UKM and CALCC

The Forum was opened by AIADR President, Datuk Prof Sundra Rajoo, with a short opening speech. This was followed with keynote speeches from the secretary-general of the Asian-African Legal Consultative Organization (AALCO), Prof. Kennedy Gastorn, the Chairman of the International Commercial Dispute

# COVID-19 ASIAN MEDIATION FORUM 2020

Prevention and Settlement Organization (ICDPASO) Dr. Yu Jianlong, as well as Former Chief Justice of Malaysia and Chief Justice of Dubai International Financial Centre Courts, YABhg H.E. Tun Dato' Seri Zaki Bin Tun Azmi.

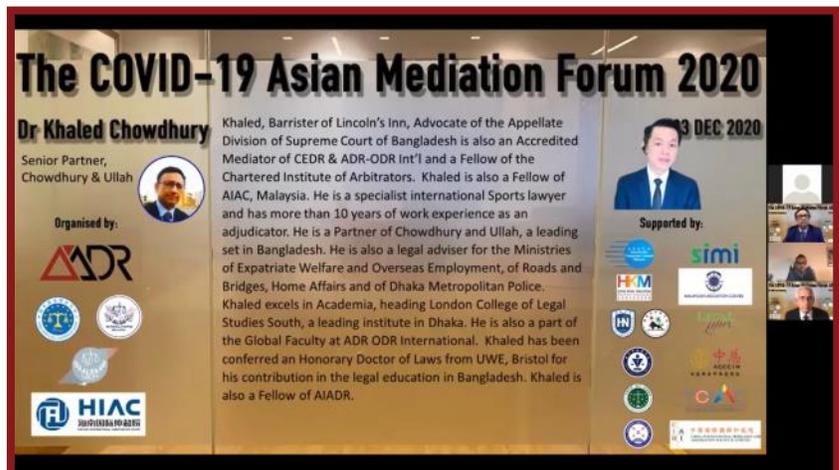
Subsequently, the Chairperson of the Forum, Ms Rammit Kaur, delivered her opening speech and subsequently launched the AIADR Mediation Rules officially. Later on, Ms Kaur who is also the AIADR Professional Development & Education Committee Chairperson, formally announced the appointment of AIADR Training Faculty members consisting of senior ADR practitioners from Fellow members of AIADR.

In the first session, the speakers will discuss on the impact of COVID19 Pandemic on businesses in the region and the shift of ADR focus on

Mediation, the regional mediation experience and its effectiveness during the pandemic, the working mechanism of Formal Mediation, Mediation Rules and Institutional support, as well as the rising regionalism focus and analysing AIADR's role in providing regional mediation support in Asia.

Global panellists include Mr Wolf von Kumberg, Dr Khaled H Chowdhury, Mr Anand Juddoo and Dr Li Hu, with Dato' Dr Teh Tai Yong moderating the session.

In the second session, the speakers discussed the Corporate Counsel experience during the Covid-19 Pandemic, the focus on mediation laws and practice development in the region, effectiveness of cross border private mediation and online mediations, and AIADR's role in providing regional ADR support.



**Pic 2: Dato' Dr Teh introducing the panellists in Session 1**

# AIADR HIGHLIGHTS

## COVID-19 ASIAN MEDIATION FORUM 2020

(Continued from page 9)

Global panellists include Atty Arlene G. Lapuz Ureta (President Legal Management Council of the Philippines), Mr Thavakumar Kandiahpillai, (President Malaysian Corporate Counsel Association), Dr SUBIR BIKAS MITRA (Hon President Federation of Indian Corporate Counsel Association), Ms Sue Lynn Neoh (Singapore Corporate Counsel Association (SCCA) and Mr Reza Topobroto (Past President Indonesian Corporate Counsel Association (ICCA), with Mr. Anil Changaroth (Dir. Intl. Relations APCCA) moderating the session.

In the third session, the speakers discussed the Covid 19 Act in Malaysia and rules by organizations, the Covid-19 Centre Mediation Centre updates on current efforts and recent experiences, the industry's views of

mediation during pandemic, the community mediation needs during pandemic, the emergence of e-mediation and its applicability and the regional institutional responses on mediation during pandemic.

Global panellists include Dato' Ong Seng Huat, JP Penang, Dr. Noorfajri Ismail (Ph.D) (USIM), Mr. Sufian Hassan (JPM), Mr Shi Datuo (TCIAC), Mr Alex Fan (HIAC) and Datuk Kuthubul Zaman Bukhari (MMC), with Ms Samrith Kaur moderating the session.

The final session saw a role playing scenario whereby the actors played out a virtual mediation session, using



**Pic 3: Datuk Kuthubul presenting MMC's initiatives in mediation**

the AIADR Mediation Rules as an example. Audiences gained better understanding on how virtual mediation is being conducted in this new era.

This session was helmed by experienced industry players such as Ms Cindy Kiu Sin Yee, Ms Siang-Joo Goh, Ms Pay Wen Lee, Raina and Mr Darren Lim Yang Ern, together with the ALSA award winning moot team from Universitas Gadjah Mada (UGM); Ms Alya Lathifah Sofhian, Mr Daven Faustino Salim, Ms Gabriela E. and Ms Astrid Adelya Natasya.

Members may view the recording of the whole event at our Youtube channel by clicking [HERE](#).



**Pic 4: Panellists on Session 2 sharing their thoughts**

## CONSTRUCTION OF COMMITTEES FOR THE TERM 2021 - 2022

Following the AIADR AGM in November 2020, the Governance Council has agreed to constitute the following 3 working Committees for the new term of 2021 - 2022:

### Professional Development and Education Committee

**Chairperson:**

Ms Rammit Kaur Charan  
Singh

**Committee Members:**

- |                              |                     |
|------------------------------|---------------------|
| 1. Anil Changaroth           | 5. Khaled Chowdury  |
| 2. Inbavijayan Veeraraghavan | 6. Dr Shahrizal Zin |
| 3. Jay Patrick Santiago      | 7. Dato' Ricky Tan  |
| 4. Samrith Kaur              | 8. Teodoro Kalaw IV |

### Membership Development Committee

**Chairperson:**

Mr Ankit R Sangvhi

**Committee Members:**

- |                           |                          |
|---------------------------|--------------------------|
| 1. Mak Ho Wang            | 5. Cheng Ho Wah @ Roland |
| 2. Jeremy Ho Soon Teck    | 6. Leonard Watt          |
| 3. Sylvester Lai Tze Yang | 7. Edwin Kolandasamy     |
| 4. Nicholas Lee Guo Jun   |                          |

### Editorial Sub-Committee

**Chairperson:**

Mr Dennis Wilson

**Committee Members:**

- |                            |                          |
|----------------------------|--------------------------|
| 1. Dr. Lam Wai Pan, Wilson | 6. Tham Soon Seong       |
| 2. Ramalingam Vallinayagam | 7. Philip Teoh Oon Teong |
| 3. Dmitry Marenkov         | 8. Dr. Nur Emma Mustaffa |
| 4. Sagar Kulkarni          | 9. Wilson Ho Sheen Lik   |
| 5. Dr. Shahrizal M Zin     |                          |

The Council looks forward to a productive and successful term for all the Committees for the benefit of our members. The Council also hopes that all AIADR members would continue to support the workings of the Committees throughout their tenure.

# BREAKING UP IS HARD TO DO: ALL ASPECTS OF DISPUTES WILL BE HEARD IN ARBITRATION, UNLESS CLEARLY STATED

Mei Ling Lew & James Lewis



Mei Ling Lew



James Lewis

***In Cheung Shing Hong Ltd v China Ping An Insurance (Hong Kong) Co Ltd [2020] HKCFI 2269***, the High Court (Court) addressed the question of whether a dispute between the parties to an arbitration agreement fell

within the ambit of the arbitration agreement, and provided guidance on the role of previous court decisions on the interpretation of arbitration agreements.

### Background

This case involved an application by an insurance company (Insurer) to stay a Court action commenced by a company insured by the Insurer (Insured) in favour of arbitration.

The Insured took out a fire insurance policy with the Insurer (Policy) for certain industrial premises it occupied in Shenzhen (Premises). The Insured commenced action in the Court, claiming approximately RMB 2 million from the Insurer for damage it claimed its Premises sustained from fire, such damage occurring during the period of insurance under the Policy. The Insurer denied liability under the Policy.

However, the dispute resolution clause of the Policy (DR Clause)

provided that *“if any difference shall arise **as to the amount to be paid under this Policy** such difference shall be determined by arbitration in accordance with the prevailing Arbitration Ordinance. If the parties fail to agree upon the choice of an arbitrators or umpires, then the choice shall be referred to the Chairman for the time being of the Hong Kong International Arbitration Center.”* (emphasis added).

Arguing that the DR Clause was broad enough to cover disputes or differences on both issues of liability and quantum, the Insurer applied to the Court to stay the proceedings in favour of arbitration in accordance with section 20 of the Arbitration Ordinance (Cap. 609) (Ordinance). The Insured resisted this application, arguing that the DR Clause covered only disputes on the issue of quantum and did not cover disputes where liability is denied wholesale, which was what the Insured did under the Policy.

The parties agreed that the only issue

# BREAKING UP IS HARD TO DO: ALL ASPECTS OF DISPUTES WILL BE HEARD IN ARBITRATION, UNLESS CLEARLY STATED

in dispute was whether the dispute or difference between them (Dispute) fell within the ambit of the DR Clause, and that if this was the case, the Court must grant the stay in favour of arbitration<sup>1</sup>.

### Legal Principles

Section 20 of the Ordinance provides that, where an action is the subject of an arbitration agreement, the court must refer the parties to arbitration, unless it is established that the arbitration agreement is null and void, inoperative or incapable of being performed<sup>2</sup>.

To determine whether to grant a stay to arbitration, the court will consider the following questions<sup>3</sup>:

*Is the agreement in question an arbitration agreement?*

There must be an element of compulsion in the agreement between the parties: any disputes or differences must be referred to arbitration. If the parties are given an option to go to arbitration if they choose, but with litigation in court being an option as well, clause will not be considered an arbitration

agreement.

***“The Court emphasised that determining whether the Dispute fell within the DR Clause (the arbitration agreement) was a question of contractual interpretation...”***

*Is the arbitration agreement null and void, inoperative or incapable of being performed?*

*Does a dispute or difference exist between the parties which can be referred to arbitration?*

Does the dispute or difference truly exist, and is it one that falls within the ambit of the arbitration agreement such that it should be referred to arbitration? This involves analysing the nature of the dispute or difference between the parties and then construing the arbitration agreement to see whether the alleged dispute or difference falls within it.

If the answers to all of the four questions are in the affirmative, the stay to arbitration is mandatory under section 20 of the Ordinance and the court has no discretion to not stay the action to arbitration.

Following the agreement of the parties, the Court focused on the fourth question above: *whether the dispute between the parties was one that fell within the ambit of the arbitration agreement.*

### Decision

The Court emphasised that determining whether the Dispute fell within the DR Clause (the arbitration agreement) was a question of contractual interpretation, to be decided by interpreting the clause itself, taking into account the precise wording of the clause and the agreement that contained it, and the surrounding circumstances and background.

The Court stated that where an arbitration clause/agreement, and the type of agreement containing it, are identical to those analysed in earlier

# BREAKING UP IS HARD TO DO: ALL ASPECTS OF DISPUTES WILL BE HEARD IN ARBITRATION, UNLESS CLEARLY STATED

cases, the Court will usually follow the construction and analysis of the earlier decisions, both because it is compelling, and for consistency reasons. However, in this case, none of the decisions cited by the parties' counsel dealt with identical arbitration clauses/agreements in identical types of agreement. Therefore, while the Court considered the general statements regarding interpretation of arbitration clauses/agreements contained in these previous decisions, it did not follow the construction and analysis.

Drawing upon statements from *Sulamerica Cia Nacional De Seguros SA & Others v Enesa Engenharia SA & Others* [2013] 1 WLR 102, the Court stated that:

- It will generally apply "good commercial sense" to the interpretation of arbitration agreements;
- It is considered "unusual" and "surprising" for parties to insurance contracts to intend issues of liability to be dealt with

in a different forum (e.g., court) than issues of quantum (e.g., arbitration), as it is unusual for parties to establish separate and distinct procedures for resolving what are likely to be different aspects of the same dispute; and

- If the parties intend for issues of liability and quantum to be dealt with in different forums under an insurance contract, the Court will expect this to be clearly spelt out in the arbitration clause/agreement.

On this basis, the Court interpreted the words "any difference shall arise as to the amount to be paid under this Policy" in the DR Clause as merely a way of incorporating both issues of liability and quantum into the scope of the DR Clause. Accordingly, the DR Clause was held to cover both the liability and quantum aspects of the Dispute.

For these reasons, the Court allowed a stay in favour of arbitration.

### Comment

While contractual interpretation generally depends upon the specific facts of each case and the formulation of the contractual provision in question, the Court indicated that where a previous case can be identified with an identically worded arbitration clause in an identical type of contract, the Court will usually follow the construction and analysis of that decision.

Despite these statements, the authors respectfully submit that the Court may distinguish previous cases based on the factual matrix/surrounding circumstances considered in context, even if the arbitration clause and the type of agreement containing it, are identical to those addressed in a previous case. Parties seeking to present arguments based on the interpretation of arbitration clauses by previous case law should ensure that they take such contextual considerations into account.

This case also emphasised that, should parties wish specific disputes, or specific aspects of disputes (such

<sup>1</sup> The Parties agreed that the correct test to determine whether a stay of court proceedings in favour of arbitration was set out in *Tommy CP Sze & Li & Fung (Trading) Ltd & Others* [2003] 1 HKC 418

<sup>2</sup> See *Lin Ming v Chen Shu Quan* [2012] 2 HKLR 547, *Astel-Peiniger Joint Venture v Argos Engineering* [1995] 1 HKLR 300, *William Co & Chu Kong Agency Company Limited* [1995] 2 HKLR 139, *Pacific Crown Engineering Ltd v Hyundai Engineering & Construction Co Ltd* [2003] 3 HKLRD 440, and *Tommy CP Sze & Li & Fung (Trading) Ltd & Others* [2003] 1 HKC 418

<sup>3</sup> *Tommy CP Sze & Li & Fung (Trading) Ltd & Others* [2003] 1 HKC 418

<sup>4</sup> See *Fiona Trust & Holdings Corp v Privalov* [2007] Bus LR 1719

# BREAKING UP IS HARD TO DO: ALL ASPECTS OF DISPUTES WILL BE HEARD IN ARBITRATION, UNLESS CLEARLY STATED

as liability or quantum), to be adjudicated in different forums (e.g., Court or arbitration), clear language is essential. This is particularly so given the presumption in favour of one-stop adjudication<sup>4</sup>, which, while this case does not refer to it, is likely to be relevant should this issue arise in future cases.

+++++

*Mei Ling Lew is a partner of Mayer Brown. She is experienced in litigation, arbitration and mediation with an emphasis on disputes arising from building construction projects. She also advises on environmental regulatory and compliance issues, non-contentious construction matters, including preparation and drafting of tender and contract documentation. She also has experience in public/administrative law cases. She is a Fellow of the Chartered Institute of Arbitrators (FCIArb), an Accredited Mediator on the panel of the Hong Kong Mediation Accreditation Association Limited, a member of the Business Environment Council's Sustainable Living Environment Advisory Group and Circular Economy Advisory Group, and an associate member of The Institute of Quarrying.*

*James Lewis is a counsel in the Hong Kong office of Mayer Brown. James has experience in contentious and non-contentious construction matters and international arbitration. He has provided mid-project advice to both contractors and employers on a variety of construction related issues, and assisted with a number of construction disputes involving a wide variety of issues, including delays, variations, defects, warranties and construction securities. He has acted for clients in international arbitrations seated both in Hong Kong and Singapore. James is admitted in both Hong Kong and New York.*

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*The opinions and views expressed in this article are solely of the authors and writers and are not necessarily endorsed by AIADR or its Editorial Committee.*

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**Any updates in your jurisdiction?**

- Express your opinion on this Article, to be published in Reader's Column
- Create a Blog on AIADR Website to invite further debate

*All critique and constructive feedback is welcome!*

# ANALYSIS OF THE STATUS QUO OF CHINA'S INTERNET ARBITRATION

## ADR VIEWS

Zhang Tianwei & Liu Bohan

### I. Overview of Internet Arbitration

Internet arbitration is a new case trialing form that uses Internet technology to assist the whole arbitration process. From previous arbitration practices, we can see that Internet arbitration requires certain typical preconditions: Firstly, arbitration institutions must have an Internet arbitration system of their own and secondly, a separate Internet arbitration rule for Internet arbitration activities shall be issued.

It is obvious to us that the development of internet arbitration has two main directions: first, it is the batch processing of similar cases. Second is a remote online case handling system represented by video court sessions.

Through years of practice, arbitration has also undergone constant changes in the aspect of application of Internet technology. People's perspective of Internet arbitration has

also changed a lot. Through research and comparative analysis, conclusion can be drawn that the arbitration rules of various arbitration institutions are also very different: As early as the year of 2009, the internet arbitration rules mainly dealt with cases regarding to internet disputes such as Web-domain case, e-commerce case etc. Until 2019, the newly released internet arbitration rules basically define Internet arbitration more as a dispute resolution method.

### II. Possibilities and limitations of big data-assisted arbitration

First of all, regarding to the application of big data, China has already been very mature in this field. The verification of corporate identity and identity of natural persons have already been achieved. However, this is still a problem in international arbitration and transnational cases. For example, if a foreigner has never been to China or has no entry record at all, or a foreign company has never conducted any business in China, the natural persons and the company's



Zhang Tianwei



Liu Bohan

identity verification might be a problem.

# ANALYSIS OF THE STATUS QUO OF CHINA'S INTERNET ARBITRATION

## ADR VIEWS

### III. Issues regarding to using artificial intelligence in the generation of arbitration awards

The derivation process of legal adjudication is often complicated while the result is relatively simple. The document of an award is mainly composed of claims, evidence and argumentation from each party as well as the tribunal court while the verdict is quite short and only takes up a small space.

When making a ruling, theoretically, each party's claim, evidence materials involved in the case, relevant rules, regulations and laws shall be all taken into consideration. This is something that cannot be achieved by simply using technology and network derivation. The arbitrator's cautious reasoning is indispensable.

At present, we are trying to use the Python language to program online intelligent document system. Python language is a kind of artificial intelligence language that many people think may become popular in system designing in the future. However, for the current moment, the

final verdict document that generated by Python is a relatively rigid and unsatisfactory.

With time passing by, it may get better. In the foreseeable future, if artificial intelligence can assist referees to play a better role, a very important prerequisite is the support of big data. However, the big data of the arbitration industry is so far not public. So at present, what we can see is only a slow progress and this kind of progress may not be able to keep up with the increasing number of cases and the current technological and economic development.

Here, I also want to compare the difference between machines and human brains in the process of refereeing. If machines can read a contract and make a ruling, the cost of the first case is going to be very high, because we need to design a special programming code and the workload of code designing has far exceeded the workload of legal workers of the referee.

Moreover, machines are actually better at repetitive and logical tasks. However, for new things, they need human thinking to help. In addition, when the arbitration issue involves human emotion and value judgment, it would be hard for the machine to understand.

Of course, machines also have advantages over human. After the working process of the machine been determined, the results for each case may be relatively stable and the data can be accumulated, and human's judgment might be affected by personal experience and personal interest.

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*Zhang Tianwei is the CEO of Beijing ZhiZhong Technology Co Ltd and Liu Bohan, is an officer from the International Arbitration Department, Beijing ZhiZhong Technology Co Ltd.*

*This article was first published on BIMACC's blog ([www.bimacc.org](http://www.bimacc.org)).*

*The opinions and views expressed in this article are solely of the authors and writers and are not necessarily endorsed by AIADR or its Editorial Committee.*

# COMMUNITY MEDIATION: PENANG JUSTICES OF THE PEACE PERSPECTIVE



**Dato' Ong Seng Huat  
JP**

Dato' Ong Seng Huat JP, MAADR

### 1. Mediation originated as a mode in resolving community disputes:

Mediation as a means of dispute resolution is not something new. History has recorded that mediation, though different words may be used, has been in practice since the Ancient Greece and Roman civilization. While in early Asia, it is also commonly practiced as a mode of dispute resolutions in India, China and neighboring Japan and Korea due to Confucianism influence. Closer to home (ie. Malaysia), this mode of Alternative Dispute Resolution has been applied by locals, the Malays, Chinese and Indians in Peninsular Malaya as early as the 15<sup>th</sup> century, prior to the introduction of laws and judiciary system by the British in 1807.

The Malays practiced *SULH* (in Arabic means end of arguments or compromise, translated as conciliation) – The mediators were local chiefs (eg. *Imam, Penghulu*

and *Ketua Kampung*) who were the administrators of a specific area/ jurisdiction appointed by the local people and endorsed by the Sultan, the head of state. Whereas the Indians practiced *PANCHAYAT* (a group (5) of elected persons). The system was originally brought from India. *Panchayat* means a village council, group of elder men acknowledged by the community as a governing body. They are the decision makers with regard to the social issue of the villagers. As for the Chinese, *TIAOJIE*, which literally means mediation, was the primary mode of dispute settlement for thousands of years in traditional China, adopted by the early Chinese settlers. Their theories and practices have been influenced by the Confucian philosophy.

The office of the Justices of the Peace (“JP”) is historically a British creation. Eminent persons of the community were appointed as JPs to assist the Crown in the preservation and maintenance of

Recently, I was honoured to be invited as part of the panelists on the AIADR’s Asian Mediation Forum 2020 held on 23 December 2020. The topic for my session was entitled “*Asian Covid-19 Pandemic Response: Institutional, Industrial and Community Mediation Perspective*” and I was delighted to share my organization’s, the Penang Justice of the Peace (Malaysia), role and initiatives in community mediation. For the benefit of the Forum’s participants and anyone interested, I reproduce my presentation as articulated below:

# COMMUNITY MEDIATION: PENANG JUSTICES OF THE PEACE PERSPECTIVE

peace of that community. In Penang, a Straits Settlements state (1826-1948) under the British administration prior to Independence, JPs were appointed to mitigate the shortage of magistrates then. In addition to their statutory roles, the JPs in Penang then had also acted as mediators in community conflicts and disputes.

## 2. Recent developments

Community Mediation was initiated by the Department of National Unity and Integration (“DNUI”) in 2007, previously under the auspicious of the Malaysia’s Prime Minister’s Department, as a mode to help residents of geographical communities to settle their differences and disputes amicably and promptly. Apart from prevention, it also aims to promote inter-ethnic and intra-ethnic conflicts. The training of community mediators and cognizance of the mediation program has since been incorporated in the Rukun Tetangga Act 2012 (“RTA”). Section 8 of the RTA stipulates that the sector committee is responsible to provide mediation services for the purpose

of settling any dispute or difference amongst the members of the community.

The preamble of the Mediation Act 2012 (“MA”) reads as ‘*an Act to promote and encourage mediation as a method of alternative dispute resolution by providing for the process of mediation, there by facilitating the parties in disputes to settle disputes in a fair, speedy, and cost-effective manner and to provide for related matters*’. The MA governs the conduct of mediation in Malaysia, particularly ad hoc mediation whereby parties to a civil or commercial dispute voluntarily submit their dispute to be mediated without or prior to commencing litigation in court.

Practice Direction on Mediation 4/2016 issued by the Chief Registrar of the Federal Court is aimed at encouraging disputing parties to choose pre-action mediation or to seek amicable settlement before trial or appeal. By this Direction, the courts may now also refer the disputing parties to appoint mediator or mediators to undertake court annexed mediation as directed by the judge or magistrate during pre-trial civil case

management. As per paragraph 5, the modes of mediation are by, (a) Judge-led (b) Kuala Lumpur Regional Centre for Arbitration (“KLRCA”) and (c) Other mediators agreeable by both parties. Mode 5 (b) is categorized as Institutional mediation whereas 5(c) refers to others like ad hoc or community mediation.

The procedure for mediation in Covid19 Bill 2020, which mirrored the procedure laid out in the MA states that any dispute in respect of any inability of any party or parties to perform any contractual obligation arising from any of the categories of contracts specified in the Schedule this Part due to the measures prescribed may be settled by way of mediation.

The creation of the Covid19 Mediation Centre reinforces the government’s commitment to not only acknowledge the benefits of mediation, but it can also assist the affected parties, particularly the lower income groups to resolve their disputes amicably, speedily and cost effectively. A timely test to know if there are sufficient trained mediators to undertake the unprecedented tasks. Though the

# COMMUNITY MEDIATION: PENANG JUSTICES OF THE PEACE PERSPECTIVE

Covid19 Bill 2020 is independent of MA, disputants are free to decide on their preferred mediation option via MA. In this instance, it is an opportune time for the ad hoc and community mediators to avail themselves when the situation warrants it.

From the above, mediation today is no longer interpreted as an informal alternative dispute resolution process that is not binding in law. It is now enshrined as one of the processes of dispute resolutions recognized by the Malaysian legal system.

### **3. Transformation of the institution of Justices of the Peace, state of Penang**

Due to changes in certain statutes after Independence, the role of JPs in Penang has been greatly diminished. By reason of non-appointment of JPs as second class magistrates as provided by section 98 and 99 of the Subordinate Courts Act 1948, the function of the JP became limited. As mediation is originated as a mode in resolving community disputes, the JP being

community leaders appointed by the State Authority is an ideal person to act the role of mediator. History has recorded that the practice of mediation by Penang JPs is evident since the 19<sup>th</sup> century, notably, an eminent person by the name of Foo Tye Sin JP acted as mediator in local community conflicts and disputes during the British rule.

Around 2014, the JP Council received a paper entitled: 'Transformation of the Institution of Justices of the Peace of Penang' from Y.A. Tuan Lim Chong Fong, then an Advocate and Solicitor in private practice. Inspired by the ideas outlined and convinced after meeting the writer in person, the Council, at the 2016 Annual General Meeting, resolved to transform the office of the JP to include as mediators, besides continuing with its limited statutory roles and functions. Consequently, the Council constitution was amended to include mediation as one of its objectives. As a mediation institution, JP mediators can be appointed as ad hoc mediators pursuant to Part III of the MA 2012.

Pursuant to section 7(2)(a), MA

2012, a mediator shall possess the relevant qualifications, special knowledge or experience in mediation through training or formal education. To secure recognition, competency and practicality, the Council approached Ir Harbans Singh, who in turn pitched the Council's proposal with the then Director of Kuala Lumpur Regional Centre for Arbitration ("KLRCA") (now known as Asian International Arbitration ("AIAC")), Datuk Sundra Rajoo for support and endorsement. The first JP-KLRCA mediation skills course was held in August 2016 with Ir. Harbans as the lead Trainer. Our collaboration with AIAC to train community mediators continues till today.

### **4. Penang JP Mediation Bureau**

Since its inception in 2016 the Council of Justices of the Peace, state of Penang, in collaboration with AIAC continues to train both JPs and non-JP community leaders from diverse background to be community mediators.

The mediators' background representing the different strata of

# COMMUNITY MEDIATION: PENANG JUSTICES OF THE PEACE PERSPECTIVE

the local community, included those from medical, legal, engineering, construction, finance, trade, commerce and other industries. Apart from the ad hoc mediation, two JP Mediators have also served in the Penang High Court's annexed mediation in 2016.

As the mediation service involves non-JP mediators, the Council decided to establish a bureau to allow it to be semi-autonomously managed. With the tacit support of the state government, the mediation bureau was officially launched by His Excellency, the Governor of the state of Penang, Tun Dato' Seri Utama (Dr) Haji Abdul Rahman Bin Haji Abbas on 20 July 2017.

Currently, the Bureau has a rented office located at the Caring Society Complex and is managed by 15 JP and non-JP mediators (local community leaders) representing different strata of the community, providing pro bono pre-action mediation services.

### 5. Covid19 Pandemic response

The severity of the Covid-19 pandemic on both business and

society is unprecedented. The cascading effects of affected sectors on the workforce has created social, economy and legal challenges to the community all over the country. To cushion the legal impact, Parliament has introduced the Covid-19 Bill 2020 to provide temporary measures which include modifying certain Acts, as stipulated in the Bill, to ease party or parties who are unable to perform their contractual obligations with a provision for mediation via section 9.

A webinar was organized to discuss the effect of the Bill on the affected parties, with focus on mediation option and its benefits. The webinar with the Chief Minister Tuan Chow Kon Yeow was held at KOMTAR, the seat of the state government on 10 October 2020 with the Chief Minister ("CM") as the keynote speaker. The event was transmitted live via Youtube and the Chief Minister's Facebook page.

Primarily, the webinar achieved its outreach objectives with the Right Honorable Chief Minister echoing our call on the troubled sectors to embrace the new normal with a new paradigm in resolving conflicts

within their own communities, business and otherwise. The CM applauded the Council's initiative and advice the sectors to opt for mediation over litigation and advise them to resolve their disputes within their own business or trade communities and where needed, the Council will extend a hand. The Council has responded to a few calls for advice and assistance to set up in-house mediation panels and has been tasked to assist an association to set up one soon.

### 6. Community Mediation – Penang JPs perspective

The JP Council's community mediation concept includes the initiation and strengthening of community environment. As Justices of the Peace, we subscribed to community building and empowerment to manage its own interests and well-being, apart from maintaining peace within the community. As such, community mediation serves as an important means to keep the community harmonious where any conflict or dispute, no matter how petty, is speedily resolved before it develops

# COMMUNITY MEDIATION: PENANG JUSTICES OF THE PEACE PERSPECTIVE

into full blown case that eventually ended up in courts.

The bureau draws the mediators from leaders of different strata of the local community. Being community-based, this approach is to involve the community leaders to play active roles and participate in issues challenging the community generally.

The JPs in Penang through its Mediation Bureau has taken the initiative to provide *pro bono* pre-action mediation services for the benefit of the local community. At the same time, it is prepared to assist the courts in alleviating the burden of pending cases in community-based disputes.

### 7. Moving forward

Since the initiative in 2016, we continued to collaborate with AIAC to train community mediators in Penang. The support and endorsement provided not only the necessary knowledge and skills, but also a sense of recognition of their competency as mediators. In addition, we shall continue to uplift the mediators' qualifications with

CPD trainings, periodical seminars and symposiums.

We have established a working understanding with the state National Unity and Integration Department (NUID) to collaborate and share resources to serve the local community. With the endorsement of NUID, the JP Council successfully hosted a community mediation symposium on 10 November 2019. It is unfortunate that due to the pandemic, all other activities were put on hold in 2020. In the meanwhile, we are prepared to work with other ADR interest groups, be it professional bodies or tertiary educational institutions, for mutual benefits and professional advancement.

Government and community sectors support are equally vital to establish public confidence. In this instance, we strive to maintain the current working relationship with the state government in involving their participation in certain activities. In reaching out to the community, we have created a road map to promote, educate and disseminate the benefits of mediation within their own respective communities. We

have also identified the trainers and prepared our own training videos to supplement the task.

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*Dato' Ong Seng Huat is currently the Honorary Secretary of the Council of Justices of the Peace, state of Penang cum Chairman of the JP Mediation Bureau. He is also a Member of AIADR.*

*The opinions and views expressed in this article are solely of the authors and writers and are not necessarily endorsed by AIADR or its Editorial Committee.*



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## **Ratifications and Entry into Force of UNCITRAL and UN Conventions**

**AIADR  
International**

### **Bolivia is the 7th party to the United Nations Convention on Transparency in Treaty-based Investor-State Arbitration 2014 (“Mauritius Convention on Transparency”)**

*On 16 October 2020, Bolivia deposited the instrument of ratification for the Convention on Transparency in Treaty-based Investor-State Arbitration 2014 (“Mauritius Convention on Transparency”) at the United Nations Headquarters in New York . It becomes the 7th state party to the Convention.*

### **Sierra Leone is the 166th country to become party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (“New York Convention”)**

*Sierra Leone acceded the Convention on Recognition and Enforcement of Foreign Arbitral Awards 1958 (also commonly known as the "New York" Convention) with effect on 28 October 2020. It becomes the 166th State party to the Convention.*

### **Mongolia is the fifteenth State Party to the United Nations Convention on the Use of Electronic Communications in International Contracts (2005) (the “Electronic Communications Convention”)**

*Mongolia has acceded to the United Nations Convention on the Use of Electronic Communications in International Contracts (2005) (the “Electronic Communications Convention”). It is the fifteenth State Party to the Convention and it will enter into force for Mongolia on 1 July 2021.*

## **Adoption of ADR Forums is on the rise!**

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# AIADR PAST EVENTS

## ANALYSIS OF ASEAN'S RECENT ECONOMIC, TRADE, AND INVESTMENT TRENDS AND POLICIES ON THE ONLINE MEETING ON THE ANALYSIS OF ASEAN'S RECENT ECONOMIC, TRADE, AND INVESTMENT TRENDS AND POLICIES

04 DECEMBER 2020



### ANNUAL LEGAL COUNSEL OF CCPIT (ASEAN)

On 4 December 2020, AIADR participated in the Annual Legal Counsel of CCPIT (ASEAN) webinar series entitled “*Analysis of ASEAN’s Recent Economic, Trade, and Investment Trends and Policies on the Online Meeting on the Analysis of ASEAN’s Recent Economic, Trade, and Investment Trends and Policies*”. The webinar was organized by the CCPIT Legal Affairs Department and co sponsored by the Law Firm LLP, Shanghai — Annual Legal Counsel of CCPIT on Overseas Trade Friction (Japan, South Korea and ASEAN).

The webinar was moderated by Mr Tony Zhang, Vice Chairman of Shanghai Chamber of Commerce for Import & Export. Panellists include AIADR President, Datuk Professor Sundra Rajoo, Mr. Sen Li (Deputy Director of Division II of the Department of International Economic and Trade Relations of Ministry of Commerce), Mr. Zachary Song (Counsel of CMS Cameron McKenna Nabarro Olswang (Singapore) Law Firm) and Professor Bohua Gong (Professor of international law and doctoral supervisor at Law School of Fudan University). Deputy Director of Legal Affairs Division of CCPIT, Ms. Huan Shu, also gave opening and closing remarks.

The webinar was delivered via Zoom in dual language (English and Chinese) and participated by Chinese business representatives and CCPIT personnel.

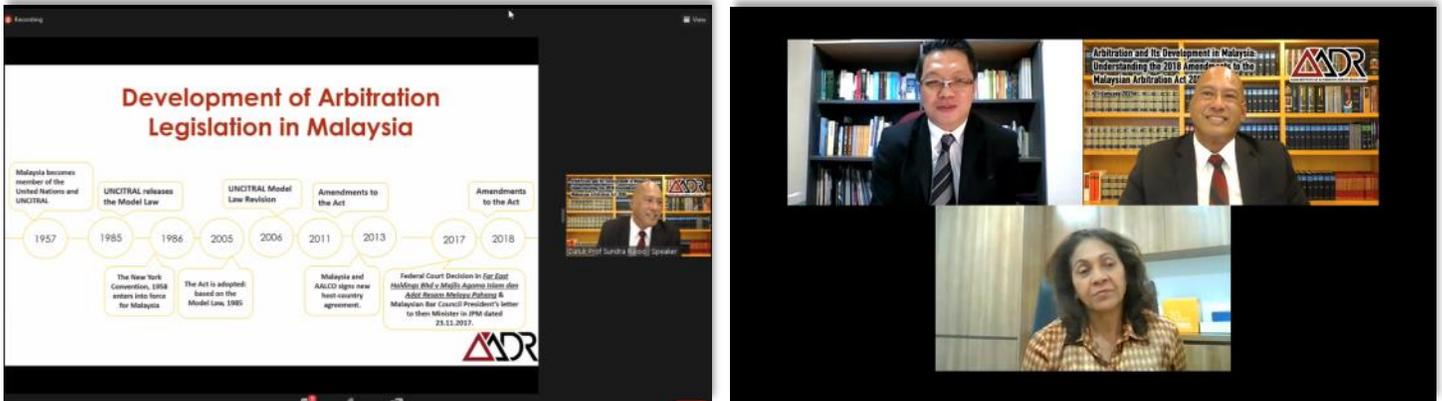
AIADR is thankful for the collaboration with CCPIT and look forward to more collaborative opportunities in the near future!

To watch the recording of the seminar, please click [HERE!](#)

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## ARBITRATION AND ITS DEVELOPMENT IN MALAYSIA: UNDERSTANDING THE 2018 AMENDMENTS TO THE MALAYSIAN ARBITRATION ACT 2005

21 JANUARY 2021



### AIADR — SELANGOR BAR (MALAYSIA)

AIADR collaborated with the Selangor Bar (Malaysia) on 21 January 2021 to deliver a webinar on the topic of “*Arbitration and Its Development in Malaysia: Understanding the 2018 Amendments to the Malaysian Arbitration Act 2005*”.

The webinar was moderated by Mr Richard Teh Tai Sheng of Teh Kim Teh, Salina & Co. AIADR President, Datuk Prof. Sundra Rajoo was invited to share his expert views and experience on the development of the Malaysia’s Arbitration Act. Participants managed to gain deeper understanding of the Act through the backstory and anecdotes in connection to the Act’s development.

AIADR is thankful for the collaboration with Selangor Bar and look forward to more collaborative opportunities in the near future!

To watch the recording of the seminar, please click [HERE!](#)

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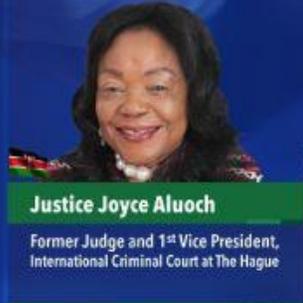
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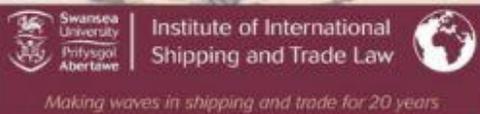
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## Other Upcoming events:

12 February 2021      Time TBC

Via Zoom

### **International Virtual Conference on the Future of Dispute Resolution in Infrastructure Sector**

Hosted by the Adani Institute of Infrastructure and supported by AIADR. Further details to be announced.

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26 February 2021      Time TBC

Via Zoom

### **Construction Law and Digital Technology International Conference: Construction Dispute Settlement And Prevention Amid Pandemic: A Conciliation Theory**

Organised by the Research Development Center of Construction Law and Taiwan-Malaysia Digital Technology International Centre and supported by AIADR. Further details to be announced.

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*For full details on these events, please check our Facebook page, LinkedIn page or website regularly or email us at [thesecretariat@aiadr.world](mailto:thesecretariat@aiadr.world)*

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1. For Newsletter : **15 March 2021**
2. For Journal : **1 May 2021**

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