ADR Centurion

The bimonthly newsletter of the Asian Institute of Alternative Dispute Resolution

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ASIAN INSTITUTE OF ALTERNATIVE DISPUTE RESOLUTION
Delivering Excellence in ADR

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Delivering Excellence in ADR

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ADR Centurion

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AIADR Announcement on the Appointment of Office Bearers

ASIAN INSTITUTE OF ALTERNATIVE DISPUTE RESOLUTION
Delivering Excellence in ADR

29th June 2021

MEDIA STATEMENT

AIADR ANNOUNCES ON THE APPOINTMENT OF OFFICE BEARERS

The Asian Institute of Alternative Dispute Resolution (AIADR) is pleased to announce on the appointment of the following council members as the new office bearers for the term 2021-2024: -

President	: Datuk Professor Sundra Rajoo
Vice President(s)	: Dato' Quek Ngee Meng
	Dr. Hu Li
	Dr. Christopher Malcolm
Honorary Secretary	: Mr. Man Sing Yeung
Honorary Treasurer	: Dato' Quek Ngee Meng

The AIADR Governance Council decided its first meeting on 29th June 2021 with the allegiance to uphold the vision, mission and core values of the institute. AIADR as the first not-for-profit member-based Asian centre for alternative dispute resolution established in 2018, shall continuing its spirit in strive to be a repertoire of global jurisprudence, formed by professional membership, recognized by international institutions for the advancement of alternative dispute resolution methodologies, for amicable conflicts management and effective dispute resolution.

For more information, please contact the AIADR Secretariat:

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T: (603) 2300 6032 E: thesecretariat@aiadr.world URL: https://aiadr.world/

Election of Mr Man Sing Yeung as Honorary Secretary

"Man Sing Yeung is a practicing arbitrator, mediator and lawyer in Hong Kong. He is accredited as a chartered arbitrator, chartered quantity surveyor and accredited mediator / adjudicator. He has been involved in alternative dispute resolution services with emphasis on construction and international trade.

Mr Yeung was the former Chair of the Chartered Institute of Arbitrators (East Asia Branch), and the HKIAC - Hong Kong Mediation Council. He was a member of the Steering Committee on Mediation of Department of Justice, HKSAR. He is currently the Chair of the Law Society's Arbitrators Admission Committee, and a director of the Asian Institute of Alternative Dispute Resolution, Malaysia. He is also serving the Chartered Institute of Arbitrators, London as standing committees' member. As an arbitrator for a fair nos. of cases since 2000, Mr Yeung is with arbitral institutions' panels in the regions, and also mediates cases for construction related and cross border investment disputes.

Mr Yeung is honoured for having served the Asian Institute of Alternative Dispute Resolution as the Honorary Secretary since 2021 to assist its services in Asia and beyond."

AIADR Ad Hoc Arbitration Rules

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is now officially launched!

Contact the Secretariat for more information!

AIADR HIGHLIGHTS

Message from the President

Datuk Professor Sundra Rajoo

Dear AIADR members,

I hope you have all been safe and well during this precarious time. On behalf of the AIADR, I would like to welcome our members to the 13th Issue of our newsletter. Last year came the Covid-19 pandemic that changed everything. All across the world, people in the service sector had to suit up in personal protective gears, and wear masks. We all had to stand 2 metres apart, and were constantly reminded to wash our hands, wash our hands, and wash our hands. Society started to work virtually from home. For many of us, it was the same. We were faced with the gathering storm clouds of new levels of complexity and coordination. Civilization was forced to learn new things. All the muscle around innovation, creativity and flexibility that we did not think we nor alternative dispute resolution had, we came to find out that we had it all along.

AIADR understands the importance of being navigated through this uncertain time by our Office Bearers with considerable skills, subtlety and knowledge. To ensure smooth and uninterrupted operations, I have had the honour of being appointed as your President. The appointment of our Office Bearers includes the Vice President and Honorary Treasurer, Dato' Quek Ngee Meng, Vice Presidents Dr. Hu Li and Dr. Christopher Malcolm, and the Honorary Secretary Mr Man Sing Yeung.

Over the last few months, we also saw the expansion our Sub-Committees, the Professional Development and Education Committee (PDEC). The newly introduced Sub-Committee of Standards, Accreditation & Examination (SSAE) and Programs Sub-Committee was unveiled with the aims of developing policies standards and regulations relating to our educational contents for members, and accreditation of our members and faculty members and to monitor the quality of our AIADR's programs, consider submissions to assessment sub-committee and initiate remedial action within PDEC.

As we set foot into the second half of 2021, perhaps we can reflect and assess our achievements over the past 6 months. I suppose first, the good news. In June, we successfully held the 2021 AIADR Ad Hoc Arbitration Forum where we addressed the dire need for a greater and more general practice of ad hoc arbitration during this pandemic. We were joined by arbitration professionals from across continents and saw a record high number of participants.

In July, I also had the honour of being invited to the 2021 2nd Belt & Road Commercial Law Forum by Counterparts from the International Commercial Dispute Prevention and Settlement Organization (ICDPASO). The Belt & Road Commercial Law Forum was especially important to

Message from the President

Datuk Professor Sundra Rajoo

both AIADR and myself as the focus placed on international and economic trade patterns, were in line with our goals of advocating for a fair and transparent legal business environment.

Despite the unprecedented challenges brought about by the pandemic, AIADR has continued to strive for an inclusive and cognitive experience for our members. “Knowledge, like air, is vital to life. Like air, no one should be denied it”. Staying true to this adage by the English writer Alan Moore, AIADR held an international internship programme in July, and have taken in virtual international interns from China. AIADR is determined to not let the challenges presented by the pandemic hinder our efforts in promoting cultural inclusivity and diversity within AIADR.

With the cloudy horizon of the pandemic seemingly behind us, perhaps we can focus on the especially important manner in which we will proceed into the second half of year. I understand that the way in which we proceed from here on will be the key difference between having a successful, or cataclysmic term for 2021. These will have to be proven not just by words but also actions in the coming months. To begin with, I am proud to announce that AIADR has recently completed the signing of a Memorandum of Understanding (MoU) with the Council for National & International Commercial Arbitration (CNICA). We are currently in the final stages of concluding the signing of Memorandum of Understanding (MoU) with several organisations. These exciting collaborations will be announced in the coming months on our website and social media platforms. Staying true to our motto and vision of delivering excellence in alternative dispute resolution, I am determined to steer AIADR with a sense of our own destiny and strive for the advancement of the methodologies of alternative dispute resolution. Our milestones thus far were made possible by the active involvement and unwavering support of our many members across the world, be it in the form of event participation or scholarly article submissions. As a membership organisation, our initiatives are made possible by the funds from our members, sponsors and supporting organisation. As we recover from the aftermath of the pandemic and come back stronger than ever, we would be much obliged if you would extend your support for AIADR by renewing your membership as we strive for the benefit and betterment of our members.

To conclude, I would like to extend my utmost gratitude to all of our members for all that we have achieved together. And as the saying by the Director-General of the World Health Organisation (WHO) Dr. Tedros Adhanom goes, “Be safe, be smart, be kind”. Thank you.

Datuk Professor Sundra Rajoo

President, AIADR

president@aiadr.world

Ad Hoc Arbitration Forum 2021 Keynote Address

Tan Sri Dato' Seri James Foong Cheng Yuen

Ladies and Gentlemen,

Introduction

I am honoured to be invited to deliver this keynote address in this forum which carries the aptly timed title: 'Seeking Private Justice in Times of Crisis'. Since 2020 until now, we, Malaysians alongside with the rest of the world are facing unprecedented challenges posed by the Covid-19 virus. Disruption to numerous activities and loss of lives appear to be the norm. No one is spared. But being humans, survival instinct forces us to adapt quickly. The legal profession, the judicial institutions and the ADR protocols are no exception. They have set up various alternatives to carry on with their task: to resolve disputes between parties while adhering to the new norm and practice: interacting by social distancing.

With the lockdowns and frequent closures of institutions designed to assist in dispensing justice and resolving disputes, we have learned to replace them virtually. Virtual platforms to transact and conduct proceedings have now become the common practice. In fact, in Malaysia, the courts and the ADR centers have already embarked on such alternatives before the pandemic. The current situation only accelerated the expansion of this means of communication.

Electronic filing and hearing of legal matters online in our national courts can be traced back to the time of Tun Zaki Azmi Chief Justice tenure. Since then, it has progressed steadily and under the current Chief Justice of Malaysia, Tun Tengku Maimun Tuan Mat it has advanced to a level that is comparable to some of the more progressive jurisdiction.

For this, credit must be given to the Malaysian Judiciary for its foresight in implementing e-filing, e-case management, paperless pleadings, affidavits, letters and documents, and the extensive use of only electronic copies at hearing, long before the spread of this virus. Private ADR centers such as the Asian International Arbitration Centre (AIAC) and Asian Institute of Alternative Dispute Resolution Centre (AIADR) were equally aggressive in the use of technology in their protocol. They too have offered specially designed venues to cater for remote hearing as well as apparatus, necessary for use electronic documents during the proceedings.

However, availability is one aspect. Electing to use them is another. Unlike the courts which can direct; in ADR, it is very much dependent on mutual consent. The preference of parties, particularly their counsel to adopt such facilities was marginally slower than the courts. But now, the choice no longer existed. The need to accept this manner of communication is, now, the only means available if we are to continue in this discipline.

But surprisingly, those forced to accept this alternative means grudgingly are now strong advocates of its acceptance, having

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experienced the enormous benefits of the system. But there are still many diehards and pessimists waiting for the pandemic wave to pass so that the old ways of doing things will return.

For those canvassing for the total adoption of the entire ADR process to go digitally, a call is made to rename ADR to DDR. Meaning the term 'Alternative Dispute Resolution' ("ADR" be changed to 'Digital Dispute Resolution' ("DDR". This is predicated on the extensive use of digital transaction in many aspects of our lives.

This reminded me of an incident not too long ago where we used to laugh at a Muslim husband attempting to divorce his Muslim wife by sending her a SMS message. This is no longer comical. It has become an accepted form for many things. The Evidence Act has been amended to include all text messages and Whatsapp messages can become admissible evidence. Another area of extensive use is the MySejahtera application. Something we cannot do without these days in Malaysia. Wherever you go, access can only be allowed after you have scanned on this app in your smart phone. This extends to Covid 19 vaccination appointments, attendance and records to indicate whether you have been inoculated and the number of doses you received are now stored in MySejahtera. So what difference does it now make to conduct a ADR hearing through a mobile device when your own safety is already managed by such means.

Once there is a demand for this facility better featured applications will be designed for ADR use.

Immediate Future

Now let us look at the immediate future as well as the post pandemic scenario in ADR.

With the pandemic still raging and even with the herd immunity reached, it is my take that it would take a substantial time to clear the backlog of things.

Like in many instances where the supply chain is disrupted, it takes time to return to normal. The courts are no exception in dealing with the disposal of cases. Even with everything done electronically, the Judiciary will still be inundated with cases. Not only with those cases carried forward during the disruption caused by either a total lockdown or partically, new cases will be filed. Adding to the normal number experienced pre-pandemic, there will an increase of new actions as a consequence of the pandemic.

Disputes over travel cancellations, hotel books, breach of banking conditions, frustration of contracts, disputed insurance claims and many other matters arising from the pandemic will be contested. In many if these suits, I anticipate the principle of force majeure will be extensively discussed. Of course, this will add fabric to our jurisprudence but for this to materialize, the disposal system of these disputes must function effectively.

With the courts constrained by manpower and limited budget, even the best of an electronically judicial operated system, there will be delay in the disposal of cases to cope with this unusual increased in volume.

But litigants cannot wait. They have waited for too long due to various movement control orders

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and disruptions. Economically, they have to survive. For example, loans or credit extended before the pandemic and, hibernated from recovery during the moratorium designed by the government to assist those who were affected, will now have to be recovered. Same with cancelled bookings of hotels and air travel and recovery of rental of premises. Faced with this dilemma, they will be looking for alternatives means to settle their disputes rather than joining the long queue in the courts.

So, what are these aggrieved parties seeking? My view is that they want an alternative dispute resolution system that provides a quick, economical and legally enforceable relief to settle their dispute. And to my mind, the best alternative is ADR which can meet these criteria provided this institution amend and change its protocol to cater for such demands.

But many ADR protocol has not changed. Perhaps believing that things will soon be returning to normal. Though the current pandemic may eventually subside, distancing, if avoidable, with extensive use of digital means.

In ADR proceedings aside from e-filing and service of documents and notices, the taking of oral evidence will be carried out electronically and remotely. This will replace physical hearing held in one particular location. If this form is considered too impetuous and perilous due to fear of couching of witnesses, perhaps a hybrid format can used. Instead of everyone present physically in one place, some can join virtually while others are stationed in a principal physical location.

Take for example, if there are three arbitrators, one in Penang and two in Kuala Lumpur, with counsel, representative correspondingly in different locations, the physical hearing can be held in Kuala Lumpur where perhaps the Chairman of the Tribunal be physically present to conduct the proceedings with key counsel to ensure no external interference with the witness who is physically present to testify.

I personally experienced this recently and found this process every acceptable. However, the following factors need to be considered.

First, there need to be a pool of mediators, arbitrators, adjudicators and counsel who are computer savvy. They must be able to operate some of the devices used in this kind of virtual or semi hybrid hearing proficiently. Whilst the new and emerging generation of lawyers are more competent in the use of various operating systems, consideration must be given to other participants in the proceedings that also includes senior arbitrators, senior lawyers, and witnesses. If we are to go completely remote, assistance may not be available on hand.

At times, many are not proficient in operating some of the most elementary steps to. This may sound highly improbable to the younger generation but sad to say that from my experience many are still uncertain as to how to hit the key to mute and unmute or to turn of the camera on or off. Thus, there is a need to educate as many participants in this kind of proceedings as soon as possible.

To speed up this undertaking, perhaps an a

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included for eligibility to an appointment as an arbitrator, mediator or adjudicator. And this is: whether you are proficient in operating virtual platforms. ADR institutions should also be quick to offer courses on this subject to its panel members. Once this pre-qualification is demanded, literacy in the operation of virtual devise of ADR members will be substantially reduced.

Secondly, even with the acceptance of this new norm, there is also a corresponding demand to improve the operating process of virtual platforms. Currently, the popular devices used in ADR proceedings are: Microsoft Team, ZOOM, and Webinar. They are excellent platforms for normal meetings and seminars and could display documents on the screen simultaneously with a speaker. Regrettably, the number of participants appearing on the screen is limited particularly when documents are displayed. Then of course, if you were to show multiple documents for comparison of contents on the same screen you may encounter limitations. I believed that these can be overcome by improved features in such programme when there is a demand.

Currently for hybrid ADR proceedings held in AIAC that I experienced, there is a special room for this purpose accompanied by a virtual 'breakout room' for more than one arbitrator to discuss among themselves in private. But apparently, if you need a larger room to accommodate more participants to comply with social distancing requirement, the accompanying virtual breakout room facility is not included as a feature. In future, perhaps, all venue for ADR hearings should have a comprehensive set of facilities for this purpose.

Then, there were also occasional disruptions in the communication system which were quickly rectified by the inhouse technicians. These are teething problems. I am confident that with an increased demand for such facilities, such hiccups will disappear. For now, I must give credit to AIAC and AIADR for its foresight in initiating such facilities prior to the pandemic. Since total digital hearing has yet to catch up, I would encourage all ADR institutions to proceed at great speed to improve their facilities to cater for the adoption of this new form of hearing.

Still on this topic, I would also like to highlight the need to adhere to certain protocol when conducting virtual or hybrid virtual proceedings. Virtual, theoretically means that a participant can be anywhere. But one must bear in mind that like physical ADR meetings and hearing, certain decorum and dress code is required to be maintained to give dignity to the process. It is not uncommon to observe a party in casual T-shirt or shorts appearing on screen. A quiet surrounding to conduct a virtual ADR is also necessary. You cannot have children running around and crying in the background or the sound of pots and pans clanking to indicate lunch will soon be served. To remind us of the importance to observe decorum, we must not miss out recalling the infamous Australian Member of Parliament exposing himself on one occasion and urinating in another. Special area should be designated to conduct such proceedings with

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sufficient lighting to focus on the face of the participant, and video cameras properly positioned instead of exposing only half his face with the rest targeted at the ceiling fan.

These may be elementary, but when one is to embark on virtual ADR or a hybrid kind of hearing, seriously consideration must be given to selecting a designated area with least noise interference, equipped with adequate lighting and appropriate background display. The proceedings must not be too casual otherwise the whole ADR process loses its impact and respect.

Thirdly, ADR protocol should be changed or amended to accept notices and documents to be sent and received electronically as authentic with digital awards containing verified signature acceptable.

Finally, to cater for the anticipated increase in the workload of ADR cases, there is a need for ADR bodies and centers to devise fast track procedure to meet this demand. I realized that no one size procedure can fit all but different type can be designed for different kind of matters. As I have said, what aggrieved parties want during such time of crisis is a fast, economical and legally binding process. To meet this challenge, new protocol with emphasis on strict time-line schedules to dispose of the contentious matter must be quickly drawn up and implemented. Without this, we will be remaining in the same spot as before.

Conclusion

Like all universal disasters, the aftermath will change many things. There will be a new dawn and things will never be the same again. Those engaged in the ADR process must meet this challenge and prepared for the change as quickly as possible to survive in this discipline. To encourage us to move towards this direction an observation by Justice Kirby, a retired Australian High Court Judge delivered at turn of last century is most apt.

Now with the onslaught of the pandemic, my take is that it will not stay the same way as Justice Kerby posed in his challenge. Procedure and protocol will be changed to fast track mode. Though the necessary structure of facts, law and conclusion approach to provide a solution to the dispute remains formatted judgements and/or awards will quicken the pace to releasing judges, arbitrators and adjudicators from the chores of writing long judgment/award to deal with more cases. With Covid 19 pandemic, the use of technology will expedite the clearance process. There are still many challenges ahead of us but in this time of crisis, ADR should lead the way to provide solutions to overcome them.

Thank you.

Tan Sri James Foong

Retired Federal Court Judge
Advocate and Solicitor Arbitrator.

International Commercial Arbitration Moot Competition 2021 (ICAMC), Closing Speech

YA Dato' Mary Lim Thiam Suan

Thank you, Master of Ceremony, Associate Professor Dr Hendrik bin Mamsali, Deputy VC, Student Affairs and Alumni of Universiti Utara Malaysia, Associate Professor Dr Rohana Abdul Rahman, Dean of the School of Law of UUM, Crystal Wong, Senior Partner with Lee Hishamuddin Allen & Gledhill, the official sponsor of the ICAMC 2021, representatives of supporting organisations, AIAC, AIADR, SELECT, Public Speaking Club of UUM, Law Students Society of UUM, judges of the ICAMC 2021, members of the Advocacy & Mooting Unit of UUM; and all participants of the ICAMC 2021.

To summon up the appropriate courage to take part in any moot is the stuff of admiration but to dig deeper and do a moot on an arbitration problem, where there is little guidance, if at all, in hearings which the involved parties list confidentiality and privacy as tops, takes even more.

Arbitration has been the preferred arena for resolution of dispute; not the Courts. And, we, at the Court, are not complaining. Not because this supposedly brings less work for us, but because the Courts have long recognised and accepted that parties who consensually contract, at arm's length, may choose to resolve their disputes at some venue other than the Courtroom and before someone other than a judge.

One of the principal reasons for that ready acceptance is the presence of a regime of rules and procedure found in the Model Law formulated by the United Nations Commission on International Commercial Trade Law or UNCITRAL. This body of laws reached after multiple rounds of deliberations is the proud achievement of the Commission that was established by the United Nations General Assembly at its meeting on 17 December 1966.

This harmonisation process involving both civil and common law principles and concepts allows for a large degree of uniformity and consistency in the interpretation and application of laws, paving in turn to the effective enforcement of arbitration awards foreshadowed by the New York Convention. These traits of uniformity, consistency, predictability and stability are necessary elements for successful trade, international and national upon which any decent economy is built upon, and continues to thrives on.

Malaysia has long since practised those norms, and the Courts have played a huge part in that success story. The Courts consistently acknowledge party autonomy, encourage and support alternative dispute mechanisms, reminding all that it is, and must remain the forum of last resort.

Case law is replete with evidence of that mantra and ethos, and I personally believe that the deletion of section 42 of the Arbitration Act of 2005 is testament of that maturity and coming of age that the arbitration circle has attained. Section 42 was where parties could referred questions of law arising from arbitration awards to the Court. Despite the preconditions that parties knew that they had to meet, there remained continued efforts to approach the Courts for intervention, often resulting in delays in the recognition and enforcement

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of awards rendered after substantial hearings. The process in Courts often did not end at the first instance at the High Court or even after appeal at the Court of Appeal. Frequently we would see these same challenges winding their way to the Federal Court, efforts that may take well over three to four years from when the arbitration award was made.

Even after the demise of section 42, we still see challenges in other respects, under sections 37, 38 and even 39 of the Arbitration Act.

These cases are no longer confined to the immediate parties to the contract, they extend to other third parties. We thus see an area of law developing involving non-parties, that such parties' action appear to have the capacity and capability to stultify the arbitration process

– as is evident in the decisions of Protasco Bhd v Tey Por Yee & Another Appeal [2018] 5 CLJ 299 [Court of Appeal] and Jaya Sudhir Jayaram v Nautical Supreme Sdn Bhd & Others [2019] 7 CLJ 395 [Federal Court]. These are decisions where applicants before the Court for injunctive orders are not parties to arbitration agreements are said to not be bound by the considerations of section 10 of the Arbitration Act; let alone section 8.

Then, there are the two decisions of Pancaran Prima Sdn Bhd v Iswaraben Sdn Bhd & Another Appeal [2021] 1 MLJ 1 and Master Mulia Sdn Bhd v Sigur Rus Sdn Bhd [2020] 12 MLJ 198 of the same panel of the Federal Court. Both decisions concern the construction and application of section 37 of the Arbitration Act on ground of breach of natural justice and contrary to public policy of Malaysia by reason of the arbitrator's use of his own skill and knowledge. The same panel reached two diametrically different decision, applying the same threshold tests.

To add to the list is the decision in Malaysian Bio-Xcell Sdn Bhd v Lebas Technologies Sdn Bhd & Another Appeal [2020] 3 MLJ 723 where the seemingly innocuous provision in section 39 of the Arbitration Act took some life. Section 39 hitherto had been viewed as mirroring the provisions of section 37. Yet, in this decision, the Court of Appeal found otherwise; that a stay of a recognition and enforcement of an award in the first arbitration pending the outcome of a second arbitration may still be granted under section 39 as that earlier award is said to have 'not yet become binding' on the parties.

Even within the narrow sphere of recognition and enforcement, the Federal Court recently in Siemens Industry Software GmBH & Co (Germany) v Jacob and Toralf Consulting Sdn Bhd & Ors [2020] 5 CLJ 143, pronounced that it is only the dispositive part of the award that is material and which is registered, not the whole award which contains the reasonings for the award. The Federal Court opined that registering the whole or entire award would or may just undermine the confidentiality of the arbitration proceedings which formed the cornerstone of arbitration. I am not sure if in view of the new confidentiality provisions of the Arbitration Act whether this position would be viewed differently.

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Finally, and this is not at all intended to be exhaustive of the law of arbitration or even commercial arbitration, there is the issue of whether there is still inherent jurisdiction in matters of arbitration as far as the Courts are concerned. In Orange Business services (Netwerk) Sdn Bhd v Dealtel (Malaysia) Sdn Bhd [2019] 1 LNS 771, the Court of Appeal held that the Courts retained such jurisdiction.

So, ladies and gentlemen, just when one thinks that the law on arbitration or even the law of contract or sale of goods is settled, the reports prove you wrong. Why is that so? I hazard the answer lies in the dynamism of arbitration and how its limits are dictated by parties and not by the strict rigid constraints which Courts frequently operate under; and to a large degree, by the dexterity and diligence of counsel and the indomitable spirit of mankind.

Now, with the advent of the pandemic that the whole world is sadly experiencing, life must go on. Thankfully, contracts at any level continue to be made, cross-borders and all. Disputes, unfortunately continue to happen and it is in this regard that resolutions, particularly alternative dispute resolution mechanisms like arbitration continue to play an indelible role.

The field of commerce is extensive and always evolving for the certainty it must generate so that confidence in the system may prosper. And, it is in this regard that I congratulate University Utara Malaysia for their great efforts in organising these Moots. Coming out with the moot problem itself is a huge ask and the effort is highly commended.

Next was to get the logistics fine-tuned and the organisers again surpassed themselves. The virtual platform, which duplicates many courtroom and arbitration room hearings is as real as it gets. We had a glitch this morning, it was at my end. We reconnected and it was safely concluded.

I understand the 12 teams that took part came from India, Indonesia, Nepal, Somalia and Malaysia. That is very commendable what more when you find that the members are still in their early years of legal knowledge gathering; and I am most proud of every single one of you. Your enthusiasm, your passion is most encouraging.

Every one of the novices that we saw this morning hit the ground running and took every advantage of the new platforms of learning. I thus must congratulate each and every mooter, researcher and member of the team for having the strength, the courage and the will to excel.

You are fortunate to be able to continue with the moots using the virtual platform. In actuality, you are living the solutions that practitioners and Courts all round the world are trying to find and define. Do however, remain prepared for physical hearings as that must be the ideal platform. Remember, regardless whichever the platform, there must always be respect for the rule of law and that integrity are cornerstones of good practice of the law. I fully encourage everyone, young and old, to stay on this course.

Finally, I would like to express my gratitude and

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appreciation to all participants for competing in this competition, and to the organising committee of UUM for making this competition a wonderful success. Congratulations. It would be entirely remiss of me if I did not single out the sponsors and judges of the moot without whose participation this competition would not have gone as far as it did these last few days. I urge legal firms and other similarly interested institutions to contribute in the way that Lee Hishamuddin Allen & Gledhill have done as well as AIAC, AIADR and SELECT.

I associate myself with the pride that AP Rohana shared in her speech when informing all that this moot, this ICAMC was wholly organised by the students themselves. Congratulations and well done and I look forward to each of you taking the same pride and passion into your respective legal careers.

Many thanks for inviting the Judiciary and I as the representative from the Judiciary of Malaysia to this Moot Competition. Stay safe wherever you are and I look forward to the next International Commercial Arbitration Moot.

Thank you.

Mary Lim Thiam Suan

Judge of the Federal Court of Malaysia

RECOGNITION AND ENFORCEMENT OF MEDIATED SETTLEMENT AGREEMENTS INTERNATIONALLY: ENHANCING THE USE OF ARBITRATION

Dmitry Davydenko

- Ph.D. in Law
- Associate Professor of the Department of Private International and Civil Law of Moscow State Institute of International Relations (MGIMO)

Currently, the importance of finding the best ways to settle and prevent cross border commercial and other disputes is only increasing. This is due, in particular, to an increase in the number of such disputes, and there is every reason to believe that their number will only grow in the foreseeable future.

The performance of contracts, especially long-term ones, in accordance with their terms often becomes impossible or extremely burdensome for a party. At the same time, many parties are forced to restrict the budget for the settlement of disputes.

Mediation is one of the most effective procedures for the amicable settlement of transnational disputes.

It is often important for the parties to the dispute to ensure the expedient international enforceability of the settlement agreements. Therefore, the parties may be attracted by the possibility of an arbitral tribunal making an award on the terms agreed in the settlement agreement. For example, Article 12(3) "Mediated agreement" of the Russian federal law on mediation provides that a mediated settlement agreement reached by the parties as a result of a mediation procedure carried out after the dispute was referred to a court or an arbitration tribunal may be approved by a court or an arbitration court as a settlement agreement in accordance with procedural law or the law on arbitration courts and international commercial arbitration.

Similarly, the Federal Law of December 29, 2015, No. 382-FZ "On Arbitration (Arbitral Proceedings) in the Russian Federation" in Art. 49(5) ("Application of Mediation Procedure to a Dispute Pending Arbitration") provides that a mediated settlement agreement concluded by the parties to the arbitration in writing based on the results of the mediation procedure in respect of a dispute that is pending arbitration may be approved by the arbitral tribunal as an arbitral award on agreed terms at the request of all parties to the arbitration.

Therefore, if we interpret the law literally, to enjoy such expedient enforcement regime the parties must first apply to the arbitration, and then only initiate mediation. In this case, they will be able to request the arbitral tribunal to render an arbitral award on the terms agreed in the mediated settlement agreement. At the same time, one should take into account the principle of favoring the amicable settlement of disputes by the parties (*favor conciliationis*)

RECOGNITION AND ENFORCEMENT OF MEDIATED SETTLEMENT AGREEMENTS INTERNATIONALLY: ENHANCING THE USE OF ARBITRATION

existing in law of many States, as well as the principles of the parties' autonomy and discretion. If applied to the situation under consideration, then applying to arbitration to render an award on agreed terms should be allowed and legitimate even where the settlement was reached before commencement of the arbitral proceedings.

If a mediated settlement agreement is reached in the course of the arbitration and, at the request of the parties, the arbitral award has been made by the arbitral tribunal on agreed terms, then it may, if necessary, be enforced abroad as an arbitration award under the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 ("New York Convention"). However, this often entails quite significant costs for the parties, since they will have to pay for the arbitration fee, in whole or in part.

Some national laws and arbitration rules provide for the possibility of vesting by the parties of the mediator the functions of an arbitrator solely for the purpose of making an award on the terms agreed by the parties. The presence of such a possibility in the regulations of arbitral institutions can also be very attractive for a number of parties.

However, if the mediated settlement agreement was concluded before the commencement of the arbitration, then there is a risk that a foreign court will refuse to enforce it, since the existence of an unresolved dispute may be considered as a prerequisite for going to arbitration. Meanwhile, if the mediated settlement agreement has been already concluded, then, as can be assumed, the appeal to arbitration took place when no dispute existed between the parties: it was settled in such an agreement. Examples of this approach of the courts in practice are available, for example, in 2019 in the case of *Castro v. Tri Marine Fish Co. LLC* the United States Court of Appeals for the Ninth Circuit denied recognition and enforcement in the United States of an arbitration award rendered in the Philippines precisely on the grounds that the parties settled the dispute by agreement even before they initiated arbitration for the purpose of making an award. The court considered that, in fact, there was not an arbitral award within the meaning of the New York Convention, but only an agreement between the parties.

This problem can apparently be solved at the global level if UNCITRAL clarification is adopted: a recommendation for the application of the New York Convention in the spirit of *favor conciliationis*. UNCITRAL practice already has an example of a recommendation on other aspects of th application of the New York Convention.

It is also advisable to make appropriate changes to Art.30 of the UNCITRAL Model Law on International Commercial Arbitration of 1985 and, accordingly, national laws based thereon, such as the Law of the Russian Federation of July 7, 1993, No. 5338-I "On International Commercial Arbitration" ("Russian Law on International Commercial Arbitration") (*see suggested wordings below*).

RECOGNITION AND ENFORCEMENT OF MEDIATED SETTLEMENT AGREEMENTS INTERNATIONALLY: ENHANCING THE USE OF ARBITRATION

Art the level of participants in civil law turnover, the problem can be solved (unless prohibited by the applicable law) by including in the mediated settlement agreement of a condition precedent: the agreement will acquire legal force only if the arbitral tribunal approves it, i.e. makes an arbitral award on the agreed terms. Until the agreement is approved by the arbitral tribunal, it will not be considered valid. Accordingly, the dispute will not be considered terminated, i.e. the condition for applying to arbitration will remain.

However, such a solution - to make the legal effect of the agreement dependent on the approval of the arbitral tribunal - although apparently elegant, may likely be acceptable not to all parties.

Therefore, the legal refulation and interpretation need amendments. *De lege ferenda* in particular:

1.

At the UNCITRAL level, it is proposed to develop a recommendation on the application of the New York Convention: namely, to recommend to the Contracting Parties to apply the Convention to those arbitral awards on agreed terms, which were rendered as a result of the parties' recourse to arbitration solely for making such an award under the conditions, when the dispute has already been settled by them in an amicable agreement, in particular, resulting from mediation.

2.

It is proposed to amend paragraph 1 of Art.30 "Settlement" of the UNCITRAL Model Law on International Commercial Arbitration and, accordingly, Art. 30 of the Russian Law on International Commercial Arbitration, supplementing it with the second subparagraph:

"An arbitral award on agreed terms may be rendered by the arbitral tribunal also if the parties, without resorting to litigation, settled the dispute by settlement agreement during the mediation procedure and then applied to arbitration solely for the purpose of making such an award by the arbitral tribunal."

MEDIATING TRANSNATIONAL DISPUTES WITH RUSSIAN PARTIES: LEGAL BACKGROUND AND OPPORTUNITIES

Dmitry Davydenko

- Ph.D. in Law
- Associate Professor of the Department of Private International and Civil Law of Moscow State Institute of International Relations (MGIMO)

Mediation is one of the most effective procedures for the amicable settlement of transnational disputes. If, as a result of out-of-court mediation, the parties enter into a settlement agreement, then the possibility, procedure and international enforcement depend on the applicable law. For example, under Russian law, if the settlement agreement resulted from mediation conducted in absence of a civil litigation, such agreement constitutes a civil law contract which, unlike settlements reached during litigation, does not have direct enforceability by means of a court approval. Therefore, it is enforceable by commencing a new litigation on the ground of breach of contract. At the same time, the approaches of the countries differ significantly. This results in a lack of legal certainty, which is highly undesirable for foreign trade.

Issues of international recognition and enforcement of mediated settlement agreements fall within the scope of the United Nations Convention on International Settlement Agreements Resulting from Mediation of 2018 (the Singapore Convention). It contains a mechanism that is balanced as per the rights of the parties and the public interest: that is, it provides for proceedings under a simplified under a simplified procedure with a uniform and exhaustive range of grounds for refusing to enforce. However, the Singapore Convention is currently effective only for a very limited number of countries. In particular, Russia, unfortunately, did not express its intention to participate in it . It appears that Russia's participation is expedient and does not entail significant risks for it, given the balanced nature of the convention and the possibility of entering into it with reservations, for example, excluding its applicability for government agencies and persons acting on their behalf (Article 8 of the convention).

Notarial certification and direct executive force

In Russian law, since October 2019, there is a possibility of giving a mediated settlement agreement direct executive force by certifying it by a Russian notary public. The only condition is that the settlement, regardless of the

MEDIATING TRANSNATIONAL DISPUTES WITH RUSSIAN PARTIES: LEGAL BACKGROUND AND OPPORTUNITIES

applicable substantive law, must be reached by the parties in accordance with the agreement on the mediation procedure compliant with the Russian law on mediation (i.e. a written agreement specifying the subject matter of the dispute, the mediation rules etc.). For the enforcement of the settlement in Russia the scope of the dispute must comply with the Russian law on mediation which is very wide and includes, in particular, any disputes arising from business and other civil relations, as well as labor, family and public law disputes. The dispute should not concern non-parties' or public interests.

This makes it more attractive for foreign companies to conclude transactions and resolve possible disputes with Russian commercial entities. Indeed, when settling disputes arising from cross-border contracts through mediation, there are now guarantees that the terms of the reached mediated settlement agreement will be enforced in Russia without any lengthy procedures and difficulties.

However, there is another side of the coin: the possibility of compulsory execution of mediated settlement agreements certified by Russian notaries outside Russia is important for Russian participants in cross-border economic activity. The property of non-Russian parties is usually located outside Russia. Consequently, the question is relevant whether it is possible to ensure the transnational recognition and enforcement of mediated settlement agreements reached in business disputes which were notarized in Russia . The answer to this question depends, first of all, on the existence of an appropriate international treaty. Some such treaties already exist: in particular, they include the CIS regional Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters of January 22, 1993 (Minsk Convention). In paragraphs 1 (a) and 2 of Art. 54 "Recognition and enforcement of decisions" it establishes that each of the contracting parties under the conditions stipulated by the convention, recognizes and enforces notarial acts (that is, a document certified or issued by a notary such as a contract) in respect of monetary obligations issued in the territories of other contracting Parties. Their recognition and enforcement are carried out in accordance with the legislation of the requested contracting Party.

However, its provisions do not create sufficient legal certainty: in particular, the convention expressly establishes the conditions for the international enforcement of only judicial decisions of CIS state courts, or rather, the grounds for refusal to enforce them abroad. These grounds are hardly suitable for notarial acts due to their very nature.

Also, unfortunately, the Russian Law on Enforcement Proceedings and other Russian domestic laws does not contain express provisions on the procedure for the execution of contracts certified by foreign notari.

MEDIATING TRANSNATIONAL DISPUTES WITH RUSSIAN PARTIES: LEGAL BACKGROUND AND OPPORTUNITIES

Russian legal treaties

There are applicable provisions in only few out of circa 70 Russian legal treaties on mutual legal assistance . Namely, Art. 26 of the Convention between the USSR and the Italian Republic on Legal Assistance in Civil Matters (Rome, January 25, 1979) "Settlement Agreements and Notarial Acts" provides that the provisions of the convention on the recognition and enforcement of judgments in civil matters also apply to notarial acts in relation to monetary obligations.

Consequently, the convention creates the basis for the enforcement in Italy of mediated settlement agreements, containing monetary obligations and certified by a Russian notary.

It is also possible, albeit with a reservation, to include the Treaty between the Russian Federation and the Republic of Poland on legal assistance and legal relations in civil cases (Warsaw, September 16, 1996) as applicable to this issue. In particular, its Art. 52 provides for cross-border enforceability of notarial deeds having the force of an executive note under the legislation of the contracting Party in whose territory they were made.

It should be noted that the concepts of "notarized agreement" and "notary's executive note" arguably constitute two different notarial procedures. For example, in Russian law, they are regulated by different chapters of the Fundamental of Legislation on Notaries (Chapters X and XVI, respectively). At the same time, the consequences of the executive note on the contract and its notarization can be considered equivalent in terms of the purposes of enforcement.

However, the overwhelming majority of Russian international treaties on legal assistance, unfortunately, currently do not contain provisions on mutual recognition and enforcement of notarial acts. Also, regrettably, there are no provisions on notarized settlements in the Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters 2019. Including such provisions would be advisable, given the absence of a separate universal similar convention on notarial acts.

Conclusions

The development of international mediation with the participation of Russian parties to a certain extent depends on the degree of involvement of Russian documents, including court judgments and notarial acts in the international document circulation. In particular, it depends on the development of instruments for cross-border recognition and expedited enforcement of notarial acts.

However, even now Russian law provides sufficient grounds for enforcement of mediated settlements notarized in Russia, including those reached with non-Russian parties regardless of the applicable substantive law.

Third-Party Funding of Commercial Arbitration in Mainland China a Promising Future

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Introduction

In the past decades, third-party funding (TPF) in commercial arbitration has grown rapidly in many countries such as Australia, United Kingdom, United States and others. TPF in commercial arbitration is where an unrelated third party provides monetary support to a party involved in a legal claim; in return, that third party has the right to profit from that claim. This arrangement has become increasingly popular. The purpose of this paper is to introduce and discuss the recent developments and prospects of TPF in China's commercial arbitration scene.

1. Development of Third Party Funding in China

Due to historical reasons, Hong Kong and Mainland China have different legal systems. In Mainland China, TPF rules are emerging, while in Hong Kong such rules have been expanded. This paper will focus only on TPF in Mainland China.

1.1 Third Party Funding in Mainland China

1.1.1 Legislation.

To date, TPF in commercial arbitration rules are not prescribed in any Chinese laws. Chinese laws have neither expressly prohibit TPF in arbitration, nor recognize it. The current applicable statutory law in China is the **Arbitration law of the People's Republic of China** (Arbitration Law) which was enacted in 1994 and was revised twice in 2009 and 2017 respectively. It does not have any specific provisions regulating TPF. The reason for this is because arbitration fees in China are more competitive and affordable than other countries. There is no real necessity for parties to seek TPF. In China, arbitration fees in commercial arbitration (including an arbitrator's remuneration) generally account to only 1% to 2% of the disputed ammount.

For instance, there is a dispute amounting to 20 million CNY, the arbitration fee is only 201,000 CNY should any of the parties make a request with the Beijing International Arbitration Center (BIAC) to refer the dispute to arbitration. If the request was made at the China International Economic and Trade Arbitration Commission (CIETAC), the arbitration fee is only 335,000 CNY. Therefore, the arbitration fee may not be

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financially burdensome to the parties, especially if compared with the amount in dispute.

1.1.2 Arbitration Rules

Since the Arbitration Law does not make any specific provisions in relation to TPF, TPF is also rarely touched on by the arbitral institutions in China (numbering more than 200 in Mainland China itself) in their arbitration rules. However, the Hainan International Arbitration Court (HIAC) has recently prescribed rules relating to TPF.

Under the HIAC (Hainan Arbitration Commission) Arbitration Rules 2020, Chapter 7, Article 72, Paragraph 1 states that third-party litigation funding in international commercial arbitration is possible. On the other hand, Paragraph 2 prescribes the duty to disclose the nature of the funding arrangement by the third-party and the identity of the said third-party.

1.1.3 The Practice Of TPF

Since 2015, there are some major and prominent Chinese companies which have started to engage in the TPF industry, such as Bangying Network Technology (Beijing) Co., Ltd, Winfire Information Technology (Shanghai) Co., Ltd. Shenzhen Qianhai Dingsheng Investment Co., Ltd and many others. In recent years, these companies have undertaken many cases with high value of dispute and of great social influence or significance. For exampe, before December 2019, Shenzhen Qianhai Dingsheng Investment Co., Ltd. had funded more than 500 cases, the sum of which exceeded 4.9 billion CNY.

1.1.4 The Academic Research Of TPF

Since 2013, Chinese scholars have begun to pay attention TPF, but focused mainly on international investment arbitration. However, from 2016, these scholars, recognizing the change in the legal landscape, began to take interest in TPF for commercial arbitration. The critical issues identified include Information Disclosure, Security for Costs, Privilege and Confidentiality. In December 2018, a company providing TPF services named Qianhai Ding Litigaton Investment Co., Ltd. took the monumental step in issuing a TPF guideline called the "Guidelines for Third-Party Funding Arbitration.". This is the first known guideline in Mainland China which sets out and clarifies TPF in arbitration proceedings.

2. Feasibility Of TPF In Mainland China

2.1 China Has No Tradition Of Prohibiting Champerty And Maintenance

China's legal system is by and large a civil law system and its roots are heavily influenced to the civil law systems existing in other advanced countries. As such, the well-known principles of champerty and maintenance which prohibit TPF (largely prevalent in countries which adopt the common law system) would not be an issue in China. There is also no established tradition of prohibiting the practice of champerty and maintenance in China.

However, throughout the history of China, there exists a culture and belief which does not encourage litigation. According to Confucianism, litigation deviates from the ideal state of harmonious co-existence between the people and therefore violates the code of conduct in ancient Chinese society. A truly harmonious society should have no dispute and no litigation.

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This idea is advocated by legislators because it helps ruling governors manage efficiently and conveniently.

Nevertheless, litigation were already quite active for a long time in the history of China. It is estimated that from the Song Dynasty (960 AD onwards), the act of litigating has expanded throughout the country in varying degrees. People in many places could easily obtain access to courts, especially later on in the Ming (1368 AD onwards) and Qing (1644 AD onwards) Dynasties, especially in the highly economically developed Jiangnan region. It shows that the social ideas of no dispute and no litigation is just a wishful thinking of the ruling government at that time.

China's no litigation culture is not so much the social model of the people but rather the culture of governance by the ruling class at the particular era. People's fear of litigation did not originate from litigation itself, but from the suppression of litigation by the state. In fact, once there was a dispute or when the rulers have eased their suppression of litigation, people's awareness and actions in defending their rights and interests by way of litigation began to stand out. At the same time, with the introduction of foreign legal concepts and the popularity of the notions of freedom, democracy, equality and rule of law under the development of market economy after the reform and opening up policy, litigation was no longer a symbol of 'evil', but rather, an important way to solve disputes and realize justice.

In contemporary China, there are many policies which exists to promote people's access to justice. The usage of Contingency Fee is the best example. Article 11 of the Measures for the Administration of Lawyer's Fees issued in 2006 by the National Development and Reform Commission and the Ministry of Justice, prescribes that in a civil case, the lawyer and the client can make a Contingency Fee contract. This means that the lawyer's fees payable will be proportionate to the compensation recovered by the claimant, but up to a maximum of 30%. In addition, the party does not need to pay any fees to the lawyer if no compensation is received. The author is optimistically convinced that China's laws and regulations on TPF will soon be refined to take into account the current needs of society and businesses.

2.2 The Current Legal Framework For TPF In China Is Legitimate

Even though it has been submitted above that there has been no prohibition on champerty and maintenance in China, this in itself does not seek to prove that the current legal framework concerning TPF is truly effective. As such, in order for one to enter into TPF agreements, it is necessary to examine whether the specific terms of the intended TPF agreement are compatible with the legal system in China, notwithstanding the fact that TPF agreements are by and large applicable under the relevant substantive laws of China.

First of all, TPF is the result of the consensus between parties. Under the principle of free will prescribed in **China's Civil Code**, a party can decide its own affairs and engage in various civil activities or transactions within the scope permitted by law. Parties can freely establish, change or terminate civil legal relations according to his or

Third-Party Funding of Commercial Arbitration in Mainland China a Promising Future

her own will. As TPF is a legal relationship between the funder and the funded party based on the funding contract, a TPF arrangement certainly falls within the principle of autonomy of will.

Secondly, TPF does not violate the mandatory provisions of the relevant administrative laws. Some scholars have pointed out that the higher percentage of sponsors in the TPF agreement after winning the case is more likely to violate Article 680, paragraph 1 of the Civil Code which is, *"It is forbidden to lend at high profits, and the interest rate of borrowing shall not violate the relevant provisions of the state"* as well as the provisions prohibiting high-profit lending in the Opinions on Several Issues. In Practice, some Courts have recognized TPF agreements as an act of lending, citing Article 53, paragraph 3, of the Contract Law, *"The contract covering up illegal purposes in legal form is invalid"*, and therefore the TPF agreement in question is deemed invalid.

On this, it is submitted that TPF agreements do not actually violate the principle of high-profit lending (premised upon the TPF agreement constituting a loan contract), as TPF agreements do not fall within the definition of a loan contract under Article 667 of Chapter 12 of the **Civil Code** of China. For a typical loan contract (which is envisioned under article 667), a borrower must repay the loan upon maturity of the agreed term and pay the interest accrued thereon. However, for TPF agreements, the funded party needs to repay the loan only in the case that it wins the case.

Finally, TPF does not generally violate or offend social norms, customs and public order. Article 8 of the Civil Code stipulates that a person who is engaged in civil activities shall not violate the law or violate public policy. Article 153, paragraph 2, on the other hand stipulates that actions which violate public policy are invalid. The fact that TPF promotes access to justice, prevents abuse of proceedings and improves litigation efficiency shows that it does not violate public policy in principle. However, given that TPF is increasingly popular, new and improved measures need to be introduced to prevent the potential adverse consequences of TPF in the future.

2.3 Chinese Market On TPF In Commercial Arbitration

According to the China International Commercial Arbitration Annual Report (2018-2019) issued by the CIETAC in 2019, 255 arbitral institutions nationwide registered 544,536 cases in 2018, an increase of 127% year-on-year; with the total value of dispute amounting to 695 billion CNY, an increase of 30%. The increase in the amount of cases and inevitably the increase of arbitration fees lays the foundation for more TPF agreements. TPF can help parties with financial issues to defend their rights and interests via arbitration. Especially for many small medium-sized enterprises (SMEs) with insufficient financial strength, TPF can increase the confidence of SMEs to protect their rights and ultimately bring a profound impact on maintaining the efficient operation of the said SMEs.

In addition, the ongoing efforts made by China towards the Belt and Road Initiative have boosted the international trade and foreign investment for China and many other countries. Foreign commercial disputes will inevitably increase. More and more international commercial arbitration would be initiated in China. Acknowledging TPF and expanding or refining its rules

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would make Chinese arbitral institutions an appealing choice for many disputing parties. It also would improve the competitiveness and influence of these Chinese arbitral institutions. This is also an objective being aimed at by "Opinions on Improving the Arbitration System to Improve the Credibility of Arbitration" issued by the General Office of the State Council of the People's Republic of China, on December 31, 2018.

3. Conclusion

In Mainland China, TPF agreements in commercial arbitration is still relatively new and not particularly addressed by the current laws. However, because China's legal system is by and large based on the civil law system, there is no historical barrier to the adoption and usage of TPF in China. As the number of commercial arbitration cases and costs of commercial arbitration increase, TPS is now encouraged by Chinese legislative and judicial bodies. China has a huge and vast TPF commercial arbitration market and there are already investment companies engaged in the TPF business, with particular focus on commercial arbitration. Third-party funding will be recognized in China. IT is just a matter of time. Of course when expanding or refining the rules of TPF, the critical issues such as information disclosure and adverse costs or security for costs must be addressed. Hong Kong as a predecessor might be the reference and the model for the development of TPF in Mainland China.

Intern's View on AIADR

Chua Qian Ren,
Brickfields Asia College, Malaysia.

Internship Period:
17/05/2021 till 09/07/2021

I can still recall the first day of internship at the Asian Institute of Alternative Dispute Resolution (AIADR), actively catching up with the patterns and exposure of the working culture of the Institute, learning about ADR topics in particular.

It was before the announcement of the Full Movement Control Order (FMCO) in Malaysia, I am blessed that I was able to work in the office for the first two weeks of the internship, grow through the task assigned by the exceptionally helpful and interactive supervisor Ms Heather Yee and nurture by her patient guidance. Not only had I been encouraged to explore various possibilities of solving a task, but also I had been awarded the privilege and flexibility to execute my proposal.

This was a great learning exposure in AIADR, as I had been rewarded with self-confidence and enhanced my problem-solving mindset which is a life teaching I can bring along in my career.

I had also been delegated the mission to assist the third Annual General Meeting (AGM) of AIADR which had been held virtually. Coordinating the Ad-Hoc Arbitration Forum 2021 with AGM on the same day is not an easy task. While working with Ms Heather and our vital executing teammate marks one of the key highlights of my internship with AIADR. Not to mention we were enlightened by the latest professionals' opinions and development in the ADR fields, but also the earning of trust and bond together with the invaluable experience to work in the team.

On top of that, it is truly undeniable that the internship facilitates a self-developing room for motivated students that are interested in venturing into the ADR's world. By researching and analysing the invited forum topics that have been held by various international ADR centres around the globe, it has given me practical insights and professional perspective towards the approaches of solving real-world problems, kindling the torch of ADR's ambition and broadening my prospective career in the legal industry.

I would not have had such exposure without the internship opportunity provided by Datuk Professor Sundra Rajoo, which I miss the office days while being inspired by his valuable experiences shared after work while enjoying dinner together. I am glad that I was able to hear his sharing before my internship ended while working from home due to the lockdown order, our teams were having a delicious

Intern's View on AIADR

Chua Qian Ren,
Brickfields Asia College, Malaysia.

Korean lunch virtually together with Datuk through Zoom.

I would have learned many things the hard way if it was not being guided by Ms Heather Yee. Her kindness in work and after work as a supervisor had profoundly changed my impression of the corporate culture that we should initiate and pursue. The simplicity of her life principle reminded me that when dealing with life, we should have courage and be kind.

My working from home period of internship would not be so cheerful and contented without the legal executive Charlotte Woo's coordination and initiatives. I would not enjoy her "work hard play hard" tenet towards every mission if without her.

To every fellow interning colleague, I enjoy every learning curve we had gone through together, this will never be forgotten.

With deepest gratitude, I wish the AIADR with further success ahead.

AIADR PAST EVENTS

16 JUNE 2021

Ad Hoc Arbitration Forum 2021: Seeking Private Justice In Times Of Crisis

The AIADR in collaboration with the sponsoring partners of Ricky Tan & Co, Chung Ting Fai & Co and JustLaw, successfully held the 2021 Ad Hoc Arbitration Forum where we highlighted the dire need for a greater practice and application of ad hoc arbitration during the Covid-19 pandemic. Joined by ADR professionals from across continents, the Ad Hoc Arbitration Forum saw a record high number of participants tuning in from various countries.

This event was proudly supported by our supporting partners the Chinese Arbitration Association Taipei, Malaysia Productivity Corporation (MPC), Hainan International Arbitration Court (HIAC), Universiti Teknologi Mara Faculty of Law (UTM), The Associated Chinese Chambers of Commerce and Industry of Malaysia, Hainan University Law School, Nanning Arbitration Commission, Nanning Lawyer's Association, China-ASEAN (MACAO) Arbitration Association, China-ASEAN Legal Cooperation Center, ZhiZhong Beijing Technology Co., Kovise Foundation Conflict Resolution International (KFCRI), and the Thailand Arbitration Centre (TAC),

AIADR PAST EVENTS

16 - 17 APRIL 2021

2021 2nd Belt & Road Commercial Law Forum

The President of AIADR , Datuk Professor Sundra Rajoo was invited as a guest speaker at the 2021 2nd Belt & Road Commercial Law Forum. The event was held by the International Commercial Dispute Prevention and Settlement Organization (ICDPASO)

JULY 2021 - SEPTEMBER 2021

AIADR Virtual International Internship Programme (China)

Hi, I am Roy! I am a 20 year-old law student. I am currently doing my internship with AIADR. During my spare time, I enjoy watching movies and swimming. I appreciate this internship opportunity with AIADR and look forward to learning from the team!

Hi, I am Aurora! I am happy to have this opportunity to join AIADR. I have made many excellent and considerate friends. AIADR is truly a progressive and professional yet friendly family. I am sure this internship experience will become a wealth that will be my lifelong benefit.

Hi, I am Alicia! I am a sophomore at the Anhui University. I am currently reading law, and have a passion for the English language. In my leasure time, I enjoy listening to music and working out. I appreciate this learning opportunity with AIADR and am certain that this internship experience will be of a valuable asset in my life.

FURTHER DETAILS

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Route 2:
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Who is eligible?

ADR or legal practitioners who have accumulated enough experience and would like to progress in the ADR forum with a view of qualifying for fellowship or panel certification.

Costs

One-time registration fee	US$ 25
Annual Fee	US$ 100
*(*1st year annual fee would be pro-rated based on date of application)*	**US$ 125**

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Route 1:
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√ Practicing lawyers, solicitors, barristers, in-house counsels with minimum 10 years' experience and with 3 years in ADR forums

Route 3:
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√ Has been a Member of another international institute recognized by AIADR to be of equal standard and qualifications as for the Member of the Institute

Route 2:
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√ Successfully completing Module 1 and Module 2, or passing Recognised Courses equivalent to Module 1 and Module 2 from the approved list of institutions

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- Priority of registration and member rates for courses, training and events by AIADR
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Who is eligible?

Any individual who is fit and proper person in all respects, and satisfies the Council that the person is committed to the Institute's Code of Ethics and Conduct.

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One-time registration fee	US$ 25
Annual Fee	US$ 50
*(*1st year annual fee would be pro-rated based on date of application)*	**US$ 75**

Who is qualified?

Route 1:
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√ A degree in Law with good grades
√ Completed the internship if applicable
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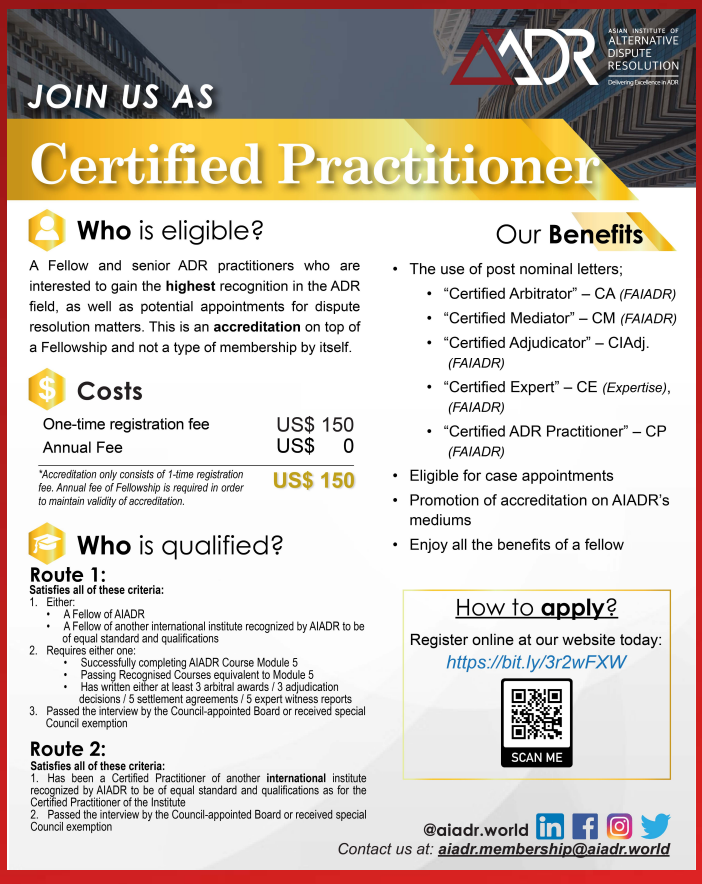
FURTHER DETAILS



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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!

Next Cut-off date for article submissions:

For Newsletter : **15 September 2021**
For Journal : **1 November 2021**

Direct your queries to *aiadr.editor@aiadr.world.*