ASIAN INSTITUTE OF ALTERNATIVE DISPUTE RESOLUTION
Delivering Excellence in ADR

ADR CENTURION

Inside this Issue

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The AIADR shall be a repertoire of global jurisprudence, formed by professional membership, recognized by international institutions, striving for the advancement of alternative dispute resolution methodologies, for amicable conflicts management and effective dispute resolution.

The ADR Centurion is the Bimonthly Newsletter of AIADR published six times per year by the Editorial Committee of AIADR for the members of the AIADR (the “Institute”) and general readers interested in ADR subject and practices.

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PRESIDENT'S MESSAGE

DATUK SUNDRA RAJOO

Dear members,

Warm greetings from the Asian Institute of Alternative Dispute Resolution. I am delighted to present you with the 26th Issue of the ADR Centurion. I would like to take this opportunity to thank all individuals for their constant support and trust in the work of the institute to achieve our vision of building a global platform in alternative dispute resolution (ADR)

I would like to take this moment to express my gratitude to the Governance Council, Office Bearers, committee members, AIADR Secretariat, partner organizations, esteemed members, and our latest subscribers for their dedication in advancing AIADR's objectives. We encourage you to stay tuned for our latest news and content across different social media platforms such as Facebook, LinkedIn, Twitter, YouTube, and Instagram.

At this time, I take the pleasure to update all our members on our recent endeavors and initiatives at the Asian Institute of Alternative Dispute Resolution (AIADR). Over the past couple of months, we have orchestrated a variety of engaging and multifaceted events, tailored to cater to a broad spectrum of interests within the realm of alternative dispute resolution (ADR).

Firstly, On 28th July 2023, AIADR continued its Roundtable Series and the talk delved into the intriguing topic of "The New York Convention: 'Paper Tiger or Effective Enforcement Mechanism'." During this engaging event, participants explored the practical applications and real-world impact of the New York Convention in international dispute resolution. Discussions centered around whether this widely adopted treaty is truly effective in enforcing arbitral awards across borders or merely symbolic in nature. The session provided valuable insights into the ongoing dialogue surrounding the New York Convention's role in today's global legal landscape.

Following that, on the 1st of August 2023, AIADR had the pleasure of hosting the delegation from Maritime Silk Road Central Legal District ("MSRCLD") Working Group from Xiamen, China. The delegation was led by Dr. Li Weihua, Standing Deputy Leader of the Xiamen Maritime Silk Road Central Legal Affairs District. During the meeting, both sides engaged in a substantive exchange of ideas and insights, focusing on the developments and progress occurring within Xiamen. The discussions also revolved around the promising prospects for collaboration between the two organizations. This event signifies a significant milestone in AIADR's unwavering commitment to nurturing international partnerships.

On August 7th, AIADR proudly unveiled its highly anticipated Mentorship Program. This initiative is designed with a dual purpose: to provide invaluable guidance and support to budding ADR practitioners, and to foster stronger connections between experienced senior practitioners and their junior counterparts. The AIADR Mentorship Program aspires to be a catalyst in elevating the career trajectories of young ADR professionals, equipping them with the knowledge, skills, and insights necessary to thrive in this dynamic field. It serves as a platform where experience meets enthusiasm. This program underscores AIADR's commitment to nurturing talent and promoting collaboration within the ADR community. As we

embark on this journey, we eagerly anticipate the positive impact it will have on the careers of emerging ADR practitioners and the broader development of the field.

Next, AIADR proudly extended its support to the AIAC ASIA ADR WEEK 2023, a significant event that unfolded from the 24th to the 26th of August. Asia ADR Week was conceived with a noble aim: to delve deep into the frameworks that amplify the influence of the ADR community. It accomplished this by not only examining the traditional avenues of dispute resolution but also by addressing emerging developments that broaden the horizons of ADR within the ever-evolving landscape of international law. This collaboration underscores AIADR's commitment to promoting and engaging in thought-provoking dialogues within the ADR sphere. By supporting Asia ADR Week, we contributed to the exploration of new frontiers in alternative dispute resolution, paving the way for innovation and progress.

Besides that, we are also thrilled to announce that AIADR has officially inked a Memorandum of Understanding (MoU) with the China International Economic and Trade Arbitration Commission (CIETAC) on September 6th, 2023. This momentous agreement marks a significant step forward in our mutual commitment to fostering collaboration and knowledge exchange in the realm of alternative dispute resolution (ADR). The MoU, signed by Mr. Wang Chengjie, Vice Chairman & Secretary General of CIETAC and AIADR, serves as a testament to our shared vision. Together, we aim to enhance the professionalism of ADR services, facilitating the exchange of expertise, and laying a solid foundation for the continued growth and advancement of ADR practices.

Following that, continuing our commitment to promoting knowledge-sharing and collaboration in the field of alternative dispute resolution, AIADR proudly supported a hybrid seminar organized by the AIAC and CIETAC Hong Kong Arbitration Center. This seminar was held in conjunction with the 11th China Arbitration Week and was themed "Contemporary International Dispute Resolution Practice in PLAY: Asian Characters." By participating in events like these, AIADR reinforces its dedication to staying at the forefront of the ever-evolving landscape of dispute resolution. We recognize the importance of engaging in discussions about contemporary international dispute resolution practices and the unique Asian perspectives that shape this dynamic field.

Next, building upon our robust collaboration with the Xiamen Legal District, I had the distinct honor of delivering the Keynote Speech at the Third Forum of Maritime Silk Road Central Legal District. This remarkable event took place at the Xiamen Wutong Pliport Hotel on the 8th of September. During my address, I underscored the immense significance of this forum in unlocking vast collaborative potential and reinforcing our shared vision. I emphasized that the enduring Malaysia-China partnership stands as a shining testament to the promise of this initiative. Through mutual understanding, shared interests, and unwavering respect, Malaysia and China have cultivated a partnership that not only benefits both nations but also propels progress forward.

On the 16th of September, AIADR hosted a special Mediation workshop in preparation for the upcoming AIADR Mediation Competition. The workshop, led by our esteemed fellow member Ms. Rammit Kaur, was exclusively tailored for participants who will be taking part in the AIADR Mediation Competition. The primary aim of this workshop was to offer attendees a comprehensive grasp of the concept of Mediation, along with an in-depth understanding of its operational mechanisms. By equipping participants with the knowledge and skills necessary for effective mediation, AIADR remains dedicated to fostering growth and expertise within the field of alternative dispute resolution.

In closing, I would like to extend my appreciation to all our members for their unwavering participation and support in our various activities and events. We are grateful for your continued engagement, as it is your involvement that fuels the success and impact of our endeavors.

Arbitration in a Thai-Russian commercial dispute and enforcement of an arbitral award in Russia: recent practice

Dr. Ilia Rachkov, MCIArb

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Introduction

Economic relations between Russia and Thailand continue to develop steadily. According to official statistics, in 2022, the trade turnover between Thailand and Russia amounted to 2 billion US dollars. Russian Government announced plans to reach trade turnover of $10 billion per year between the two countries.[1]

It is obvious that under current conditions there is a growing demand for fair resolution of commercial disputes. The best means to achieve this goal is international commercial arbitration. Notably, there is no publicly available information on the recognition and enforcement of arbitral awards of Thai arbitration bodies (e.g. such as the Thai Arbitration Institute (TAI) and the Thailand Arbitration Center, THAC) in Russia.

In 2022-2023, our law firm – Nektorov, Saveliev and Partners (NSP) – represented the interests of claimant, a Thai company, in arbitration proceedings against a Russian limited liability company. The dispute was administered by the Russian Arbitration Center at the Russian Institute of Modern Arbitration (RAC)[2] . The client opted for the arbitration in Russia because the respondent's assets are located in Russia.

We also represented the interests of the Thai company in the context of:

- the claimant's application for recognition and enforcement of the RAC award before Russian courts,

[1] Russia eager to see trade top $10 billion with Thailand, Bangkok Post, available at: https://www.bangkokpost.com/business/2313714/russia-eager-to-see-trade-top-10bn-with-thailand

[2] Official website of the Russian Arbitration Center: https://centerarbitr.ru/

- the respondent's attempt to set it aside and
- the claimant's attempt to declare the respondent bankrupt; and
- the claimant's application to impose subsidiary liability for the respondent's debts on its CEO and shareholders.

We would like to share our experience with the readers as we believe that it may be of interest to them.

Underlying Facts

The claimant is a Thai producer of fresh vegetables and fruits, such as durian, mango, dragon fruit, papaya, etc. The facts of the dispute are simple: the claimant supplied fruits to the Russian buyer (= the respondent), but the latter did not pay, referring to poor quality of the fruits supplied. Thus, the RAC arbitration proceedings concerned the debt collection.

Pathological arbitration clause subsequently cured by the parties

The first problem on the way to resolve the dispute was a pathological arbitration clause contained in the supply contract. From its content, it was impossible to determine which arbitration body (in Russia or abroad) or ad hoc arbitration should entertain the dispute. At a separate meeting held in Moscow in December 2021, the representatives of the parties agreed that the dispute should be referred to the RAC. To this effect, the parties signed appropriate minutes of their meeting.

It would not be advisable to initiate court proceedings in Thailand for enforcement reasons. Russian state commercial (arbitrazh) courts are entitled to recognize the foreign courts judgments even in the absence of a relevant international treaty – on the basis of the international legal principles of reciprocity and/or international comity.[3] However, in the absence of Russian caselaw dealing with recognition and enforcement of Thai court judgments it would be complete adventure for the client to file a lawsuit against a Russian defendant with a court in Thailand and then try to get it recognised and enforced in Russia.

Therefore, it would be reasonable to file a claim with a Russian state court since the property of respondent was located only in Russia. According to Article 247 para. 1 subpara. 1 of the Commercial (Arbitrazh) Procedure Code of the Russian Federation (APC), Russian commercial (arbitrazh) courts have jurisdiction to consider claims of foreign organizations against defendants who are located on the territory of the Russian Federation, or whose property is located in Russia. However, court proceedings on the merits before the Russian commercial (arbitrazh) courts may be more burdensome and time-consuming as compared to the arbitration.

Besides, in order to litigate before Russian courts, all documents joined to the court case file (mostly drawn up in English) must be translated into Russian. Besides, the respondent may use a number of tricks to artificially delay the consideration of the dispute by the Russian court on the merits.

Below we depict the procedural ways and means used by the representatives of the Russian respondent to delay the proceedings on the recognition and enforcement of the arbitration award.

An arbitral award rendered in Russia-seated arbitration proceedings is much easier to enforce on the territory of Russia. In addition, arbitration proceedings in Russia simplify the issue of proper notification of the respondent – a Russian company.

Besides, RAC offers the use of an electronic arbitration system so that the parties can easily and quickly exchange documents. This saves time to conduct the arbitration proceedings and ensures compliance with the deadline for rendering of award – 180 days from the date of constitution of

[3] The key judicial act in the formation of this widely used approach was the Ruling of the Supreme Court of the Russian Federation No. 5-G02-64 dated 7 June 2002.

the tribunal (Article 27 para. 2 subpara. 1 of the RAC Arbitration Rules).

Thus, the choice of arbitration (instead of Thai or Russian state courts) allowed the proceedings to be conducted within a reasonable time.

Sole Arbitrator Appointed

RAC appointed an arbitrator from Indonesia as the sole arbitrator, as the disputed amount was under 500,000 US$. The parties had no influence on the appointment of the arbitrator. The parties only have the right to challenge the arbitrator if they have justifiable doubts as to whether the arbitrator is impartial and/or independent. However, in the case at hand, the parties did not have such doubts.

Applicable Law

The Contract was governed by the civil law of the Kingdom of Thailand.

The United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980) (CISG) did not apply in this case as the CISG applies to contracts of sale of goods between parties whose places of business are located in different states provided that the states are CISG contracting states. Thailand is not a contracting state to the CISG.

The law applicable to the arbitral procedure is Law No. 5338-I of the Russian Federation "On International Commercial Arbitration" enacted in 1993 (as amended). It is based on the UNCITRAL Model Law on International Commercial Arbitration[4].

Quality of fruits supplied

During the arbitration proceedings, NSP submitted to the sole arbitrator evidence of the proper quality of the goods and the absence of grounds for non-payment of deliveries. Respondent did not provide any evidence to the contrary. Thus, Respondent did not properly discharge its burden of proof.

RAC Award

On 5 September 2022, the sole arbitrator granted in full claims of the Thai Claimant:

(a) 92,966.41 US dollars as the Principal Debt Amount;

(b) 4,293.73 US dollars as the Late Payment Interest as of the date of filing a Request for Arbitration;

(c) 3,877.85 US dollars as the Late Payment Interest from the date of commencement of arbitration proceedings through to the date of the RAC Award;

(d) Late Payment Interest from the day following the issuance of the RAC Award to the actual date of payment of the Principal Debt Amount;

(e) 11,025.86 US dollars as the arbitration fee; and

(f) 4,120.98 US dollars as the arbitration costs;

Recognition and enforcement of the RAC Award v. setting-aside attempts

In the course of recognition and enforcement of the RAC Award in Russia, non-trivial tasks arose, which were mainly related to the abuse of procedural rights by the Respondent.

On 26 September 2023, we (acting as representatives of Claimant) submitted an application for recognition and enforcement of the RAC Award to the Commercial (Arbitrazh) Court of the City of Moscow (the Court)[5]. The RAC Award is not a foreign arbitral award within the meaning of the New York Convention on the Recognition and Enforce-

[4] https://uncitral.un.org/en/texts/arbitration/modellaw/commercial_arbitration.

[5] Case No. A40-207024/2022, available in Russian language in the commercial courts database at: https://kad.arbitr.ru/Card/7cfc635c-f9b9-4b70-817f-7d8f68d343c7.

-ment of the award in the case at hand is governed by Russian domestic law, i.e. the APC.

A week later, once Respondent learned about this attempt, it filed a separate application to set aside the RAC award. The Respondent stated that the underlying contract contained a pathological arbitration clause (which is true, of course), and the parties allegedly did not conclude other arbitration agreements. Accordingly, in the opinion of the Respondent, the RAC award had to be set aside on the grounds of invalidity of the arbitration agreement under the law of the Russian Federation (Article 233 para. 4 subpara. 2 APC).

The APC grants a party to arbitration proceedings the right to apply for setting-aside an arbitral award during the proceedings on its enforcement (Article 238 para. 4 APC).

In this case, the filing of an application to set aside the RAC award was aimed at delaying the proceedings on recognition and enforcement of this award. Article 238 para. 5 APC provides for the consolidation of the proceedings on recognition and enforcement and setting-aside of the same arbitral award. Once both proceedings are consolidated, the consideration of the case by the Russian court begins anew (Article 130 para. 8 APC).

Respondent's application resulted in certain protraction of the proceedings: between 5 December 2022 and 6 February 2023, the Court held four hearings to come to a definite result, although the case could be considered in one hearing, as the APC sets the same deadline – one month – for consideration of applications for setting-aside and for recognition and enforcement of arbitral awards (Article 232 para. 1 APC, Article 243 para. 1 APC).

In the preliminary court hearing (held on 5 December 2022), the representatives of Respondent also filed an unreasonable application to suspend the consideration of the case on recognition and enforcement of the RAC Award until the issuance of a judgment on the case on setting-aside of the same. This application grossly violates the above-mentioned provision of the APC on the consolidation of proceedings. No surprise that the Court declined that application.

Respondent managed to prevent the transition from the preliminary court hearing to the main one within the same court hearing. This option is provided for Article 137 para. 4 APC. However, due to the consolidation of cases, as mentioned above, the case had to be considered from the outset.

Postponement of the court hearing

Two days before the next court hearing (scheduled for 17 January 2023), representatives of Respondent filed an application for postponement of the hearing due to the illness of the allegedly sole representative. We as the representatives of Claimant objected to the postponement, as another representative represented the interests of the Respondent during the RAC arbitration proceedings. However, to be on the safe side, the Court postponed the hearing until 31 January 2023.

A further trick: fake agency agreement

For the final court hearing (scheduled for 31 January 2023), the Russian company decided to follow a more sophisticated way: Respondent and its former general director (= CEO) prepared an agency agreement (back-dated 28 December 2020). According to it, the former general director (a Russian citizen) allegedly provided agency services to his former company for a fee (equal to certain percentage of deliveries).

According to the terms of the agency agreement, the agent is supposedly obliged to return the agent's remuneration if a court judgment or an arbitration award on debt collection is made against the Russian company.

The former general director, thus, tried to present to the Court a new justification for setting-aside of the RAC Award: the latter allegedly violates the rights of a third party (the former CEO), since this person would have to return the remuneration to Respondent if the RAC award is upheld. In this regard, Respondent claimed that the sole arbitrator had to, but failed to, join the former CEO to the arbitration proceedings as a third party, and that now the state Court had to join him to the court proceedings as a third party.

According to Article 51 para. 4 APC, the involvement of a third person in the proceedings entails the consideration of the case from the outset. Accordingly, this step by the Russian company could also entail a delay in the consideration of the case.

We informed the Court that the documents submitted by the former general director were fake: in a hurry, the representatives of the Russian company indicated in the agency agreement (allegedly dated 2020, but in reality apparently forged in 2023) the mailing address of Respondent, which became its official address only in 2022! In addition, the former general director did not participate in the arbitration proceedings, although he could have been joined to the arbitration proceedings as a third party according to Article 34 para. 3 of the RAC Arbitration Rules, if Respondent or the former CEO himself would have applied to join him (and provided that the sole arbitrator would have come to the conclusion that this would be necessary to safeguard the former CEO's rights and legitimate interests).

On 6 February 2023 (after a break of six days), the Court rejected the former CEO's application to be joined to the proceedings before the Court as a third party and granted our application for recognition and enforcement of the RAC Award.

The former general director filed an appeal complaint against the ruling of the Court. The Ninth Commercial (Arbitrazh) Appeal Court has scheduled a court hearing to consider the complaint of the former CEO for 20 March 2023. It is noteworthy that neither the former director nor representatives of Respondent's Team attended this hearing. The Appeal Court refused to satisfy the complaint.

Respondent did not file a cassation complaint against the Court's ruling on the recognition and enforcement of the RAC Award.

Moratorium on Penalties

There was also a very interesting feature in this case, which could have potentially led to a partial set-aside of the RAC Award due to a violation of the Russian public order.

On 28 March 2022, the Russian Government has issued Regulation No. 497 on a moratorium on the initiation of bankruptcy cases. The moratorium expired only on 2 October 2022.

A moratorium on the initiation of bankruptcy cases (moratorium) is provided for in Article 9.1 of the Bankruptcy Law of the Russian Federation[6] . One of the key legal consequences of the moratorium is a ban on the accrual and collection of late payment interest and penalties.

[6] Official name: Law No. 127-FZ dated 26 October 2002 "On insolvency (bankruptcy)".

The penalty is a sum of money determined by law or contract, which the debtor is obliged to pay to the creditor in case of non-fulfillment or improper fulfillment of the obligation. So, the penalty is n alternative to late payment interest. In practice, the parties set a fixed amount of the penalty in the contract.

In turn, late payment interest is another type of additional sanction. Late payment interest is a monetary amount that is accrued at a certain interest rate (or differentiated rates) established by law.

The RAC Award ordered the Russian company to pay the late payment interest in accordance with Section 224 of the Thai Civil Code, at a rate of 7.5% per annum. Part of the amount of the late payment interest was accrued in the period from 28 March 2022 to 2 October 2022.

One of the grounds for setting-aside of an arbitration award, including partial, is a violation of the public policy of the Russian Federation (Article 232 para. 4 subpara. 2 APC). It is noteworthy that Russian Commercial (Arbitrazh) courts are entitled to independently, without motion from the parties, investigate whether an arbitral award violated the public policy of the Russian Federation.

The commercial (arbitrazh) court proceedings in Russia are based on the adversarial principle. Therefore, it follows that the examination of the grounds for setting-aside of an arbitration award due to a violation of public policy cannot be qualified as the obligation of the Russian Commercial (arbitrazh) courts. This applies to cases in which Russian commercial (arbitrazh) courts cannot detect a prima facie violation of public order.

The moratorium is imposed only in extreme cases and to protect the economic interests of Russian companies. Therefore, it is obvious that raising the issue of violating public policy by charging late payment interest in an arbitration award was only a matter of time. Despite the fact that the applicable substantive law in the present case was the civil law of Thailand, the Russian courts give priority to the moratorium. Application of the Russian substantive law is caused by the super-mandatory nature of the moratorium rules.

On 16 February 2023, the Supreme Court of the Russian Federation issued ruling No. 305-ES22-22860. According to it, the accrual of late payment interest upon an arbitral award during the period of the moratorium is contrary to the public policy of the Russian Federation. This ruling was issued 10 days after the Court issued a ruling on recognition and enforcement of the RAC Award.

The Russian Supreme Court concluded that the moratorium was indeed aimed at protecting the economic interests of Russian commercial entities. Accordingly, violation of the legal regime of the moratorium in any case constitutes a violation of the public policy of the Russian Federation. And in the present case, the Court had the right (but not the obligation) to set-aside the RAC Award because of the accrual of late payment interest during the period of the moratorium. However, the Court did not make use of its right to do so.

Thus, the Russian company's choice of an improper and fraudulent way to protect its rights (delaying the proceedings and submitting forged documents) eventually was not successful.

How can the RAC Award be enforced, as a matter of practice?

Since 9 January 2023, a rule has been in effect in Russia, according to which a foreign legal entity can receive funds from the bailiff service only to a bank account with a Russian bank. Such rules were introduced by amendments to the Law on Enforcement Proceedings of the Russian Federation[7]

In this case, a foreign creditor can choose between the following options:

— opening a bank account with a Russian bank,

[7]Official name: Law No. 229-FZ dated 2 October 2007 "On enforcement proceedings".

—concluding an agreement with a Russian company on the assignment of the right to claim debt collection from a debtor,

—authorization of a legal representative to receive funds on behalf of a foreign creditor.

Article 8 of the Law on Enforcement Proceedings of the Russian Federation allows a foreign creditor to apply to the banking institution where the Russian debtor has an account to recover funds from the Russian debtor.

This method is more effective because it allows a foreign creditor to skip the stage of applying to the Federal Bailiff Service of the Russian Federation. In addition, a foreign creditor should be known of its debtor's bank accounts, since such information is usually disclosed in contracts.

Often, even the initiation of enforcement proceedings against a Russian debtor does not mean the possibility of debt recovery. Participants of Russian companies can withdraw all money from the accounts of a legal entity before a foreign creditor can impose a court-enforced collection on them.

In this case, foreign creditors also have the right to file an application for bankruptcy of Russian debtor with the competent Russian commercial (arbitrazh) court.

The bankruptcy proceedings against a Russian debtor allow a foreign creditor to establish control over the actions of this legal entity by appointing a bankruptcy manager. A foreign creditor has the right to analyze the accounting and other documents of a Russian debtor. Thus, such a creditor has possibilities to prevent any further withdrawal of funds from debtor's bank accounts and/or other assets.

Chapter III.2 of the Russian Bankruptcy Law offers a mechanism for bringing the debtor's controlling person to subsidiary liability for the debtor's obligations. The relevant mechanism is, in our opinion, the final opportunity for a foreign creditor to compel the CEO and/or the shareholders of a Russian debtor to fulfill the latter's obligations.

ADR Case Digest: Latest Updates and Insights

Payward Inc v Chechetkin [2023] EWHC 1780

This case is a unique instance where the English courts declined to uphold an arbitration award due to concerns related to public policy. The award in question was issued against Mr. Chechetkin, a lawyer residing in the UK, who experienced substantial financial losses while trading on the Claimant's cryptocurrency platform. The English Commercial Court's decision not to enforce the award was primarily based on the fact that the arbitrator had not taken into account or applied English consumer protection and financial services laws.

Mr. Chechetkin engaged in cryptocurrency trading on Payward's platform, but when substantial losses occurred, he took his case to English courts, arguing that Payward's operations violated UK financial regulations, specifically the Financial Services and Markets Act 2000 (FSMA). In response, Payward initiated arbitration proceedings through Judicial Arbitration and Mediation Services ("JAMS") arbitration, seated in San Francisco and emerged victorious, absolving themselves of any liability in the dispute.

The court made several significant findings in this case. Firstly, it determined that Mr. Chechetkin, despite being a lawyer, qualified as a consumer under the Consumer Rights Act 2015 (CRA) and was considered a non-commercial customer by Payward. Secondly, the court ruled that it was not bound by the arbitrator's decisions because she had failed to consider both the CRA and the Financial Services and Markets Act 2000 (FSMA). This departure from the usual deference to arbitrators was warranted because the arbitrator hadn't even attempted to address English law. Thirdly, the court regarded the CRA and FSMA as integral parts of English public policy, and the arbitrator's failure to consider English law rendered the award unenforceable on public policy grounds.

It's important to highlight that this case doesn't signal a broader shift in English courts towards increased scrutiny of arbitration awards or a departure from their generally pro-arbitration stance. Instead, the court's decision is primarily influenced by the unique circumstances surrounding consumer disputes and the need to protect consumer rights and interests within the UK legal framework.

Costco Wholesale Corporation v. TicketOps Corporation, 2023 ONSC 573

In this case, the dispute revolved around digital ticketing services provided by TicketOps to Costco. TicketOps had breached its agreement with Costco by failing to forward payments to ticket suppliers during the early stages of the COVID-19 pandemic. The parties' contract contained an arbitration clause, requiring arbitration seated in Seattle, Costco initiated arbitration proceedings against TicketOps and emerged victorious. Subsequently, Costco sought to enforce the award in Ontario, Canada, while TicketOps opposed enforcement.

The Ontario Superior Court of Justice, in addressing the enforcement issue, emphasized that Ontario's International Commercial Arbitration Act 2017, incorporating the UNCITRAL Model Law and New York Convention, mandates minimal interference by domestic courts in international arbitration awards.

The court stressed the narrow interpretation of grounds for refusing enforcement, limiting them to fraud, public policy, and lack of natural justice. In this case, TicketOps raised several defenses, including the brevity of the arbitration hearing and a perceived bias due to the arbitrator's Facebook connection with Costco's counsel. However, the court dismissed these objections, maintaining that the short hearing did not violate natural justice and that Facebook friendships should not raise concerns of bias. Ultimately, the court found no valid grounds for rejecting the award's recognition and enforcement, underscoring the obligation to honour the arbitration outcome.

The Republic of India v Deutsche Telekom AG [2023] SGCA(I) 4

This case arose from an investor-state arbitration involving the Republic of India and Deutsche Telekom AG, a German company in the Singapore Court of Appeal. The dispute stemmed from a terminated agreement between an Indian state-owned entity (the Indian SOE) and one of Deutsche Telekom's subsidiaries (the DT Subsidiary). Deutsche Telekom initiated arbitration, asserting that the agreement's termination violated a bilateral investment treaty between India and Germany. After receiving a favourable final award, Deutsche Telekom sought to enforce it in Singapore and obtained leave to do so. India attempted unsuccessfully to set aside this leave order in the Singapore International Commercial Court (SICC) and subsequently appealed to the Singapore Court of Appeal. India also applied for a sealing order to ensure that proceedings related to the appeal would be private and that information and documents from the arbitration, including the parties' names, would remain confidential. This sealing order request was made under specific sections of the International Arbitration Act and the inherent powers of the court.

The Singapore Court of Appeal emphasized the fundamental principle of open justice but recognized exceptions for confidentiality in arbitration-related court proceedings, as outlined in the International Arbitration Act (IAA). The purpose of a sealing order under the IAA is to safeguard the confidentiality of the arbitration itself. However, the Court of Appeal declined India's request for a sealing order in this case because it found that the confidentiality of the arbitration had already been "substantially lost". This decision was based on various disclosures, including the online availability of arbitration awards, the revelation of India's identity in a Swiss court decision, public identification of the parties in an article and on LinkedIn, and publicly accessible documents in enforcement proceedings. Additionally, insolvency proceedings in India had disclosed the identities and outcomes of the arbitration, leading the court to conclude that there was no compelling reason to keep the enforcement proceedings confidential under the IAA.

The key lesson from this ruling is that parties engaged in arbitration, along with their legal representatives, must take measures to prevent the exposure of arbitration-related information to

the public. Additionally, in cases where parallel proceedings occur in different jurisdictions, parties should proactively secure sealing orders or similar protective measures. Doing so enhances the likelihood of obtaining a sealing order in any subsequent legal proceedings.

CZT v CZU [2023] SGHC(I) 11

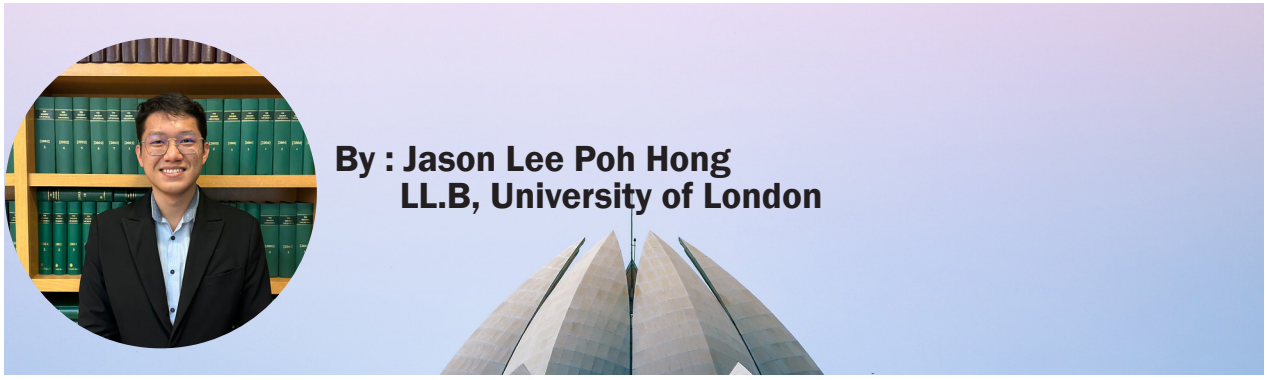
In a dispute arising from an ICC arbitration with Singapore as the arbitral seat, the Claimant sought production orders to compel the three members of the arbitral tribunal to disclose records of their deliberations. These requests were made within the context of setting-aside proceedings before the Singapore International Commercial Court (SICC). The Claimant alleged that the majority members of the tribunal had breached natural justice, exceeded the scope of arbitration, and violated Singapore's public policy. These claims were partially based on a dissenting opinion from the (Minority) tribunal member, who accused the (Majority) of serious procedural misconduct and concealing the true basis for their decision.

To substantiate these allegations, the Claimant sought access to the tribunal's deliberation records and a draft copy of the final award to demonstrate that the Majority had decided a crucial liability issue for undisclosed reasons. The central question before the SICC was whether the tribunal's deliberations were protected by the implied confidentiality obligation over arbitration proceedings, with consideration of any potential exceptions to this confidentiality.

The SICC underscored two crucial elements in its determination that the tribunal's deliberation records were indeed protected by confidentiality. Firstly, the SICC recognized an implied legal obligation that extends confidentiality to arbitrators' records of deliberation, including draft awards submitted for scrutiny by the arbitral institution. This protection is grounded in significant policy considerations, such as fostering candid discussions among arbitrators, ensuring unrestricted decision-making, safeguarding against external influences, and minimizing spurious setting-aside applications arising from differences in tribunal deliberations. Importantly, this confidentiality is not contingent on parties expressly selecting institutional rules that provide for it reinforcing Singapore's pro-confidentiality stance in arbitration.

Secondly, the SICC emphasized that exceptions to this confidentiality are exceedingly limited, allowing disclosure of deliberations only in the rarest of cases. To meet this standard, the case must present exceptionally compelling circumstances where the interests of justice outweigh the policy reasons for confidentiality, involve very serious allegations, and demonstrate real prospects of success. Notably, allegations of corruption fall within this exception due to their grave implications for the integrity of arbitration, provided they are likely to succeed.

Interns's View



By : Jason Lee Poh Hong
LL.B, University of London

I am deeply grateful for the invaluable experience I have gained during my three-months internship at Asian Institute of Alternative Dispute Resolution (AIADR). I would like to extend my heartfelt thanks to my humble colleagues who have been immensely supportive throughout this journey.

First and foremost, I express my sincere appreciation to our President, Datuk Professor Sundra Rajoo, for giving me the opportunity to intern with the AIADR Secretariat. I would like to express my warmest gratitude to my direct supervisor and Legal Executive, Mr. Jashveenjit Singh, for your professional guidance and advice in legal and non-legal drafting, research, and writing. I would like to thank the Assistant Manager, Ms. Cheng Wan Yng, for providing me with hands-on experience in reviewing document drafts and involving me in thought-provoking moments such as the revision of AIADR's membership rules and regulations. Lastly, I would like to thank our Membership and Marketing Executive, Mr. Agilan Gunasegaran, for imparting marketing insights and enhancing my digital designing skills.

Throughout my internship here at AIADR, I was exposed to a diverse range various tasks and duties which have significantly expanded my skill-sets and deepened my understanding of various facets of dispute resolution. I am particularly honoured to have contributed three chapters – Costs of Arbitration, Challenging and Enforcing Arbitral Awards - for AIADR's inaugural Arbitration Training Module and one chapter on Malaysian ESG regulations for AIADR's upcoming ESG Course. While drafting this training course material, I closely assisted my supervisor to draft essential pleading documents such as sample Notice of Arbitrations and procedural orders, which play crucial roles in real life arbitration proceedings.

Furthermore, I had the privilege to host the AIADR Roundtable Talk on the topic 'The New York Convention: Paper Tiger or Effective Enforcement Mechanism'. This opportunity allowed me to engage in insightful discussions and gain an international understanding of alternative dispute resolution mechanisms.

In addition to legal drafting and research, I actively assisted with various secretariat duties which allowed to me enhance my often underappreciated and underestimated soft skills. Being tasked with reviewing important documents, I gained a profound appreciation for the importance of attention to details and a heightened sense of responsibility. Moreover, my involvement in drafting official letters imparted valuable lessons in professionalism, work ethics and nuances of effective language. Interactions with legal and ADR professionals, participation in ADR-related conferences, and engagement in knowledge-sharing sessions have shown me the critical need for interpersonal skills and continuous professional development.

My time at AIADR has been instrumental in shaping my journey towards becoming a legal and ADR practitioner. I am eager to apply the knowledge and skills I have acquired as I slowly work towards my future goals. The experiences and memories I have gained here will always hold a special place in my heart. I extend my best wishes to AIADR and its staffs for their future endeav-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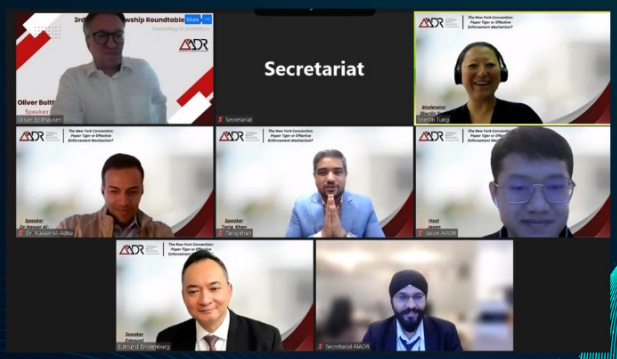
COURTESY VISIT FROM CHINA

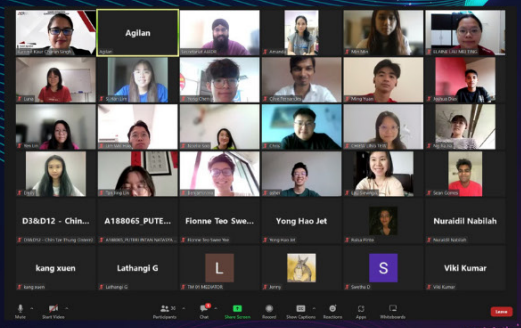
Above are some pictures from the Courtesy Visit by the Maritime Silk Road Central Legal District ("MSRCLD") Working Group from Xiamen to AIADR.

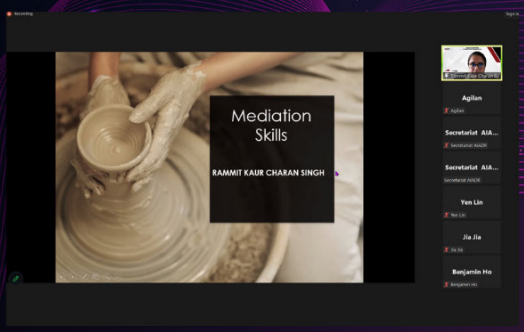
Above are some pictures from the Courtesy Visit by The China International Economic and Trade Arbitration Commission (CIETAC) Hong Kong Branch.

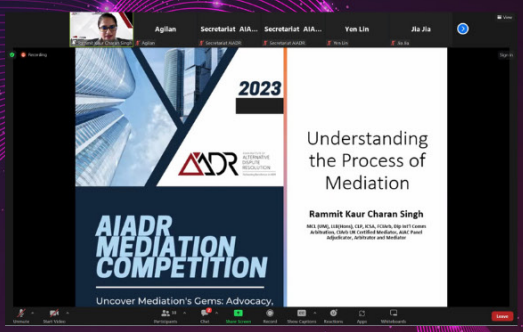
PICTURES FROM OUR RECENT WORKSHOP & WEBINARS



Above are the speakers for AIADR's Roundtable Discussion on The New York Convention: Is it a Paper Tiger or an Effective Enforcement Mechanism?







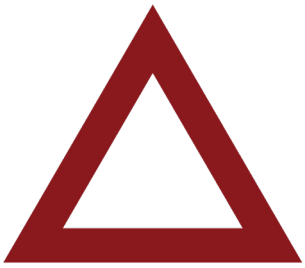
Above are some pictures from the AIADR Mediation Workshop held in preparation for the AIADR Mediation Competition

Upcoming Events.

17 October 2023 - 22 October 2023
ASEAN Law Association General Assembly 2023

18 October 2023 - 21 October 2023
AIADR Community Mediation training Course in Collaboration with the Justices of Peace Selangor

4 November 2023
Conference : Development of Platform for Legal Service and Mechanism for Training Legal Personnel in the Belt and Road Initiative



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 welcomed.

Next Cut-off Date for Submission of Contributions:
Newsletter: 1 September 2023
Journal : 31 October 2023

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

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