ADR CENTURION

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Delivering Excellence in ADR

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Delivering Excellence in ADR

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ADR Centurion

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ADR CENTURION

EVENTS

AIADR SECOND ANNUAL GENERAL MEETING 2020

The AIADR second Annual General Meeting (AGM) has been tentatively fixed on 5 November 2020 at 4:00 p.m. MYT (GMT +8) subject to further announcements.

CYBER SPACE

MEMBER'S PORTAL ONLINE

Members who have yet to update their profile are invited to visit the website https://www.aiadr.world and update their profile from the Dashboard.

Members Portal is linked to the search engine for selection and nomination of neutrals as Adjudicators, Arbitrators, Mediators and Expert Witnesses to be appointed by parties, when required.

VOLUNTEERS

INVITING FELLOWS & PANEL MEMBERS OF AIADR!

To contribute towards building of your Institute and be a Volunteer by joining the Committees and Subcommittees of AIADR as Chairpersons and Faculty Members.

Applications for joining the AIADR Faculty are invited for the following voluntary roles:

⇒ **Course Developers**

⇒ **Tutors**

⇒ **Examiners and Peer Reviewers**

SOCIAL

VISIT AIADR FACEBOOK AND LINKEDIN PAGES TO STAY IN TOUCH WITH THE LATEST UPDATES!

Professionals with interest in ADR Forums, Education and Training, Members and non-Members, are invited to visit AIADR Facebook Page and LinkedIn Page to post news, views and comments.

AIADR HIGHLIGHTS

Message from the President

Datuk Professor Sundra Rajoo

Dear Members,

There is a demand for ADR education, training and accreditation in Asia and Africa. This is a role which AIADR is seeking to fill by creating training in specific disciplines and acquisition of certain skill sets that one needs to become an ADR practitioner.

Many of our members often come from very different disciplines and from a variety of career backgrounds. In the face of all of this variation, idiosyncrasy, and diversity of our membership, we are united by our common interest in the discourse and practice of ADR.

AIADR achieved three milestones this year:

First and foremost is the release for our first inaugural edition of AIADR journal on International ADR Forums. The journal was presented in multilingual basis in line with AIADR mission to develop a neutral and dynamic knowledgebase.

Secondly, the institute had successfully conducted the foundation course in ADR forums via virtual classroom with participants from across the region despite the COVID-19 pandemic. AIADR is also progressing in terms of dissemination and delivering informational updates on ADR-related topics with the launching of the Brevi Nota series.

And thirdly, AIADR as a founding member, has been appointed onto the Advisory Committee of the International Commercial Dispute Prevention and Settlement Organisation (ICDPASO). China has gathered commercial, industrial, regional and legal service organisations in 30 countries.

ICDPASO is envisaged as an international non-governmental and non-profit organisation composed of commercial institutions, trade associations, legal service providers as well as other entities in the field of international commerce around the world. It's role in ADR especially in the Belt and Road is best seem in Article 6 (Scope of Business) of its Charter:

"(1) To provide the service of international commercial dispute prevention and settlement subject to the relevant laws, including but not limited to the following activities: publicity and training, dialogue and consultation, construction of compliance of laws and regulations, pre-caution measures, promotion of the standard contract and multi-mechanism of dispute settlement;

(2) To organize international conferences and seminars, to build up the platform for sharing and communicating the information and sources and to discuss issues of common concern in the international commercial legal area;

(3) To collect the opinions, suggestions and interest requests concerning the international commercial dispute prevention and settlement, and to participate in the international events relating to the deliberation, adoption and modification of international rules under the auspices of relevant international institutions

Message from the President

or organizations;

(4) To make the publication of the statistical data and survey report concerning the international dispute prevention and settlement, to strengthen the capability of managing the information and analysing the Big Data with respect to the international commercial cases, to carry out the application of the Big Data, to make publications and to set up the data centre accordingly;

(5) To cultivate legal talents with international vision, and to set up a team of experts with high standard of morality and outstanding professional qualifications;

(6) To sign the Memorandum of Understanding and cooperation agreement with other institutes as well as to carry out other relevant activities subject to relevant laws, rules and international treaties and;

(7) To build up a mechanism for routine communication, to promote the sharing of experiences and business cooperation among commercial organizations, dispute resolution institutes, academic institutions and think tanks around the world, and to jointly maintain a fair and stable international business transaction environment."

It is really exciting that AIADR is working closely with ICDPASO. We look forward to contributing towards the excellence in ADR education and practice in Asia, Africa and beyond.

Datuk Professor Sundra Rajoo

President, AIADR

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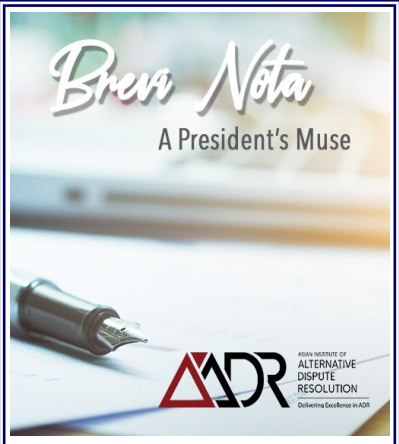

Do you know that the President also shares some anecdotes, scribes and short notes on the past, present and future happenings of the ADR forum?

Here are some of his latest *Brevi Notas*:

- Key Takeaways of the Malaysia's Covid-19 Bill 2020
- Ring Side View on the Development of Arbitration in Malaysia
- Repeal of Section 42 of the Arbitration Act 2005
- Transformation, Growth and Prospects of Asian International Arbitration Centre (AIAC)

Message from the Vice President
The Singapore Convention on Mediation

Dato' Quek Ngee Meng

Dear Members,

It was my great pleasure to represent AIADR as a speaker at a recent webinar jointly organised by the China Arbitration Law Research Association, China International Chamber of Commerce Mediation Center, China Maritime Arbitration Commission, and Institute of International Law, Chinese Academy of Social Sciences.

Coinciding with the coming into force of United Nation's Convention on International Settlement Agreements resulting from Mediation ("The Singapore Convention") on 12th September 2020, the webinar brought together esteemed speakers who shared various thoughts on the development of alternative dispute resolution mechanisms, especially mediation, in the context of cross-border transactions involving China. Through my session, I explored the essence of Singapore Convention and its potential rising significance in cross-border dispute resolution and prevention, the gist of which is reproduced here:

The Singapore Convention

The Singapore Convention applies to international settlement agreements resulting from mediation concluded by parties to resolve a commercial dispute and is modelled largely based on the successful framework of New York Convention 1958, in order to provide a uniform and efficient cross-border framework for the enforcement of settlement agreements.

Adopted on 20th December 2018 by the General Assembly of the United Nations, the Singapore Convention is a result of three-year vigorous debate which saw the participation of 85 member states and 35 IGOs/NGOs , followed by an expansive drafting process including representations from African, Asia-Pacific region, Latin-America and the Caribbean, Eastern Europe regions.

The Convention was officially opened for signatures on 7th August 2019 in Singapore, when 46 nations showed initial commitment by signing the international treaty. To come into full effect however the Convention required at least three instruments of ratification, acceptance, approval, or accession (Article 14(1)).

At present (at the time of writing, there are a total of 53 signatory states and six state parties, namely - Belarus, Fiji, Ecuador, Qatar, Saudi Arabia and Singapore whose ratifications and approvals have brought the Singapore Convention into effect, starting 12 September 2020.

Key Provisions of the Singapore Convention

(a) Scope of Application (Article 1(1)): This Convention applies to international settlement agreements resulting from mediation, concluded in writing by parties to resolve a commercial dispute which is international i.e. parties are from different states or the place of business are in different states. Accordingly, electronic communications may also form a written settlement agreement. Unlike the New York Convention, the Singapore Convention does not require reciprocity for its operation. Therefore, even if a state is not a party to the Singapore Convention, it could still apply to

Message from the Vice President
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the international commercial mediations and settlement agreements in which state businesses participate and enter.

(b) Exclusion from Application (Articles 1(2) & 1(3): The Convention does not apply to settlement agreements (1) concluded by a consumer for personal, family or household purposes, or relating to family, inheritance or employment law; (2) that is enforceable as a judgment or as an arbitral award to avoid possible overlap with existing and future conventions, namely the New York Convention 1958, the Convention on Choice of Court Agreements (2005) and the Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (2019).

(c) Requirements of reliance on Settlement Agreement (Article 4): A party relying on a settlement agreement under this Convention shall supply to the competent authority of the Party to the Convention where relief is sought: - The settlement agreement shall be signed by parties and evidence that the agreement is a result of mediation and not other ADR mechanism by, inter alia, indicating in the document itself that mediation was carried out, having the signature of mediator or attestation by administering institute.

(d) Flexible Procedural Requirement (Article 3): Each Party may determine the procedural mechanism that may be followed where the Convention does not prescribe any requirement.

(e) Grounds Refusing Relief (Article 5): A court may refuse to grant relief at the request of the disputing party against whom it is invoked. These grounds can be grouped into three main categories, namely in relation to the disputing parties, the settlement agreement and the mediation procedure. Article 5 includes two additional grounds upon which the court may, on its own motion, refuse to grant relief. Those grounds relate to public policy and the fact that the subject matter of the dispute cannot be settled by mediation.

"The Singapore Convention on Mediation is important to international commercial stakeholders in establishing a harmonized legal framework for a fair and efficient settlement of cross-border commercial disputes."

(f) Parallel Applications or Claims (Article 6): If an application or a claim relating to a settlement agreement has been made to a court, an arbitral tribunal or any other competent authority, the competent authority of the Party to the Convention where such relief is sought may adjourn the decision and may also order the other party to give suitable security.

(g) Other laws or treaties (Article 7):

This Convention shall not deprive any interested party of any right it may have to avail itself of a settlement agreement in the manner and to the extent allowed by the law or the treaties of the Party to the Convention where such settlement agreement is sought to be relied upon.

This provides States with the flexibility in implementing the cross-border enforcement mechanism and achieving a comprehensive legal framework on mediation (i.e. adopt either the Convention, the Model Law as a standalone text or both the Convention and the Model Law as complementary instruments of a comprehensive legal framework on mediation (UNCITRAL)).

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The Significance of Singapore Convention

The Singapore Convention on Mediation is important to international commercial stakeholders in establishing a harmonized legal framework for a fair and efficient settlement of cross-border commercial disputes.

Where preservation of the business relationship is important, mediation is a popular choice among users as a flexible and cost-effective process and draw attention to its business-friendly characteristics. The Singapore Convention plays a particularly important role in this regard in also ensuring that a mutual settlement reached between commercial parties is binding and enforceable.

In facilitating the resolution of cross-border disputes through a simplified and streamlined system of enforcement, the Singapore Convention brings about the added assurance of certainty and stability to the legal framework which in turn promotes the larger vision of UN Sustainable Development Goals of strengthened access to justice and the rule of law.

Moving Forward: Development of International Mediation Regime?

In times of the ongoing Covid-19 crisis, the commercial world needs to focus on nurturing business relationships and resorting to alternative ways of resolving conflicts. Moving forward, amicable ways of dispute resolution such as mediation, be it on a stand-alone basis or as part of a tiered dispute resolution process, could be highly effective in upholding mutual business and contractual interests.

It is hoped that the Singapore Convention garners greater reception as is witnessed with the success of New York Convention 1958 which is endorsed by a total of 165 countries! Mediation is quintessentially a flexible method of dispute resolution that is well suited to cultural diversities and, as emphasised earlier, the Singapore Convention affords this process legal bite in the form of international enforcement of settlement agreements reached via mediation.

AIADR as an institute firmly dedicated in promoting alternative dispute resolution (ADR) practices across the globe and the swift settlement of commercial disputes has recently joined the International Commercial Dispute Prevention and Settlement Organization (ICDPASO) with the aim of further intensifying the promotion of mediation as a form dispute prevention in the sphere of international commerce.

With time, it is highly likely that there will be rise in the number of global and regional mediation institutes and possible collaboration amongst various ADR institutions on cross-border basis for the provision of mediation resolutions. With the various global travel restrictions currently in place due to the Covid-19 pandemic, there is also foreseeable rise in the conduct of online mediation, such as the Singapore International Mediation Centre's COVID-19 Protocol, to provide for a swift, accessible, and cost effective means to resolving cross-border disputes.

Such progress is positive and must be welcomed. In fact, in moving forward by promoting mediation as a forum of dispute prevention, we are essentially returning to our ancient roots where cooperation, openness, equality, mutual trust and mutual benefit formed the fundamentals of business.

Dato' Quek Ngee Meng
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Maritime Arbitration – A Practical Guide for the Arbitrator

Philip Teoh Oon Teong

Philip Teoh

Shipping moves International Trade and the Global Economy. Malaysia relies strongly on International Trade to drive the economy. The establishment of the Admiralty Court in 2010 and the amendment of the Arbitration Act to allow ship arrest to provide security for Arbitration has shown the government's priority to facilitate the resolution of Maritime Disputes within the Malaysian eco-system.

This article aims to highlight the important issues which the Arbitrator must bear in mind in presiding over a Maritime Arbitration.

Applying Maritime Law Principles

Maritime law may be defined as the corpus of rules, concepts and legal practices governing the business of carrying goods and passengers by sea.

Maritime law closely reflects practices of the Industry. The sage advice of Lord Mustill should be borne in mind:

"The Law and practice of shipping law have always been closely entwined. There can surely be no other branch of commerce where the practical people know, and need to know, so much of the law; and where professionals know, and need to know, so much of the practice."

In the course of handling the Maritime Dispute, the Arbitrator may be called upon to interpret provisions of the common Maritime Conventions such as the Hague Rules, Hague-Visby Rules or the York Antwerp Rules. These Rules are incorporated in most bills of lading as well as Charterparties and other common forms of contracts used in international shipping. The Arbitrator should pay heed to the following rule of interpretation as stated in Stage Line Ltd v Foscolo Mango & Co Ltd:

"It is important to remember that the Act of 1924 was the outcome of an international conference and that the rules in the schedule have an international currency. As these rules must come under the consideration of the foreign courts it is desirable in the interests of uniformity that their interpretation should not be rigidly controlled by domestic precedents of antecedent date, but rather that the language of the rules should be construed on broad principles of general acceptation."

Conflict of Laws

When events or transactions involving civil and commercial matters are not confined within the borders of a single country, the indigenous legal systems of the different countries involved may have substantive laws that govern the subject matter of the legal dispute in very different ways.

Conflict of laws (sometimes called private international law) concerns the process for determining the applicable law to resolve disputes.

Conflict of laws rules allow for some necessary adjustment between these different substantive laws. The Arbitrator must consider the conflict of laws aspects of the dispute.

The Characterization Question

Whereas matters of substantive law are governed by the lex causae, namely the law applicable under the local rules for the choice of law, all matters of procedure are governed by the lex fori, namely

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the law of the country in which the action is brought.

It is not always easy to classify rules of law into those which are substantive and those which are procedural, but, generally speaking, it may be said that substantive rules give or define the right which it is sought to enforce and procedural rules govern the mode of proceeding or machinery by which the right is enforced.

Choice of Law

At common law, where the parties have expressly stipulated that a contract is to be governed by a particular law, that law applies so long as the selection is bona fide and legal and does not contradict public policy.

In the English House of Lords case of Compagnie Tunisienne de Navigation SA v Compagnie d'Armement Maritime SA the court considered what was the proper law of the contract in a situation where parties did not express a choice of governing law in their contract. The inquiry must always be to discover the law with which the contract has the closest and most real connection. The mere fact that arbitration was to be in London did not mean that what was in reality a French contract of affreightment had to be governed by English rather than French law. It did not matter at all that English arbitrators would have to apply French law. It is by no means uncommon for the proper law of the substantive contract to be different from the lex fori.

Arbitral Seat

The Seat of the Arbitral Tribunal is the judicial seat of the arbitration, rather than a geographical location or venue where the hearing is conducted. The seat designates the applicable law, procedure and international competence of a national court for the challenge of the award.

Most arbitration statutes and institutional rules recognise the distinction between the seat of the arbitration and the venue in which hearings may be held. It is not necessary for the seat of arbitration and the venue of the arbitration to be the same location (though often they are) and even when hearings take place during the course of the arbitration in several different countries, the chosen seat of arbitration will remain unaffected.

Cultural Aspects of International Arbitration

It is inevitable that International Arbitration will involve Arbitrators, Counsel hailing from diverse legal backgrounds. A Russian Lawyer may face an English Lawyer in a Maritime Arbitration before a Panel of 3 Arbitrators with Civil and Common Law backgrounds. Whilst the parties may have consensus on the governing law, they may have different approaches towards conduct of the hearing. The flexibility of Arbitration and adaptability of the Tribunal will accommodate these differences and often there will be problem.

Sometimes it is simply getting to know the Tribunal Members. A retired Judge used to sitting in a formal Court setting may be more familiar and comfortable with a setting not dissimilar with his former environs. Similarly, a lay Arbitrator may not be comfortable with too much technicalities and the Counsel should adapt his arguments accordingly.

The Tribunal must understand and properly apply the governing law to the dispute in the reference. If principles are misapplied or ignored this may lead to the issues of Arbitral Misconduct.

About the Author

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Ratifications and Entry into Force of UNCITRAL and UN Conventions

United Nations Convention on International Settlement Agreements Resulting from Mediation ("Singapore Mediation Convention")

The Singapore Mediation Convention entered into force on 12 September 2020 in accordance with Article 14(1) six months after deposit of the third instrument of ratification, acceptance, approval or accession. Currently, there are 53 signatories and 6 parties to the Convention. The Convention was adopted on 20 December 2018 by resolution 73/198 during the seventy-third session of the General Assembly of the United Nations.

Ethiopia is the 165th country to become party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 ("New York Convention")

On 24 August 2020, Ethiopia made accession to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (also commonly known as the "New York" Convention) with reservation and declarations. Ethiopia becomes the 165th State party to the Convention.

Australia is the 6th party to the United Nations Convention on Transparency in Treaty-based Investor-State Arbitration 2014 ("Mauritius Convention on Transparency")

On 17 September 2020, Australia ratified the Convention on Transparency in Treaty-based Investor-State Arbitration 2014 ("Mauritius Convention on Transparency"). Australia is a signatory to the Convention on 18 July 2017 and becomes the 6th party to the Convention by ratification on 17 September 2020.

Adoption of ADR Forums is on the rise!

AIADR is well founded to promote and educate communities and businesses for resolving their disputes by ADR and use Arbitration as the final One Stop Centre at AIADR!

Arbitration in Malaysia: A Brief Update

James Ding Tse Wen

James Ding

Parties contemplating arbitration as a means to resolve disputes or differences arising would be primarily concerned with the seat of arbitration as it is usually the determinative factors in terms of enforcing or setting aside of the arbitration award. Typically, the party dissatisfied with the arbitration award would mount a challenge either that there was a breach of natural justice or the arbitrator exceeded his/her jurisdiction in making of the determination. Further, it is not uncommon for the applicant of a setting aside application to couch a merits-based challenge of the arbitration award under the guise of either a breach of natural justice or an excess of jurisdiction or to both.

In the recent Federal Court's decision of ***Master Mulia Sdn Bhd v. Sigur Rus Sdn Bhd***, the Malaysian highest court took the opportunity to re-affirm Malaysia's position as a Model Law jurisdiction where the Court's role is one of assistance for the arbitral process rather than interference and that the Court does not review the merits of the arbitration award. In deciding whether an arbitration award could be set aside, it must be first identified which rule of natural justice was breached, how it was breached and how the breach was connected to the making of the award. Even where the applicant has established the aforesaid, the Court must consider whether the breach was significant and affected the outcome of the arbitration award.

While the determination of the significance of such a breach is fact sensitive, and there may be instances where the significance of the breach itself is so great that the arbitration award may be automatically set aside notwithstanding the impact it has on the outcome of the arbitration award, the Federal Court held that prejudice is not a pre-requisite, although it remains a relevant consideration, to establish a breach of natural justice. It was further held that in consonance with other Model Law jurisdictions, the Malaysian Courts retain the residual jurisdiction to enforce the arbitration award notwithstanding there may be breaches in natural justice provided that those breaches do not affect the materiality of the outcome of the arbitration award.

In complementing ***Master Mulia***, the Federal Court in ***Pancaran Prima Sdn Bhd v. Iswarabena Sdn Bhd*** clarified the scope in which the arbitral tribunal could draw upon its own knowledge and expertise. This aspect not infrequently comes into play where a dissatisfied party complains, either under the hearing of a breach of natural justice or excess of jurisdiction or both, that the arbitral tribunal's determination or reasoning on a particular issue(s) was never raised or submitted on by the parties. While the Court recognises the challenge in setting apart what

> ***Both Master Mulia and Pancaran Prima affirms the principle that the Malaysian Courts are very much in favour of arbitration and the anecdotal concerns that parties may have in selecting Malaysia as the seat of arbitration would perhaps be a thing of the past.***

Arbitration in Malaysia: A Brief Update

constitute general and specialised knowledge, it is instead "*the overriding task for the plaintiff [applicant] to show that a reasonable litigant in his shoes would not have foreseen the possibility of reasoning of the type revealed in the award, and further that with adequate notice it might have been possible to persuade the arbitrator to a different result*". This burden to discharge must be preceded by the requirement that the parties were first accorded equal treatment and the full opportunity to present their respective cases. Once these are accorded, the Courts would not disturb or interfere the arbitration award under the guise of a breach of natural justice or excess of jurisdiction.

Both ***Master Mulia*** and ***Pancaran Prima*** affirms the principle that the Malaysian Courts are very much in favour of arbitration and the anecdotal concerns that parties may have in selecting Malaysia as the seat of arbitration would perhaps be a thing of the past. What these decisions do highlight as a corollary is the need to give due consideration to the selection of the arbitrator(s) for the given issue (s) or dispute at hand, a topic where parties not uncommonly give only a perfunctory glance or to happily leave the appointment of the arbitral tribunal to the relevant arbitral institutions.

About the Author

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How do you rate this Article?

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!

Section 12(4) of CIPAA 2012: Effect of a Non Speaking Award

Davey Wan Guan Hui

Davey Wan

The Construction Industry Payment and Adjudication Act 2012 ("CIPAA 2012") came into operation on 15 April 2014 and was introduced in Malaysia to facilitate regular and timely payment to provide a mechanism for speedy resolution through adjudication, to provide remedies for the recovery of payment in the construction industry and to provide for connected and incidental matters.

Yet, the adjudication decisions under CIPAA 2012 though binding is not final. The parties of the adjudication could initiate and have the same dispute to be determined in court without attracting the doctrine of res judicata and issue estoppel notwithstanding the dispute had gone through adjudication proceedings under CIPAA 2012.

Furthermore, the aggrieved party may apply to the High Court to set aside the adjudication decisions on any of the grounds referred to in Section 15 of CIPAA 2012 as follows: -

a) the adjudication decision was improperly procured through fraud or bribery;

b) there has been a denial of natural justice;

c) the adjudicator has not acted independently or impartially; or

d) the adjudicator has acted in excess of his jurisdiction.

Section 15(b) CIPAA 2012: Denial of Natural Justice

Denial of natural justice in the context of Section 15(2) of CIPAA 2012 was clearly explained in the High Court judgment of Naza Engineering & Construction Sdn. Bhd. v SSL Dev Sdn. Bhd.

Reference were made to the United Kingdom (UK) Court of Appeal judgment of AMEC Capital Projects Ltd v Whitefrairs City Estates Ltd which states that there are two rule of natural justice that applies to adjudicators under United Kingdom's Housing Grants, Construction and Regeneration Act 1996 (equivalent to CIPAA 2012 in Malaysia) as follows:-

a) 1st Rule of natural justice: An adjudicator must be unbiased; and

b) 2nd Rule of natural justice: All parties have a right to prior notice and an effective opportunity to make representation before an adjudicator makes an adjudicator decision.

The 2nd Rule of natural justice mainly concerns procedural fairness which depends on whether a party has been prevented from tendering evidence or to make a submission regarding any issue which has been raised in an adjudication.

In the event the adjudicator failed to consider a relevant defense, it may consider as a breach of natural justice which justifies a setting aside of the adjudication decision. The decision could also be set aside in the event the Adjudicator went to a frolic of his own by making a finding himself when the material facts was not raised by the parties in the first place.

This is apparent in the case of Genting Malaysia Berhad v PLM Interiors Sdn. Bhd.. It is held that the adjudicator must decide on the principal issues and the material subsidiary issues stating with reasons why one argument is preferred over the other even though the adjudicator is not confined to decide the issues strictly based on the arguments of the parties.

In the event the adjudicator formulates a new proposition, the adjudicator must afford the parties the right to be heard before decides the issues

Section 12(4) of CIPAA 2012: Effect of a Non Speaking Award

with his reasons even though facts or evidence already adduced by the parties. Otherwise, the adjudicator risks having denied natural justice unless the proposition concerned subsidiary issues which are either peripheral or irrelevant.

The breach of the 2nd rule of natural justice also must be "decisive or of considerable potential importance to the outcome and not peripheral or irrelevant" to the adjudication. The determination of whether the issue is decisive or of considerable potential importance involves a question of degree which must be assessed by any judge on a case to case basis.

Nonetheless, an unsuccessful party must not simply raise the ground of breach of natural justice in setting aside an adjudication decision just because the party disagrees with the interpretation of law or finding of facts by an adjudicator. The ground of breach of natural justice should not be used as a backdoor way to set aside an adjudication decision after both parties have been given the opportunity to submit their adjudication pleadings.

Section 12(4) OF CIPAA 2012: Reasons Needed?

Section 12(4) of CIPAA 2012 provides that the adjudication decision shall be made in writing and shall contain reasons for such decision unless the requirement for reasons is dispensed with by the parties.

Hence, it boils down to the question: Whether reasons for the adjudication decision are mandatory?

One could observe that throughout Section 12(4) of CIPAA 2012, the word "shall" was used.

Since the word "shall" was used in Section 12(4) CIPAA 2012, it confers a mandatory obligation to the Adjudicator to provide the reasons for the said adjudication decision.

The next question that was posed is whether the adjudicator must give full reasons for each argument by the parties?

This is answered in the judgment of Ranhill E & C Sdn Bhd v Tioxide (Malaysia) Sdn. Bhd. To comply with the requirement of Section 12(4) of CIPAA 2012, a statement of the adjudicator's reason for the adjudication decision is sufficient, however brief it is.

The reasons must be succinct enough or sufficient to show that the adjudicator has dealt with the very issues remitted to the adjudicator and what his conclusions are on those issues. The Courts would be reluctant to set aside the adjudication decision even if the reasons may be wrong on the facts and/or law.

Section 12(4) OF CIPAA 2012: No Reasons Were Given at All

In the event an adjudicator does not give any reason at all for an adjudication decision, there will be a breach of Section 12(4) CIPAA. However, such breach may only support the contention that the adjudicator has breached the 2nd Rule of natural justice by his or her failure to consider a possible defense.

Further evidence must be shown based on the facts of the case whether such breach is decisive or of considerable potential importance to the outcome and not peripheral or irrelevant to the adjudication to set aside the adjudication decision.

Conclusion

Section 12(4) of CIPAA 2012 compels the adjudicators to provide written reasons as it is a mandatory provision. Failure to adhere to the requirements stated in CIPAA 2012 may render the adjudication decision to be set aside due to breach of natural justice under Section 15(b) CIPAA 2012.

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The New Delhi International Arbitration Centre—The Upcoming Arbitration Hub of India

Surabhi Chhabra

Surabhi

Arbitration is the procedure where two parties mutually decide to submit their dispute to a third party, called the arbitrator, to make a binding decision through an arbitral award. It is considered as an important means of Alternate Dispute Resolution and has been encouraged in the present times because of its various advantages. One of the dimensions of arbitration is international arbitration. International arbitration plays a vital role in resolving disputes which may take more time in litigation due to various cultural and legal barriers. In order to facilitate smooth and easy mechanism of this dispute resolution globally, various countries have been setting up international arbitration centers. India is also one of the major countries who have adopted arbitration as a dispute settlement mechanism and for this purpose, there have been continuous efforts to promote ADR. One such effort is to establish The New Delhi International Arbitration Centre.

In order to promote domestic as well as international institutional arbitration in India, The New Delhi International Arbitration Centre Ordinance, 2019 was promulgated. This Ordinance was replaced by The New Delhi International Arbitration Centre Act, 2019, which came into force on 26th July, 2019. The main aim of the Act is the establishment of an autonomous regime of Institutional Arbitration in India. The need for such a regime arose when the Committee headed by B.N. Srikrishna recommended for the replacement of the International Centre for Alternate Dispute Resolution (ICADR) as it has failed to achieve the objective of promoting growth towards the alternative dispute settlement mechanisms in India. The ICADR was established in the year 1995, however, it failed to provide facilities for alternative dispute resolutions mechanisms and was not competent to keep up with the present-day scenario of institutional arbitration system in the world. Hence, the need for an institution to conduct institutional arbitration arose.

The purpose of establishment and incorporation of the New Delhi International Arbitration Centre is to create an independent and autonomous regime for institutionalized arbitration and for acquisition and transfer of the undertakings of the International Centre for Alternative Dispute Resolution and to vest such undertakings in the New Delhi International Arbitration Centre for the better management of arbitration so as to make it a hub for institutional arbitration. It is further mentioned in the Act that The New Delhi International Arbitration Centre will utilize the existing infrastructure of the ICADR and its facilities.

One of the most important features of the Centre is that it has been declared as an institution of national importance. The Central Government will provide funds to the Centre in order to promote the growth of the conduct of arbitral proceedings.

Objective and Functions of the Centre

Apart from being an autonomous and independent institution to conduct international and domestic arbitration and provide facilities for the same, the objects of the Centre are also to promote research and study, providing teaching and training, and organizing

The New Delhi International Arbitration Centre—The Upcoming Arbitration Hub of India

conferences and seminars in arbitration, conciliation, mediation and other alternative dispute resolution matters, to collaborate with other national and international institutions and organisations for ensuring credibility of the Centre as a specialised institution in arbitration and conciliation and to lay down parameters for different modes of alternative dispute resolution mechanisms being adopted by the Centre.

The need for replacing ICADR with The New Delhi International Arbitration Centre was recommended due to the long procedures and delays caused. Hence, the primary function of the Centre is to provide cost effective and timely services for the conduct of arbitration and conciliation at national and international level. No party to a dispute prefers delays in such proceedings, and arbitral proceedings are preferred because of its efficiency. The Central Government can notify any other object or function which, according to the Government, shall be entrusted to the Centre.

The Centre shall establish a Chamber of Arbitration. The Chamber shall consist of a panel of arbitrators and shall look-into the admission in the panel. The Chamber of Arbitration shall consist of experienced arbitration practitioners of repute, at national and international level and persons having wide experience in the area of alternative dispute resolution and conciliation.

If required, the Centre can also establish an Arbitration Academy. The purpose of establishing the Arbitration Academy is to train the arbitrators for commercial disputes and for other academic purposes such as conducting of research in the area of alternative dispute resolution. This will help the Centre to be at par with other established institutes globally.

Composition of the Centre

The Centre shall comprise of seven members-

1. Chairperson. Any person who has been a judge of the Supreme Court or Judge of a High court or an eminent person having special knowledge and experience in the conduct and administration of arbitration can be a chairperson.

2. Two eminent persons having substantial knowledge and experience in institutional arbitration, both domestic and international.

3. One representative of a recognised body of commerce and industry.

4. Secretary, one Financial Advisor and Chief Executive Officer as ex officio members.

To facilitate its functions, the Centre, if required, may constitute a Committee also.

Conclusion

The need for establishing NDIAC came with rising demand for a neutral and independent platform for conducting arbitration in various sectors. Even though ICADR was in existence, it could not fulfil its objective and many parties referred to other foreign institutions for international arbitration. For this reason, it was important to bring our arbitration system at par with other international institutions. Hence, a proper and well managed implementation of the NDIAC Act, 2019 is required.

About the Author

Surabhi Chhabra

Law student

Vivekananda Institute of Professional Studies in Pitampura, New Delhi, India.

Fellows and Members Are Invited to Volunteer as Chairman or Member of Committees

AIADR INVITATIONS

To contribute towards building of your Institute and be a Volunteer by joining the Committees and Subcommittees of AIADR as Chair or Committee Members of:

- Φ Membership Development Committee ("**MDC**")
- Φ Professional Development & Education Committee ("**PDEC"**)
- Φ Disputes Resolutions and Appointments Committee ("**DRAC**")
- Φ Events Development & Management Committee ("**EDMC**")
- Φ Marketing and Communications Committee ("**MCC**")
- Φ Editorial Sub-Committee ("**ESC**")
- Φ Internet & Web Content Management Sub-Committee
- Φ Fund Raising and Promotions Sub-Committee
- Φ Business Development & International Relations Committee ("**BDIRC**")

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- ☺ ***Write scholarly articles for the AIADR Journal!***
- ☺ ***All readers and members are welcome to contribute!***

AIADR PAST EVENTS

14 August 2020

3rd KIAC Webinar: Researching and Writing A Good Opinion / Award

AIADR was invited by the Kigali International Arbitration Centre to speak on the webinar titled “Researching and Writing a Good Opinion / Award”. The panel consisting of AIADR President, Datuk Professor Sundra Rajoo, Ms. Emilia Onyema, Prof. Dr. Abdel Wahab, Dr. Fideli Masengo and Justice Emmanuel shared their thoughts on the core topics of achieving good awards, requirements on writing a reasoned awards and dissenting opinions in arbitration.

12 September 2020

Singapore Convention on Mediation: China's Cross Border Mediation And Development After Its Entry Into Force I

《新加坡调解公约》生效后中国涉外调解发展研讨会

AIADR was invited to participate in the conference jointly organised by the China Arbitration Law Research Association, China International Chamber of Commerce Mediation Center, China Maritime Arbitration Commission, and Institute of International Law, Chinese Academy of Social Sciences. The conference was held in conjunction with the entry into force of the Singapore Convention on Mediation and AIADR Vice President, Dato’ Quek Ngee Meng explored the essence of Singapore Convention and its potential in cross-border dispute resolution and prevention during the panel discussion.

AIADR PAST EVENTS

23 September 2020

Dispute Prevention and Resolution on the Belt & Road

On 23 September 2020, AIADR organized a webinar on the topic of "Dispute Prevention and Resolution on the Belt & Road" supported by the China Maritime Arbitration Commission. The webinar was moderated by AIADR President, Datuk Prof. Sundra Rajoo and joined by esteemed panelists, Prof. Philip Yang, Dr. Li Hu and Prof. Dr. Mohamed Abdel Wahab from Hong Kong, China and Egypt respectively.

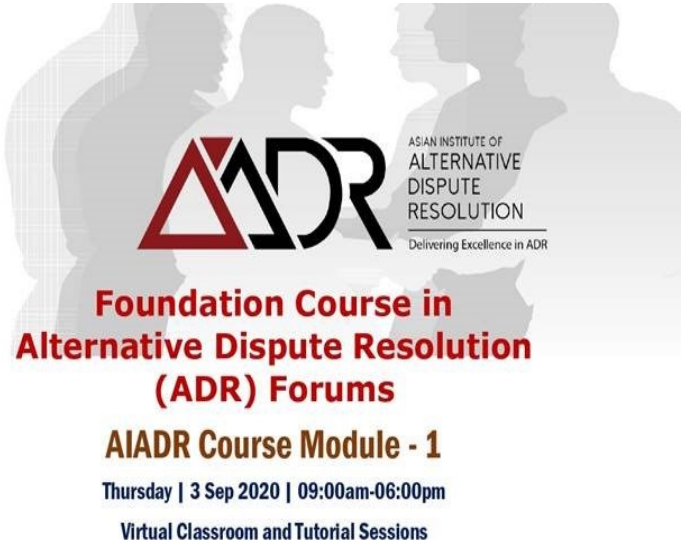
The following key takeaways emerged from the interactive panel discussion:-

- The need for an intergovernmental supranational initiative to form an uniform and harmonized set of norm across and above diversified legal systems of Belt and Road jurisdictions. This serves as an attempt to reconcile the applicable principle to the Belt and Road projects despite divergence or possible differences in legal systems.
- Adoption of readily available rules as immediate alternative solution to ongoing Belt and Road projects' problems without forgoing the importance of procedural law in dispute resolution.
- Form an alliance of existing and new arbitral institutions to set up mechanisms for dispute prevention and resolution.
- Allow choice and mix of substantive law and procedural law based on the legal systems of parties involved in the project.
- Importance of provision of education and training to raise awareness on dispute prevention and resolution pertaining to Belt and Road projects, prevent dispute from arising and bring amicable conclusion to the dispute.
- Importance of institutional support such as AIADR in conducting training and courses on dispute prevention and resolution on the Belt & Road jurisdictions.
- Parallel existence of mediation, arbitration and litigation with emphasis on dispute prevention as flexible method of settling dispute. However, it is observed that arbitration may still remain as the main dispute resolution method in the Belt and Road.

AIADR FOUNDATION COURSE

LAYING THE FOUNDATION FOR DISPUTE AVOIDANCE AND ALTERNATIVE DISPUTE RESOLUTION FORUMS

AIADR COURSE MODULE—1



This course provides an overview of the conflict management principles and dispute resolution forums for both domestic and international commercial transactions and trade related contracts. It covers introduction to AIADR, membership tracks, eligibility criteria and various alternative dispute resolution methods as an alternative to litigation in court. The course is developed for participants with limited or no prior legal qualification but with experience in projects and contracts management.

Most Beneficial for:

Fresh Law Graduates, Contracts Managers, Supply Chain Management Executives, Project Managers, Operations Managers & Executives, Inhouse Legal Counsel, Quantity Surveyors, Valuers, Services Providers and all others involved in negotiations and award of contracts and agreements. The course is industry neutral and is suitable for diverse range of industrial and commercial segments.

Register Online or Email to thesecretariat@aiadr.world

(Registered Participants will be admitted as Learner Members of AIADR without additional registration Fee. Existing Learner Members of AIADR will pay the discounted fee of USD50/- only)

Address: 1003 Bukit Merah Central, #02-10, INNO Centre, Singapore 159836
Phone: +65 6377 6617
Email: thesecretariat@aiadr.world

3 September 2020

Foundation Course in Alternative Dispute Resolution (ADR) Forums

The AIADR course module-1 on ADR forums was successfully completed on 3 September 2020 with participants from across the region including Singapore, India, Pakistan and more. The course was a whole day online program which covered as much as 13 ADR-related topics with mini group tutorial sessions conducted by experienced academician, practitioners and arbitrators.

AIADR would like to express the deepest gratitude to the trainers (Mr. Jayems Dhingra, Dato Ricky Tan, Prof Choong Yeow Choy, Ms. Rammit Kaur and Datuk Prof. Sundra Rajoo) for their time, dedication and contribution in making the course a success!

AIADR UPCOMING EVENTS

14 October 2020

JAIAC Webinar Series: Dispute Management in a New World

AIADR is pleased to support the Webinar Series: Dispute Management in a New World launched by the Jamaica International Arbitration Centre (JAIAC). The next event in the series will feature the Maurice Stoppi Lecture and Panel Discussion, under the subject title of Courting the Court: "Zooming" in on the role of the courts in the resolution of construction disputes in 2020 and beyond. The webinar will be broadcast *via* Zoom, with live streaming on JAIAC YouTube channel and HYPE TV on 14 October 2020 from 4:00 pm to 6:30 pm (Jamaica Time). Kindly refer to JAIAC portal for more information.

28 & 29 January 2021

9th Annual Arbitration & Investment Summit 2021: Arbitrating & Investing in a Virtual World

AIADR is pleased to support the 9th Annual Arbitration & Investment Summit which will be held on 28 and 29 January 2021 where AIADR President, Datuk Prof. Sundra Rajoo has been invited to speak on one of the sessions pertaining to alternative dispute resolution. *Stay tuned for further information!*

AIADR Second Annual General Meeting

Dear Members,

Subject to further announcement, the second annual general meeting for the institute has been tentatively scheduled on 5 November 2020 at 4:00 p.m. MYT (GMT +8).

For any inquiries, kindly email to *thesecretariat@aiadr.world.*

Thank you for your commitment and support to your Institute – AIADR!

Launch of Inaugural Issue of AIADR Journal

The inaugural issue of AIADR Journal was successfully launched on 31st August 2020 and is now made available to all members!

Click here to view the AIADR Journal

Be part of the ADR Journal contributors!

Submit your scholarly articles in English, Asian or other Languages!

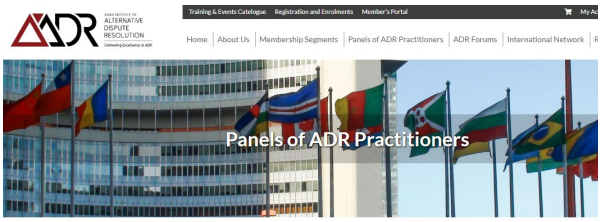
All readers and members are welcome to contribute!

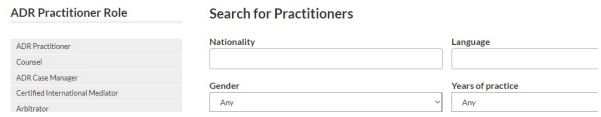
Submit to: aiadr.editor@aiadr.world

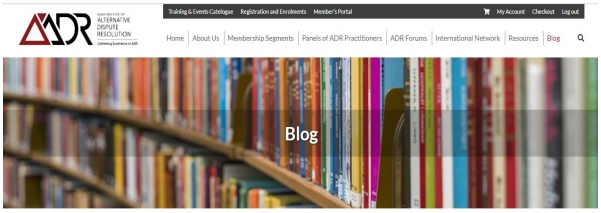
Interact with your network of members of the AIADR and contribute towards the growth of your Institute by joining Committees and contributing articles for the AIADR Journal and ADR Centurion, the Bimonthly Newsletter.

All Members of the Institute are invited to submit proposals for holding events and online discussion sessions, on subjects of interest to members and industrial segments for continuous learning through sharing. The Secretariat will coordinate with the volunteer speakers and presenters on the schedule and content of such events, after receiving proposals.

IMPORTANT—ANNOUNCEMENTS







UPDATE MEMBERSHIP RECORDS ONLINE

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

Renew your membership online or write to thesecretariat@aiadr.world should you have any inquiries.

Registered members will be able to create their own blogs and post comments on other blogs.

AIADR Panelists Section and Member's Portal is Live!

Your profile will get noticed by parties seeking ADR professionals, you chose what to place in public profile section.

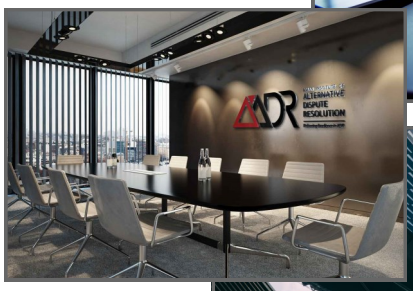
Applications for Corporate Memberships are invited under the following groups:

- Φ **Platinum Members** : Users of ADR Services
- Φ **Gold Members** : Arbitral Institutions and ADR / Legal Services Providers
- Φ **Silver Members** : Educational Institutions
- Φ **Ordinary Members** : All Other Corporates

AIADR MEMBERSHIP GRADES

- ⇒ **Learner Members**
- ⇒ **Associate Members** [Post Nominal: AAIADR]
- ⇒ **Members** [Post Nominal: MAIADR]
- ⇒ **Fellows** [Post Nominal: FAIADR]
- ⇒ **Honorary Fellows** [Post Nominal: Hon. FAIADR]
- ⇒ **Corporate Members**
- ⇒ **Certified International Practitioners** (Arbitrator, Mediator, Adjudicator, ADR Practitioner) [Post Nominals: CIA, CIM, CIAdj, CIP (ADR), AIADR]

Inviting Corporate Members!



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That AIADR is a NGO and Members' Institution!

* Subscription funds of the members will be used for membership records administration only and not for the payroll of the AIADR Secretariat!
* Education, Training and CPD Programs will be affordable and without discrimination!
* AIADR will be the Institute for members from all industries and walks of life, including but not limited to lawyers and legal professionals!
* Free from any historical inclinations, but for the future generations to come!
* Affordable, Independent, Accessible, Desirable and Resourceful!

ADR Centurion is the bimonthly Newsletter of AIADR containing contributions from individual authors, for distribution to the members of AIADR, ADR practitioners, professionals from trade & industry and associated organizations. The constructive feedback and comments from the readers are most welcome!

Cut-off Date for Submission of Contributions:
1. For Newsletter : **15 November 2020**
2. For Journal : **15 October 2020**

Direct queries to *thesecretariat@aiadr.world* / *aiadr.editor@aiadr.world*.