

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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ADR Centurion

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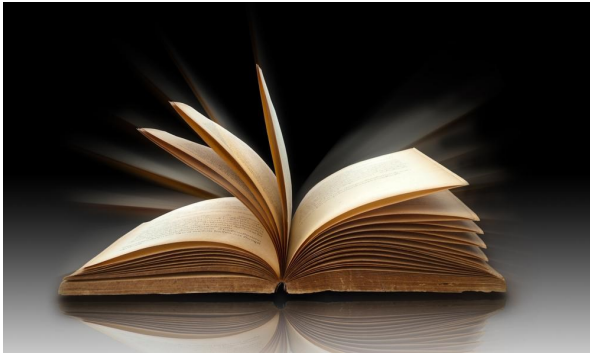
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MEMBERSHIP RULES UPDATE

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

UPDATE MEMBERSHIP RECORDS ONLINE

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

Log in to our website or write to aiadr.membership@aiadr.world should you need further assistance.

EXPRESSION OF INTEREST FOR COLLABORATION OF WEBINARS

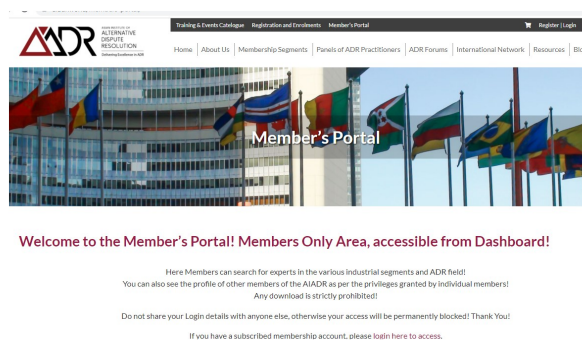
Members are welcome to reach out to the Secretariat for assistance or collaboration in organizing webinars on ADR topics of their choosing. No charges are levied.

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

UPGRADE YOUR MEMBERSHIP & GET ACCREDITED AS CERTIFIED PRACTITIONER

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

Apply through our website or write to aiadr.membership@aiadr.world for further clarification.



AIADR ANNOUNCEMENT



AIADR Wishes

We at Asian Institute of Alternative Dispute Resolution (AIADR) would like to thank all for the continuous drive and support in our efforts to deliver excellence in ADR.

We hope you had an amazing year! Thanks to all of your support over the past year and here's to wishing you a great 2022!

AIADR HIGHLIGHTS



Dear Members,

A cordial welcome to the 16th issue of our ADR Centurion. On behalf of the Asian Institute of Alternative Dispute Resolution (AIADR), I extend our New Year together with the Lunar New Year wishes to all. We welcome another year full of opportunities, growth, success and prosperity. We will move forward with our everyday life while keeping well and healthy.

AIADR as a member's institute continues on its effort

Message from the President

Datuk Professor Sundra Rajoo

to build up a global platform for alternative dispute resolution (ADR). As we unfold yet another year of success, we will create a bigger success curve in the alternative dispute resolution (ADR) industry as a whole.

AIADR has focused on diversifying the perimeters to ensure that we reach wider coverage of jurisdictions to aid our efforts of making a change in the ADR industry. Substantially, the support and encouragement that we have received over the past years from various organizations and institutions across the globe has succored us in expanding and achieving our vision as an organization.

Just as the saying goes, "Rome wasn't built in a day", it takes time to create great work and we continue to strive in bringing more to the ADR

industry. We are thankful for the help of multiple groups of individuals over the years in contributing their expertise and knowledge towards AIADR.

I express my heartiest gratitude and thank you to the AIADR Secretariat, PDEC, Office Bearers, collaborating organizations, and our newest subscribers for helping AIADR achieving its goals. I invite all of you to look out for our future updates and posts on our work and upcoming initiatives on our social media handles, LinkedIn, Facebook, Instagram and Twitter.

At this time, I take the pleasure to share with all members some of our recent work and initiatives. The following are some of our recent work and initiatives:

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1. AIADR joined in the 'Mediation for Dummies' organized by Asian Law Students' Association Brickfields Asia College and Amnesty Malaysia BAC Club as a supporting organization for the event. We also had our Head of Secretariat, Ms Heather Yee Jing Wah as the panelist for the panel discussion. The discussion was purposeful for students to be equipped with a starter pack of introductory to mediation and an insightful view of the mediation field.
2. In the effort of spreading the work of AIADR to other jurisdictions, AIADR partnered with the Regional Centre for International Commercial Arbitration Lagos in a live webinar on 'Enhancing Arbitration Friendly Jurisdiction in Nigeria: "Thematic Interplay of Government, Arbitral Institutions and the Users"'. As part of the panel, I represented AIADR to share my experiences on the journey of how the Asian International Arbitration Centre (AIAC) and Kuala Lumpur turned out to be the leading arbitration centre in Asia. I was privileged to share the rebranding journey of AIAC since Kuala Lumpur Regional Centre for Arbitration (KLRCA) and how AIAC's arbitration rules accorded with the world recognition as well as many other sharing in the session.
3. AIADR continues its service of ensuring that knowledge is shared to a vast group and in the efforts, AIADR partnered with University Teknologi Malaysia (UTM) in an online global classroom on the 'Construction Dispute Resolution during the Pandemic'. I was given the honor to give a lecture in the global classroom via Webex on the problems related to workforce, disruption of the global supply chain as well as the legal issues that arise out of it and many other alternative dispute resolutions to the matter.
4. AIADR together with the Hyderabad Arbitration Centre jointly organized a webinar on 'An International Perspective: Dispute on Law Governing The Arbitration Agreement'. This webinar covered various topic of discussion by dwelling into the law governing the arbitration agreement in different countries' perspectives. The topic includes disputes on the law governing the arbitration agreement from

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the Gulf Cooperation countries perspective, the tribunal's perspective while considering the law governing the arbitration agreement and more. I thank both the organization for giving me the opportunity to be present to give the opening remark of the webinar.

5. In my continuous effort of spreading my knowledge and experiences, my 2,400 pages book in 2 volumes on 'Standard Form of Building Contracts Compared' was launched in an event organised by L2 i-CON, Legal Plus and the Publisher Lexis Nexis on 14th January 2022. AIADR was a supporting organisation for the hybrid book launch event. I hope that the book will be a useful guide to the construction industry moving forward.

6. My 1,928 pages book on "Law, Practice and Procedure of Arbitration in India" as published by Thomson Reuters India is offered as to serve India and the global arbitration community. It is being launched on 25th February 2022 with AIADR being the organiser for the launch.

7. Furthermore, AIADR is proud to be the supporting organization of Society of Construction Law India in the International Virtual Conference 2021. Along with that, I had the opportunity to be part of the speaker panellist in the event discussing on the 'Allocation of Risks in Construction Contracts: The Balancing Act'. The session covered the importance of appropriate risk allocation and why risk allocation is necessary in construction contract.

8. Lastly, we are once again proud to be an institutional partner of the Construction Arbitration Mentorship Program 2022 by Semu Legum. The event includes many experts of the industry including Mr Julian Bailey, a prominent figure in construction law as the speaker.

2021 has been a great and fruitful year. We thank you for your continuous support and contribution to AIADR. Our focus this year will be on diversifying our membership base. Please spread the work we do here to your close friends and colleagues. Stay safe, healthy and sincere good wishes.

ADR VIEWS



About the Authors

Dr Hemant Garg

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Introduction

Indian laws have been amended numerous times to bring the country's legal regimes in line with those of other leading commercial law jurisdictions in the interest of integrating with the global business community. Arbitration, Mediation and Concilia-

Alternative Dispute Resolution: Lessons for India from the world (global trends in alternative dispute resolution mechanisms like arbitration, mediation, conciliation, negotiation that can be implemented in India in the current ADR scenario in India)

tion as alternate dispute resolution methods have a long history. The Arbitration, Mediation and Conciliation as alternate dispute resolution methods have a long history. The Arbitration and Conciliation Act 1996 was modelled after the UNCITRAL (United Nations Commission on International Trade Law) framework of laws to modernize Indian arbitration law, align it with best global practices, and establish India as a global arbitration hub and a commercial hotspot. This only means that right from the inception of the law, the legislators and policymakers have been aware of the fact that they have to keep pace with the global trends, commercial requirements and act in the interest of justice. Another reason why legislators tend to focus on the ADR laws on priority is also the long-drawn pendency and the adding burden of new cases being filed in the Indian courts every day. Indian courts have amassed sizable backlogs ranging to nearly 38 million pending cases, according to the statistics rolled out in the year 2020. These are staggering figures but there is a concerted effort which is being made to promote ADR mechanisms such as arbitration, negotiation, mediation, conciliation, and Lok Adalat (people's courts).

Dating back in the year 2002, an amendment to the Indian Civil Procedure Code gave courts the authority to order the mediation of disputes and to establish appropriate rules to

mediation of disputes and to establish appropriate rules to govern the process. Much later in the year 2015, by granting arbitral tribunals the authority to grant interim measures through a 2015 amendment to the Indian Arbitration and Conciliation Act, 1996, the legislators increased the overall efficacy of alternative dispute resolution mechanisms. Additionally, arbitration proceedings are bound by time limitations, requiring a decision to be delivered within 12 months from the proceedings commence. They are generally preceded by a pre-mediated or negotiated time-bound effort to resolve the dispute between parties. More recently, India's arbitration law was amended in August 2019 to include the concept of an Arbitration Council of India, which will be responsible for promoting and encouraging alternative dis-

pute resolution mechanisms, as well as developing policy and guidelines for uniform professional standards in arbitration (including grading of arbitral institutions and arbitrators) to make the process of arbitration more streamlined and to maintain a quality check. The long-awaited Mediation Bill has also been recently rolled out. These changes have been made with the intent and motive to maintain and rather increase the ease of doing business, resolving disputes, and maintaining the commercial viability of the businesses to incorporate and do business in India. In this process, the legislators and policymakers also refer to the ADR practices followed across the major jurisdictions in the world. This study is an attempt made by the Author to review and analyze the emerging global trends in the ADR space and

the possibility of their application in India.

What is ADR- Looking at the development of ADR in India

As the name implies, Alternate Dispute Resolution is a method of resolving disputes that is distinct from the mainstream adversarial methods. In the past, disagreements, particularly commercial ones, were referred to a neutral entity. This could be a person in a position of authority or a business with relevant experience and expertise. With the passage of time, most of the countries established a formal judicial system. While the formal judicial system remains the most frequently used mode of dispute resolution, a small but growing segment of commerce is turning to alternative dispute resolution for expeditious, if not

necessarily, economical remedies. In India, alternative dispute resolution techniques include mediation, conciliation, arbitration, and Lok Adalat. Except all others, Lok Adalat is conceptually unique to India. Each of these alternative dispute resolution methods have distinct benefits and drawbacks, and depending on the nature of the dispute, one or more of them may be more effective at resolving it. Arbitration is one of the most formal means of ADR, governed by a written agreement and a specific set of procedures to be followed. The Act governing the Arbitration in India is the Arbitration and Conciliation Act, 1996. Unlike arbitration, conciliation is a fewer formal means of dispute resolution and doesn't need an agreement. Mediation is an entirely informal method of resolving conflicts in which the media-

tor acts as a facilitator rather than an active participant in the resolution process. On 5 November 2021, the Ministry of Law and Justice published the long-awaited Draft Mediation Bill 2021 in the public domain to promote and strengthen mediation's position as an effective mechanism. These rules are discussed in the further course of this study. Lok Adalat needs a special mention in any discussion related to ADR. It is the most used form of dispute resolution that caters to very large sections of rural India. While the Lok Adalat is a government-run procedure, it is highly informal, with no court fees or stringent evidence procedures. When the parties reach an agreement, the Lok Adalat issues a binding award with the same enforceability as a civil court decree. To sum up, all these forms of ADR are accepted with the common motive to reduce the burden on

the courts, make litigation cost-effective and justice more accessible to the remotest parts of the country.

Key takeaways and learning for India from the rest of the world

i. Need for a virtual or a platform inbuilt dispute resolution system in India (ODR)

The European Online Dispute Resolution platform requires that all online traders in the EU, Norway, Iceland, and Liechtenstein include an easily accessible link to an ODR platform on their website for consumer information, where consumers can file complaints. Similar approach has been adopted by Mexico, where the Office of the Federal Prosecutor for Consumers, also known as the Federal

Alternative Dispute Resolution: Lessons for India from the world

Consumer Protection Agency (Profeco), is in charge of Concilianet, an online dispute resolution process for consumers who have complaints against merchants of goods and services. Consumers may file complaints online or in person, and the Agency will resolve them via telephone or the internet. Taking a similar approach, India can also include external links to a dedicated ODR platform with an idea to resolve disputes between the service provider and consumer. An effective implementation of this technique can substantially reduce the number of consumer disputes in India.

Indeed, there are success tales bolstering ODR's rise in India, but they are significantly rare. PayPal, for example, has an online dispute resolution centre that works as a neutral third party in settling consumer issues by allowing

disputing parties to settle their differences first through negotiation and then through arbitration if an acceptable settlement cannot be reached. Similarly, NestAway recently introduced an online dispute resolution platform to aid tenants with billing concerns. Independent private ODR service providers have also been developed in India to promote technology improvement and capability for online dispute resolution. These service providers currently offer online consultation, arbitration, and mediation. Despite these efforts, a sizable number of service providers continue to use adversarial conflict resolution procedures, mostly due to a lack of awareness.

ii. Emergency Arbitration

There is considerable controversy in Indian law surrounding the enforcement of emergency awards and orders entered

during arbitral proceedings held in India. The LCI suggested in its 246th Report that the notion of an emergency arbitrator be recognized by widening the definition of an arbitral tribunal under section 2 of the Arbitration and Conciliation Act, 1996. This recommendation, however, was not included in the Amendment Act 2015. The Sai Krishna Committee Report made a similar recommendation. The problem emerged in the well-publicized dispute between Amazon, Future Group, and Reliance, in which Amazon secured an emergency injunction from a SIAC Emergency Arbitrator blocking the Future Group businesses from proceeding with the Rs 24,700 crore retail business monetization agreement. However, doubts have been raised about the enforceability of an emergen-

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cy arbitrator's temporary order in India.

Asia's torchbearers are Singapore and Hong Kong. Both countries modified their constitutions to officially acknowledge the Emergency Arbitrator's temporary orders. Singapore revised its International Arbitration Act to include Emergency Arbitrators in the definition of 'arbitral tribunal'. Similarly, Hong Kong updated its Arbitration Ordinance to add Part 3A, which broadens recognition and enforcement of arbitral awards. The London Court of International Arbitration (LCIA), the American Arbitration Association (AAA), and the International Chamber of Commerce (ICC) have all amended their rules to incorporate this novel concept, which saves time and money while also expediting the process and making the amendments enforceable.

iii. Need for Mediation and Conciliation focused institutes in India

Like the Singapore International Mediation Institute (SIMI), there is a need for institutions dedicated to mediation and conciliation with qualified personnel empaneled in them. Additionally, there is a need for a governing agency that establishes the minimum requirements for mediators and conducts periodic assessments of existing mediators' performance to ensure that the acceptable standards are met at all times.

iv. Mandatory Mediation

Singapore and Turkey are the landmark jurisdictions which have consistently laid emphasis on the importance of mandatory mediation. While the scope of mandatory mediation in India is limited to certain statutes, there has been an elaborate dialogue on making mediation mandatory before all

litigation commences but all efforts have gone into vain. The 1947 Industrial Disputes Act, as well as the Companies Act 2013 refer to a mandatory mediation before parties' venture into litigation. In addition to the former, the Consumer Protection Act, 2019 also provides for mediation. Recently, the Commercial Courts Act, 2015, and the Real Estate (Regulation and Development) Act, 2016, both by way of an amendment included a mandatory pre-litigation mediation. Additionally, Parliament reinstated (Section 89) a provision in the Civil Procedure Code in 1999 that permits Courts to recommend parties to mediation. However, with the exception of these particular legislation, there is no requirement for mandated mediation or other forms of alternative dispute resolu-

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tion (ADR) such as conciliation or arbitration. The Hon'ble Supreme Court in the landmark judgment *Salem Advocate Bar Association vs. Union of India* mandated the reference of disputes to mediation before parties file for litigation, yet till date there is only a selective legislation which include provisions for mandatory mediation before litigation commences. Despite the reinstatement of Section 89 in the Civil Procedure Code, judges are keen on taking conventional approach and fail to direct the disputes towards mediation. The agreements executed between the Parties by default refer to an arbitration or litigation mechanism in the dispute resolution clause, subject to a few exceptions. Taking note of the pendency of cases and backlog before the Courts in India, inspiration can be drawn from Singapore and Turkey and

pre litigation/arbitration mediation can be made mandatory.

v. Effective implementation of the Mediation Bill, 2021

There was a pressing need for a standard statute in India that governs primarily the mediation process and standardize it. A very common and evident example is the Arbitration Act, 1996. There is a significant rise in the eminence of arbitration before and after the year 1996, when the Act was passed, and the same may qualify as a blueprint for the mediation statute which will tentatively be given a green signal soon. Additionally, with over eighteen additional jurisdictions, including Singapore, Malaysia, and Ireland, having enacted a legislation governing mediation, India couldn't afford to be left behind. Although the judiciary is primarily concerned with cases requiring adjudication, there are times when me-

diation approaches might be more appropriate and beneficial to the parties. As a result, the identification of such issues and situations by parties, lawyers, and judges becomes critical in promoting the mechanism.

In the majority of commercial contracts, the dispute resolution provision in the parties' agreement serves as the beginning point for resolution. There are sufficient clauses in place that envision some amount of mediation prior to arbitration but are rarely followed in spirit. By the time a conflict develops, the majority of parties are not interested in communicating or resolving it but only prefer to commence legal actions. The newly proposed mediation statute is likely to stimulate the adoption of a tiered dispute resolution agreement that provides for

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mediation first and then arbitration. Among other things, the Bill emphasizes the availability of interim reliefs, mandatory pre-litigation mediation, disputes unfit for mediation, and clarifies the role of a mediator and the extent of his intervention in the dispute arising between the parties. Now the only tricky part is the effective implementation of this bill, which lies in the hands of policy makers and legislators. India can refer to the success stories of jurisdictions like Singapore to effectively implement the mediation law.

vi. ADR to govern disputes arising out of novel technologies

The United Kingdom (UK) pioneered the development of new Digital Dispute Resolution Rules (UK Rules) for the resolution of digital disputes, particularly those involving the former. The UK Rules in-

corporate a novel concept called 'automatic dispute resolution' or 'on-chain' resolution, which enables the arbitrator to directly implement an arbitrated judgement on a blockchain using a private key. For example, the arbitral tribunal could decide that the losing party deposit compensation immediately into the victorious party's blockchain-based digital wallet. Additionally, the tribunal has the authority to operate, modify, sign, or cancel any digital asset relevant to the dispute through the use of a digital signature, cryptographic key, password, or other digital access grant. We believe that India should start focusing on curating a law and amending the current ones to cover within their ambit the possible legal issues arising out of complex and novel technologies such as blockchains, cryptocurrencies, NFTs, smart contracts etc. With complex technologies such as the aforesaid and the

recently rolled out Facebook led venture called the "Meta", there is a need for the legal systems and legislations to be technically equipped. Cryptocurrency, NFTs etc., are already in circulation without the Government regulating them, and disputes are also bound to arise. Due to the growing adoption of blockchain technology in India, more particularly in the banking and financial services sector, Indian businesses may benefit from an efficient and flexible digital dispute resolution framework. Therefore, keeping that in mind working on the legal framework will only make the use of these technologies legally a smoother experience in India. Recently NITI Aayog also published its draft ODR policy plan in which it discussed the possibility of blockchain-based arbitration capable

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of automating enforceability via smart contracts. This approach resembles the automatic dispute resolution mechanism included in the UK Rules but is still in a very nascent stage.

Recent trends in the ADR- Indian Scenario

i. Virtual Dispute Resolution

Numerous parties have benefited from ADR by resolving their conflicts by using a third party and various forms of ADR. As a result of last year's pandemic, the court system's hearing procedures underwent significant changes and has substantially shifted to a virtual setting. This revolution has benefited some people, but there are also many people who still don't have access to the internet systems. While India has a large absolute number of internet users,

it accounts for roughly 50 per cent of the country's population as per a survey carried out in 2020. This lack of internet access and infrastructure, such as affordable computers, are the primary impediments to virtual dispute resolution's widespread adoption and specifically on this front, India can seek some guidance with approximately 90% of its population having access to and also having an understanding of how to use the internet. The virtual ADR process is advantageous for parties because it eliminates the need for any party or attorney to travel between locations. Both parties can communicate via video conferencing, which allows for both audio and visual communication. In the case of mediation, the mediator can easily communicate with each party separately and assist them in reaching an agreement.

ii. The 2021 Amendments to the Arbitration Act

The 1996 Arbitration and Conciliation Act was amended in 2021 by the Arbitration and Conciliation (Amendment) Act 2021. The Act of 1996 has been amended three times in six years, indicating the legislative intent to amend the Act and make India more arbitration friendly. The aforementioned amendment made two significant changes to the Act, namely, (i) to automatically stay awards in certain circumstances where the court has prima facie evidence that the contract upon which the award is based was tainted by "fraud" and "corruption.", and (ii) omitting the 8th schedule from the main Act. It establishes the necessary qualifications, experience, regulations, and standards to ensure the accuracy of

arbitrators' mediation. These qualifications and general standards were so broad that this section, among other things, prohibited qualified foreign lawyers from serving as arbitrators in India. It appeared to be a significant impediment compared to regions that are more receptive to arbitration, such as France and the United Kingdom.

Conclusion

Alternate Dispute Resolution has already made a significant impact in India, particularly in the context of commercial disputes and has the potential of laying the groundwork for future innovation and enhancement. Numerous newly enacted provisions in ADR contribute to the enhancement of its various aspects. The proposed amendments and suggestions are bound to establish a broader framework and to increase

the exposure to the ADR mechanism, along with ensuring its effectiveness. The learnings and takeaways from relevant commercial jurisdictions across the world will only leverage India's position as a global destination as a choice for arbitration and a commercial hotspot for its resultant ease of doing business.



About the Authors

Professor Maidan K. Suleimenov, Doctor of Law

Chairman of the Kazakhstan International Arbitration (KIA)

Chairman of the Board of the Arbitration Chamber of Kazakhstan

Member of the International Council at the Supreme Court of the Republic of Kazakhstan

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- Conducted and translated by Dmitry Marenkov -

Dmitry Marenkov, FAIADR, FCIArb, Member of the AIADR Editorial Sub-Committee

Interview with Professor M.K. Suleimenov

— Conducted and translated by Dmitry Marenkov —

1. What issues are the most relevant in the law and practice of arbitration in Kazakhstan today?

In my opinion, the most relevant and, accordingly, the most promising directions for the development of scientific doctrine taking into account the realities of Kazakhstani practice are such issues as asymmetric arbitration clauses and parallel proceedings (in court and arbitration simultaneously), specifics of arbitration of corporate disputes and disputes related to real estate, the participation of third parties in arbitration, expedited arbitration and online arbitration, the possibility of expanding interim measures in accordance with the UNCITRAL Model Law as amended in 2006.

2. Kazakhstan has not implemented the UNCITRAL Model Law on International Commercial Arbitration. Please

tell us whether this issue has been discussed and how the decision has been made. Are there any plans to implement the Model Law in Kazakhstan in the future?

The Model Law is of a recommendatory nature. And yet most developed countries were guided by its provisions in adopting their laws. The first draft of Kazakhstani Law on International Commercial Arbitration, prepared by a group of scientists from the Research Institute of Private Law under my leadership, was also fully based on the norms of the Model Law. But we did not manage to pass one law. Instead, two drafts appeared: the Law on International Commercial Arbitration and the Law on Arbitration Courts. But they were not drafted like the laws adopted in 2004, which duplicated each oth-

Interview with Professor M.K. Suleimenov

er by 90%. The draft of the Law on International Commercial Arbitration contained 36 articles and the draft of the Law on Arbitration Courts contained 8 articles. It was due to the fact that the draft of the Law on Arbitration Courts referred to the draft of the Law on International Commercial Arbitration on all procedural issues. There was not the endless duplication that we had in the laws adopted in 2004. It is a pity that these drafts were not used in the preparation of the draft of the Law on Arbitration 2016.

Now it is difficult to say whether it will be possible to implement the Model Law in Kazakhstan in the future. But, at any case, we strive to bring the Law on Arbitration in compliance with the Model Law. In particular, we consider it necessary to bring the terminology of the Law on Arbitration into conformity with the Model Law.

Bringing our Law in conformity with the Model Law will meet the concrete needs of international commercial arbitration and will establish international standards acceptable for parties from various states and legal systems. Only then Kazakhstan can become one of the attractive places of arbitration for foreign parties because arbitration proceedings will involve less difficulties.

I am convinced that Kazakhstan's emergence as one of the developed countries of the world is impossible without the creation of a favourable investment climate including bringing the Law on Arbitration and some norms of the Code of Civil Procedure in compliance with the provisions of the UNCITRAL Model Law, the New York Convention of 1958 and the European Convention on International Commercial Arbitration of 1961.

3. You are the Chairman of the Board of the Arbitration

Chamber of Kazakhstan (<https://palata.org/>) which was established in 2016. What are the powers and tasks of the Arbitration Chamber?

The Arbitration Chamber is an independent non-profit organization which is a voluntary association of permanent arbitration institutions and arbitrators. According to our approximate calculations, there are currently some 40 to 60 permanent arbitration institutions in Kazakhstan. Since membership in the Arbitration Chamber is voluntary, not all of them are members. The powers of the Arbitration Chamber include, inter alia, training and professional development of arbitrators, establishing rules for keeping case records in permanent arbitration institutions, preparing expert opinions on certain issues of legislation and

Interview with Professor M.K. Suleimenov

practice, which are of recommendatory nature. The Arbitration Chamber actively represents the interests of its members through interaction with the Parliament, the Supreme Court, the Ministry of Justice and other state bodies.

4. You are one of the founders of the Kazakhstan International Arbitration (<http://arbitrage.kz>). Please tell us how this arbitration centre was created and about its development in recent years.

The Kazakhstan International Arbitration (KIA) is an independent permanent arbitration institution. KIA was founded in January 2005 and for 15 years of its existence it has become one of the leading arbitration institutions in the Republic of Kazakhstan and the Central Asian countries. Disputes arising from civil law relations between individuals (including individu-

al entrepreneurs) and (or) legal entities, irrespective of their place of residence or location within or outside the Republic of Kazakhstan, can be referred to KIA by a respective agreement of the parties.

The KIA arbitrators are 172 highly qualified specialists. 80 arbitrators are citizens of Kazakhstan and 92 are foreign lawyers from Australia, Austria, Azerbaijan, Belarus, Belgium, China, Czech Republic, Finland, France, Georgia, Germany, India, Italy, Japan, Lithuania, Moldova, Netherlands, Poland, Russia, Singapore, Slovenia, South Korea, Sweden, Ukraine, United Arab Emirates, the United Kingdom, USA and Uzbekistan.

KIA is one of the most dynamically developing arbitration institutions in Central Asia which is evidenced by the constant growth of the number of disputes considered and the value of claims. Currently, the KIA practice includes such cases

which have never been considered in Kazakhstan by state courts or other arbitration institutions before.

When we established KIA, we set a goal to create in Kazakhstan a really independent and respected arbitration centre meeting all international standards. And all these years we try to adhere to them.

5. Can a KIA hearing be held remotely as an online video conference?

Yes, we hold hearings in the form of online videoconferencing. Article 32 (3) of Kazakhstani Law on Arbitration expressly provides that the arbitration hearing (or part thereof) at the request of the parties or at the initiative of the arbitral tribunal may be held by videoconference and other technical means. In the conditions of the pandemic,

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this format of hearings has become the most popular.

6. Can parties to KIA proceedings appoint an arbitrator who is not on its List of Arbitrators?

Of course they can, and there are occasions when parties elect arbitrators who are not on our list. The list is of a recommendatory nature. The main thing is that such an arbitrator must meet the mandatory requirements in Article 13 of the Law on Arbitration, as well as the requirements set out in the parties' agreement.

7. What kind of disputes are mostly resolved in KIA arbitrations?

KIA is one of the few really international arbitration institutions in Kazakhstan as the overwhelming majority of cases are international disputes (foreign legal entities participate in 71% of arbitrations).

Nationality of disputing parties: Algeria, Australia, Belarus, British Virgin Islands, China, Estonia, Finland, Germany, Hong Kong, Italy, Kyrgyzstan, Liechtenstein, Lithuania, Netherlands, Panama, Poland, Russia, South Korea, Switzerland, Tajikistan, Turkey, Ukraine, United Arab Emirates, the United Kingdom, USA, Uzbekistan etc.

Domestic disputes (between Kazakhstani legal entities) account for about 29% of cases.

Applicable law, most often, is the law of the Republic of Kazakhstan, the law of the Russian Federation, the law of Ukraine, as well as the law of England and Wales. In recent years, disputes between Russian and foreign companies who choose Kazakhstani law and KIA as the arbitration institution have begun to appear.

Basically, these are disputes from the contracts of sale (supply), property rent (lease), workmanship, services, loan,

pledge, transportation, freight forwarding, insurance and others.

The amounts in dispute in KIA arbitrations were from 10,000 to 39 million U.S. dollars.

8. How do you see the future of arbitration in Kazakhstan?

I am convinced that the further successful development of arbitration in Kazakhstan is possible only with the support and understanding of the legal nature of arbitration as an alternative method of dispute resolution by state courts and the necessary improvement of arbitration legislation.

My recommendations in that respect can be reduced to five main directions.

Firstly, it is necessary to bring the Law on Arbitration as close as possible to the

Interview with Professor M.K. Suleimenov

provisions of the UNCITRAL Model Law by excluding numerous borrowings of norms from the Code of Civil Procedure.

Secondly, it is necessary to carry out serious scientific research as our legal literature has serious deficiencies in the field of arbitration. We, for our part, are trying to fill this gap. For example, this year we published a monograph on the topic "Alternative dispute resolution in Kazakhstan: a new stage of development" which was supported by a grant of the Ministry of Education and Science of Kazakhstan.

Thirdly, it is necessary to continue the interaction between state courts and arbitration institutions. It is important to create conditions for the proper application of existing national legislation in this area. It must be based on a proper understanding of the legal nature and role of arbitration as

an integral part of the national legal system. Besides improvement of the existing arbitration legislation, we need guidance from the Supreme Court explaining the problems of the application of the arbitration legislation to lower courts, in order to prevent unreasonable setting-aside or refusal of enforcement of arbitral awards by courts.

Fourthly, it is necessary to gradually solve the problems with "dishonest arbitration institutions". Unfortunately, in the Kazakhstani practice there are cases of creation of arbitration institutions and change of arbitration rules to serve the interests of some "clients". Some disputes have been resolved by arbitration despite the absence of an arbitration clause. Sometimes, the chairperson of an arbitration institution was empowered to set-aside the arbitral award.

And, finally, it is necessary to carry out on a regular basis

various measures aimed at the popularization and development of arbitration in our country, mainly scientific and practical seminars not only for the practicing lawyers but also for the judges who apply the arbitration legislation when considering cases regarding the setting-aside and enforcement of arbitral awards. As practice shows, it is also necessary to hold special seminars for arbitrators, the more so because the Arbitration Chamber of Kazakhstan is authorized to train and improve the qualification of arbitrators.

ADR VIEWS



About the Authors

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FAIADR, FCIArb, FHKIArb,
Member of the AIADR
Editorial Sub-Committee

Nicolas Wiegand & Markus
Altenkirch

HKIAC Administered
Arbitration Rules, Article by
Article Commentary.

2021, 185pp
Published by C.H Beck &
Nomos (Germany)

Book Review: HKIAC Administered Arbitration Rules, Article-by-Article Commentary by Wiegand/Altenkirch

The Hong Kong International Arbitration Centre (HKIAC) is - according to the most recent international arbitration survey by the Queen Mary University of London – one of the world's three most popular arbitral institutions. Established in 1985, the HKIAC annually administers more than 300 arbitration proceedings, 70 to 80 per cent of them being international arbitrations. Considering the continued economic growth in South-East Asia and China in particular as well as the planned projects under the Belt and Road Initiative, the HKIAC is likely to further strengthen its position on the world arbitration map in the coming years.

The new publication authored by Nicolas Wiegand and Markus Altenkirch offers an Article-by-Article Commentary of the 2018 HKIAC Administered Arbitration Rules. This is the first detailed commentary of the current version of the

HKIAC Administered Arbitration Rules. The other well-known book "A Guide to the HKIAC Arbitration Rules" edited by the prominent arbitrator Michael Moser and the former HKIAC Secretary-General Chiann Bao, published by the Oxford University Press in February 2017, refers to the previous version of the HKIAC Administered Arbitration Rules (2013). A new edition is in preparation but has not yet been published.

The author Dr Nicolas Wiegand is the Managing Partner at CMS in Hong Kong and Head of the firm's Disputes Group. Co-author Dr Markus Altenkirch is a lawyer at Baker McKenzie's International Arbitration team in Germany.

The 2018 HKIAC Administered Arbitration Rules are now in their third edition following previous editions of 2008 and 2013. The au-

Book Review: HKIAC Administered Arbitration Rules, Article-by-Article Commentary by Wiegand/Altenkirch

thors highlight the following core changes introduced by the latest edition of the Rules:

1. Under Article 3.1(e) parties can now upload any written communications to any agreed secured online repository as an alternative to exchanging briefs and exhibits by email or courier.
2. Article 13.8 now expressly provides that arbitration proceedings or emergency arbitrator procedure can, at the request of any party, be suspended where the parties agree to pursue other means of settling their dispute after the arbitration commences (for instance, mediation, Arb-Med-Arb). The arbitration or emergency arbitrator procedure shall resume at the request of any party to HKIAC, the arbitral tribunal or emergency arbitrator.
3. Where the parties have not previously agreed on the language of the arbitration, any party in accordance with Article 15 shall communicate in English or Chinese prior to any determination of the language of the arbitration by the arbitral tribunal.
4. The 2018 HKIAC Administered Arbitration Rules for the first time contain express provisions on third party funding. Under Article 44 the funded party must communicate a written notice to all other parties, the arbitral tribunal, any emergency arbitrator and HKIAC of the fact that a funding agreement has been made and the identity of the third party funder. Pursuant to Article 34.4 the arbitral tribunal may take into account any third party funding arrangement in determining all or part of the costs of the arbitration.
5. An early determination procedure has been introduced giving the arbitral tribunal the power, at the request of any party and after consulting with all other parties, to decide one or more points of law or fact by way of early determination procedure under certain conditions (Article 43).

The authors stress that an arbitration agreement shall not only refer to the HKIAC Administered Arbitration Rules but also provide for arbitration “administered by HKIAC” or use words to similar effect. Pursuant to the new Article 1.2 the parties accept that the arbitration shall be administered by HKIAC. This novelty considers Article 16 of Chinese Arbitration Law according to which an arbitration agreement shall always

ADR VIEWS

Book Review: HKIAC Administered Arbitration Rules, Article-by-Article Commentary by Wiegand/Altenkirch

provide for an administering institution. In addition, HKIAC seeks to ensure that no other arbitral institution administers cases under the HKIAC Rules.

The 2018 HKIAC Administered Arbitration Rules pursuant to Article 1.4 apply to cases in which the notice of arbitration is submitted on 1 November 2018 or after that date while Article 1.5 contains an exception to this rule.

The new book by Nicolas Wiegand and Markus Altenkirch gives a very good overview of the main features and current trends in HKIAC arbitration. It explains various aspects of practical application of the 2018 HKIAC Rules providing an analysis of the purpose of each provision and includes some valuable recommendations for the drafting of arbitration agreements and conducting of arbitration proceedings. The commentary therefore constitutes

a valuable resource for arbitrators, dispute resolution practitioners and inhouse counsel.

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Datuk Sundra Rajoo
President
Asian Institute of Alternative Dispute Resolution

SPEAKER 2
Dr. Seng Hansen
Lecturer
Universitas Agung Podomoro

FACILITATOR
Dr. Hamizah Liyana Tajul Ariffin
Senior Lecturer (Quantity Surveying)
Universiti Teknologi Malaysia

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“ENHANCING ARBITRATION FRIENDLY JURISDICTION IN NIGERIA: THEMATIC INTERPLAY OF GOVERNMENT, ARBITRAL INSTITUTIONS AND THE USERS”

9TH DECEMBER 2021

The poster features a blue and purple geometric background. At the top left is the logo of the Regional Centre for International Commercial Arbitration (LCIA) Lagos-Nigeria. To its right, the text reads 'REGIONAL CENTRE FOR INTERNATIONAL COMMERCIAL ARBITRATION LAGOS'. Further right, it says 'In partnership with' followed by the AIADR logo (Asian Institute of Alternative Dispute Resolution) and the OAL logo (Olisa Agbakoba Legal). Below this, the word 'Presents' is followed by a blue button that says 'LIVE WEBINAR'. The main title is 'Enhancing Arbitration Friendly Jurisdiction in Nigeria: "Thematic Interplay of Government, Arbitral Institutions and the Users"', with the subtitle in yellow. Below the title is the section 'Meet Your speakers' followed by six circular portraits of the speakers and moderators, each with their name and role. At the bottom, the date and time are listed as 'DATE: 9TH DECEMBER 2021. TIME: 12. NOON' and the platform as 'PLATFORM: zoom' with the Zoom logo.

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Hon. Attorney General and Commissioner for Justice Delta State
(Speaker)

CHIKWENDU MADUMERE LL.M
Chartered Arbitrator and a Fellow of the Chartered Institute of Arbitrators
(Speaker)

DR. OLISA AGBAKOBA SAN
Olisa Agbakoba Legal
(Speaker)

DATUK PROFESSOR SUNDRA RAJOO
President Asian Institute of Alternative Dispute Resolution
(Speaker)

MS. BERVERLY AGBAKOBA
Associate Partner Olisa Agbakoba Legal
(Moderator)

HON WILFRED D. IKATARI
Director-Regional Centre for International Commercial Arbitration Lagos
(Keynote Address)

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Day 2 – December 10, 2021

Session 2 (12:00 – 13:30)

Allocation of Risks in Construction Contracts: *The Balancing Act*

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Samar Abbas Kazmi
Barrister, Atkin Chambers
London, UK



Zarina Pundole
GC EPC Division,
Shapoorji Pallonji Group
Mumbai, India



Datuk Professor Sundra Rajoo
Sundra Rajoo Arbitration Chambers
Kuala Lumpur, Malaysia



Aisha Nadar
Former Board Member, FIDIC
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Christiaan Grosskopf
Head of Practice, Juddon Arbitration Chambers
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Dr. Amit George
Advocate, Independent Law Practice
Member, Maadhyam
New Delhi, India

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8TH JANUARY 2022



Live Webinar

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On 8th January 2022, AIADR has successfully organized a live webinar event together with the Hyderabad Arbitration Centre (HAC). The event was hosted by AIADR on the topic of "An International Perspective: Disputes on Law Governing The Arbitration Agreement".

On the special event, Datuk Prof Sundra Rajoo, President of AIADR and Mr Srwana Unnam, Head of HAC, delivered the opening and closing remark speech, respectively.

The webinar was delivered via Zoom webinar with the moderation of Mr Patrick Dahm, Arbitrator, Mediator and Attorney-At-Law.

The speakers of the event were Mr R. Venkataraghavan, Founding Partner, C Cubed Consultants Limited, Ms Karen Gough, Attorney-At-Law, Chartered Arbitrator and Barrister at 39 Essex Chambers London, Mr Chakrapani Misra, Partner in Khaitan & Co, Mr Veeraraghavan Inbavijayan, Managing Partner, KOVE GLOBAL LLP, Ms Leonora Riesenburger, Independent Arbitrator, Accredited Commercial Mediator, UAE.



SPEAKERS



R. VENKATARAGHAVAN
FOUNDING PARTNER, C CUBED CONSULTANTS LIMITED, UAE, UK AND INDIA
FELLOW OF AIADR



CHAKRAPANI MISRA
PARTNER IN KHAITAN & CO
MEMBERS OF GLOBAL ADVISORY BOARD-HAC



KAREN GOUGH
ATTORNEY-AT-LAW, CHARTERED ARBITRATOR, BARRISTER AT 39 ESSEX CHAMBERS LONDON
CERTIFIED INTERNATIONAL ADR PRACTITIONER & FELLOW OF AIADR



VEERARAGHAVAN INBAVIJAYAN
MANAGING PARTNER, KOVE GLOBAL LLP
FELLOW OF AIADR; MEMBERS OF GLOBAL ADVISORY BOARD-HAC



LEONORA RIESENBURG
INDEPENDENT ARBITRATOR, ACCREDITED COMMERCIAL MEDIATOR, UAE
MEMBERS OF GLOBAL ADVISORY BOARD-HAC

MODERATOR



PATRICK DAHM
ARBITRATOR, MEDIATOR, AND ATTORNEY-AT-LAW (RECHTSANWALT)
FELLOW OF AIADR

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8TH JANUARY 2022

MEDIATION
Bootcamp

MEDIATION FOR DUMMIES

PANEL DISCUSSION
8 JAN 2022 (SATURDAY)
4:00 PM - 5:30PM

MEDIATION DEMO + Q&A
9 JAN 2022 (SUNDAY)
4:00 PM - 6:00PM

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The special event was opened by Tun Dato' Seri (Dr.) Zaki Tun Azmi with a welcoming and opening speech. Following that, the book was launched at the event.

The forum was held in three sessions on the 'Compare Payment & Variation Order Clauses', 'Compare EOT and LAD Clauses' and 'Compare Termination Clauses' with a panel of various speakers from the industry sharing their knowledge and experiences on the matter.

We cordially invite you to purchase the 'Standard Form of Building Contracts Compared' by Datuk Professor Sundra Rajoo. The book is available for purchase at <https://store.lexisnexis.com.my/categories/area-of-interest/new-releases-332/standard-form-of-building-contracts-compared-skuSKUMY2021STANDARDFORM>.

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Date: 15th to 22nd Jan, 2022

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28TH JANUARY 2022

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Former President of CIArb, President
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**John Rooney Esq.**
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**Karen Gough**
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**Dr. Peter D. Maynard**
FCIArb, Former Head of Law
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10th March 2022

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Further details to be announced.

24th–27th March 2022

9th National Law University Odisha, Bose & Mitra & Co. International Maritime Arbitration Moot 2022

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Further details to be announced.

10th—13th February 2022

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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.

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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 Submission of Contributions:

1. For Newsletter : **15 March 2022**
2. For Journal : **31 April 2022**

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