



ASIAN INSTITUTE OF
ALTERNATIVE
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Delivering Excellence in ADR

ADR CENTURION

Inside this Issue

President's Message
Datuk Professor Sundra Rajoo

What's Being Right Got To Do With It?

**An exploration of the roles of right and wrong
in mediation**

By: Marc Bhalla

**Nudging Disputants to a Win-Win Settlement: A
Case Study of Family Business Conflict.**

By: John C G, LEE & G. Roy D.E Goh

AIADR 6th Annual General Meeting Highlights

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Contents

Announcements	6	
Highlights	7	Message from the President: Datuk Professor Sundra Rajoo
Views	10	What's Being Right Got To Do With It? An exploration of the roles of right and wrong in mediation <i>By : Marc Bhalla</i>
	13	Nudging Disputants to a Win-Win Settlement: A Case Study of Family Business Conflict. <i>By: John C G, LEE & G. Roy D.E Goh</i>
Highlights	18	AIADR 6th Annual General Meeting Highlights
News	20	Past & Upcoming Events

***“Conflict is in
combat is***

***inevitable but
optional.”***

— Max Lucado.

Announcements

Join the spotlight - submit your profile to the AIADR Newsletter

2024



Submission requirement:

- 1. Profile Picture**
- 2. Biodata (150 - 200) words**

- **Available to AIADR members with active membership only**
- **Limited to 5 slots for each issue.**

To submit, kindly email aiadr.editor@aiadr.world

6

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Members are welcome to reach out to the Secretariat for assistance or collaboration in organizing webinars on ADR topics of their choice. 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. Email us to register your interest!

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PRESIDENT'S MESSAGE

DATUK PROFESSOR SUNDRA RAJOO

Dear Members,

Warm greetings from the Asian Institute of Alternative Dispute Resolution. It is with great pleasure that I introduce the 31st Issue of the ADR Centurion. I extend sincere thanks to all individuals for their unwavering support and trust in our institute's mission to establish 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 new subscribers for their dedication to 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.

I am pleased to take this opportunity to update all members of the Asian Institute of Alternative Dispute Resolution (AIADR) on our recent work and initiatives. 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). Whether you're an experienced professional or just starting in the field of ADR, there was something for everyone at AIADR's recent events:

1. Firstly, we are pleased to announce that Dato Ricky Tan, Chairperson of the Business Development and International Relation

Committee (BDRIC) visited Cambodia to engage with key stakeholders at the National Authority for Alternative Dispute Resolution (NADR) and the National Commercial Arbitration Centre (NCAC). During this visit, productive discussions took place with officials and representatives from NADR and NCAC, focusing on enhancing collaboration and sharing insights to advance alternative dispute resolution mechanisms. The visit underscores our commitment to strengthening partnerships with respected institutions like NADR and NCAC, promoting effective dispute resolution practices and contributing to the development of a robust ADR framework both regionally and internationally.

2. On May 4th, 2024, I had the privilege of speaking at the One-Day International Conference on Construction Arbitration, organized by the Society of Construction Law India in Mumbai. My presentation focused on the important topic of 'Proving Delays in Construction Disputes.' Drawing on extensive experience and knowledge in this area, this presentation aimed to offer valuable insights to the distinguished audience in attendance. This opportunity allowed me to contribute to the discussion on effective dispute resolution strategies within the construction sector, highlighting practical approaches to delay-related challenges. The conference served as an excellent platform for meaningful exchanges and learning, reinforcing our commitment to advancing best practices in construction arbitration.

3. Next, I am pleased to announce significant developments during my recent visit to Hainan and

Highlights

2024

Guangzhou, where AIADR successfully formalized several collaborations agreements with prominent institutions. On May 22nd, 2024, AIADR and the Hainan Lawyer Association penned a Memorandum of Understanding (MoU), marking a pivotal step in fostering collaboration in this field. The following day, May 23rd, AIADR and the Nanning Arbitration Commission also formalized an MoU aimed at enhancing cooperation and advancing the ADR industry. On May 24th, AIADR and Guangxi University formalized an MoU to integrate our Arbitration Training Course into their esteemed Master of Law (LLM) program. These agreements underscore our commitment to enhancing ADR through collaboration with respected institutions, aiming to improve dispute resolution practices globally and strengthen AIADR's international influence.

8

4. AIADR is grateful to have had Prof. Dr. Harald Sippel deliver a special guest lecture during our recently concluded Legal Sustainability Practitioner Training Course on May 25th, 2024. His presentation on EU regulations and their implications, particularly the Malaysian context, provided participants with valuable insights into the regulatory landscape and its potential impacts on legal practices. Prof. Dr. Sippel's expertise significantly enriched the course, enhancing the learning experience and underscoring our commitment to legal sustainability education. This lecture reaffirmed AIADR's dedication to fostering dialogue and knowledge-sharing within the ADR community, contributing to the advancement of ADR practice. We are pleased to facilitate this important opportunity for professional development and growth.

5. AIADR was privileged to host a distinguished delegation from the Hainan Lawyers Association on June 5th, 2024. Led by President Fu Qiongfeng, the delegation engaged in substantive discussions on future collaboration, the exchange of ideas, and other topics of mutual interest. Following this fruitful discussion, AIADR and the Hainan Lawyers Association formalized their commitment by signing a Strategic Cooperative Agreement. This milestone marks the beginning of a promising partnership aimed at enhancing legal cooperation. Through this agreement, we

aim to contribute to the development of a robust legal framework and look forward to the positive impact this collaboration will have on the legal community.

6. Next, I am pleased to announce my participation on June 20th, 2024, at the ESG National Conference 2024: The Ethical-Legal Landscape, Impact & Opportunities, where I delivered a speech and moderated a session. Our support for this conference reflects our commitment to enhancing participants' practical skills and experience in resolving legal disputes. The event provided deep insights into the complexities and significance of ESG-related legal issues and effective dispute resolution strategies. It also served as a platform for exchanging ideas with industry leaders on how ESG is evolving to promote sustainable business practices and long-term corporate responsibility. These discussions aim to foster meaningful dialogue that advances ethical and legal standards in today's business environment.

7. We are pleased to announce that AIADR had the privilege participated in the Opening Ceremony of the Malaysia Office of Yingke Global One-Hour Legal Service Ecosystem on 24th June 2024. During this event, AIADR signed a Memorandum of Cooperation with the Yingke Malaysia, marking a significant step towards enhancing collaboration on ADR training courses. This partnership aims to further the professional development of ADR practitioners and underscores our commitment to improving global dispute resolution practices. By collaborating with respected institutions like Yingke Malaysia, we strengthen AIADR's international influence and advance our dedication to fostering greater cooperation within the field of ADR.

8. We are also delighted to announce that on 26th June 2024, AIADR officially signed a Collaboration Agreement with Brickfields Asia College (BAC) for the Mediation Training Course. This partnership marks a significant milestone in our efforts to enhance the quality and accessibility of mediation training for current and future legal professionals. By prioritizing excellence and innovation, we are committed to shaping the

future of ADR education and practice, ensuring continuous improvement in global standards. The agreement between BAC and AIADR reflects our proactive approach to legal education and dispute resolution training, aiming to equip the students with versatile skills for various legal domains. This initiative underscores our commitment to embracing innovation and providing diverse learning opportunities for students.

9. Lastly, I had the honor of participating in the Two-Day International Conference on Construction Law & Arbitration, organized by the Society of Construction Law India from July 6th to 7th, 2024. At the conference, I shared insights as a panelist on 'How to Prepare an Extension of Time (EoT) Claim and the Relevance of the SCL Delay & Disruption Protocol'. Additionally,

I moderated the panel on 'Disruption Claims: Liability and Quantification', where we discussed the complexities of identifying and assessing disruption claims. Through our support, AIADR reaffirmed its commitment to fostering dialogue and knowledge-sharing within the ADR community, advancing ADR practice. These efforts reflect our dedication to promoting excellence and innovation in the profession, and we look forward to future collaborations aimed at enhancing ADR standards and practices.

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 endeavours.



What's Being Right Got To Do With It?

An exploration of the roles of right and wrong in mediation

2024



Marc is based in Toronto, Canada. He has over two decades of mediation experience. As a professor, Marc is dispute resolution faculty at Osgoode Hall Law School and the York University School of Continuing Studies. His practical experience includes private practice and service on administrative tribunals. Marc serves on the Board of Directors of the ADR Institute of Canada, where he supports aspiring and seasoned conflict management professionals in promoting collaboration, embracing technology and being environmentally conscious in practice. Marc has authored three books along with over 100 articles, and he has spoken across North America on a variety of mediation, mediation adjacent and dispute resolution topics. Born in Hong Kong, Marc Bhalla immigrated to Canada as a young child and grew up supporting the Toronto Blue Jays.

10

Marc Bhalla, LL.M.

In the Canadian province of Ontario, the local law society has a motto “Let Right Prevail”.¹ It is a noble notion to be sure. In the world of Alternative Dispute Resolution and, specifically, mediation though, the question it begs is: What’s being right got to do with it?

At its core, mediation is about collaboration and self-determination.² The focus of mediation is often on furthering understanding. Participants consider how to move forward rather than assigning labels on the past. This impacts everything about participating in mediation as compared to taking part in an adversarial process chaired by a decision maker who will impose an outcome on the parties.

Adversarial processes are very much about prov-

ing you are right and others wrong. There is a combative and oppositional tone in adversarial proceedings as a result. This makes sense. In an adversarial proceeding, you do not need opposing parties to agree that they were wrong - only the decision maker needs to agree with you on that assessment.

Mediation, however, is not focused on deciding whose view on what is right should triumph. The consideration in mediation is more practical in focus. Often in mediation, some exploration of the past is needed for parties to embrace settlement and “finish the story”³ of their dispute. In mediation, exploring the past is less about proving your view of what previously occurred; it is instead about sharing perspectives and allowing for clarification and greater shared

¹ The Law Society of Ontario, formerly known as the Law Society of Upper Canada, has this motto.

² ADR Institute of Canada, “Principle of Self-Determination” from National Mediation Rules & Code of Conduct for Mediators (2012) p 16. online: < <https://adric.ca/pdf/ADRMEDIATIONRULES2014.pdf>> [perma.cc/S2FU-XJB5].

³ This sentiment, as expressed, is inspired by Cody Rhodes. There are many different ways to express the notion, such as “turning the page” and “closing the book”. The idea being to conclude the dispute.

Views

understanding. As mediation is party-focused, it can help identify and fill the gaps of understanding for those participating in it. Unlike typical adversarial proceedings, mediation often includes space to consider preserving or improving the relationship between disputing parties.

A recent, local example for the writer comes from the world of sports. In Toronto, Major League Baseball's Toronto Blue Jays went to arbitration earlier this year with star player Vladimir Guerrero Jr. to address a salary dispute.⁴ Fans had grave concern that the adversarial nature of the arbitration would have our beloved "Vladdy" – baseball's reigning home run derby champion – exposed to negative things being said about him by his team as they put forth their arguments in support of paying him a lower salary than he sought. This risk - of participating in a dispute resolution process having a detrimental impact on the relationship between the parties - is typically mitigated in the collaborative mediation process where the focus is on working together.

Participants need to be more thoughtful about the way they communicate in a collaborative setting. The tone and approach of offering one's perspective in mediation is usually less confrontational. This allows opposing views to be received less harshly. It should not be difficult to see how this softened presentation and more inclusive outcome setting focus better allows for relationship preservation. The underlying tone is more positive because the focus is on working together.

In an adversarial process, parties fixate on proving that their version of historic events is most accurate. In mediation, parties can agree to disagree about historic aspects of the dispute and move on. Certainly, when mediation produces a settlement, parties tend to feel better about one another in a way that simply does not play out likewise when an

arbitrator or judge releases their ruling.⁵ This is not to suggest that everyone is thrilled by the results of mediation; it is simply that mediated solutions are less divisive than outcomes of adversarial processes. Because those involved in the conflict are involved in crafting and accepting mediated outcomes, it is said that the results of mediation tend to be better accepted, more sustainable and easier to enforce than those from adversarial processes.⁶

Mediators often introduce the mediation process as one that does not exist to decide who is right and who is wrong.⁷ This notion can be a struggle for those with legal training to wrap their minds around; it goes against the way of thinking and advocacy in which they are schooled. It disregards the motto of the aforementioned law society. It can still be helpful to research similar cases, evaluate the strengths and weaknesses of your position and given legal consideration to the known positions of others in preparing for and offering submissions at mediation. Having a sense of reality with respect to the potential of adversarial outcomes can be invaluable in assessing if any settlement offers made in mediation are worth considering. It is simply that the focus is on agreeing to an outcome rather than proving yourself right.

The success of any particular mediation is not about whether or not the matter settles – not all matters should settle in mediation.⁸ Mediation exists to allow parties to explore settlement possibilities. Each party must ultimately decide if a settlement option available to them is better than their alternatives. Parties involved in mediation are encouraged to select the option that is best for them. Truly doing this requires a sound understanding of what is likely to occur if the matter is not resolved through mediation. The time, cost and risk involved in pursuing adversarial process options are important to understand through a lens of reality in order to make the best decision.

⁴ It was widely reported by Major League Baseball and related news outlets that the Toronto Blue Jays and Vladimir Guerrero Jr. went to salary arbitration, which concluded in February 2024.

⁵ This is the writer's observation in practice and also logical.

⁶ This sentiment has been widely shared in the Canadian dispute resolution fields as attributable to a broad spectrum of ADR practitioners and process participants

⁷ This is observed as a common practice amongst mediators in the writer's jurisdiction

⁸ The success of any particular mediation is not about whether or not the matter settles – not all matters should settle in mediation.

We often speak to mediation offering the chance for a “win-win”.⁹ The idea being that if a mediated settlement can satisfy the underlying interests of each party involved in the conflict, the outcome produced can leave them each with something they had wanted. Mediation allows for creative solution exploration. Such can extend beyond the rigid parameters of judicial or arbitral jurisdiction; when the parties themselves determine the outcome of their conflict, possible outcomes are not confined in scope in the same manner as a third party decision-maker’s jurisdiction for outcome imposition. Mediation often renders results that a judge or arbitrator would not have the power to impose.

Of course, the reality of participating in an adversarial process requires a win-win as well. Typically, you need to succeed in both your legal arguments and your claim for the recovery of costs. Otherwise, the cost of being right can be a very steep cost indeed.

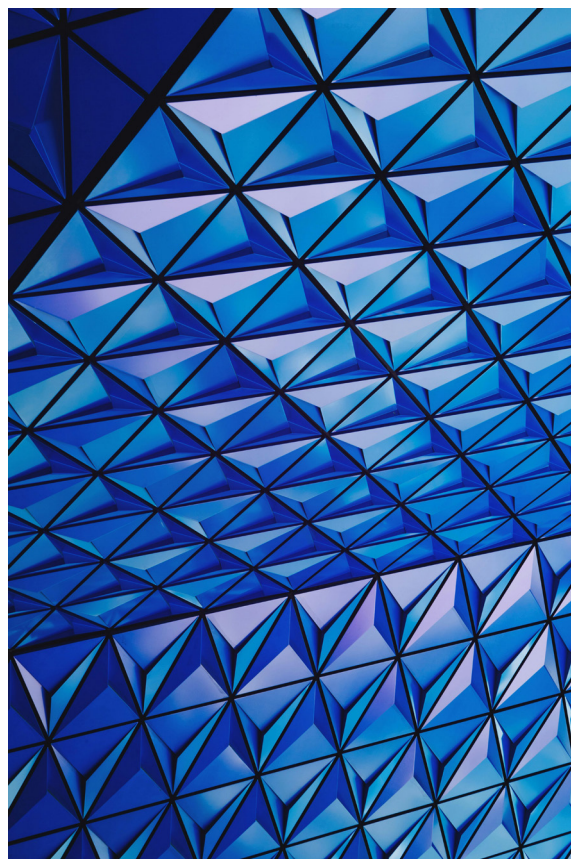
Additional cost considerations that deter many from pursuing adversarial outcomes is the time and toll on mental health that comes with the very nature of the adversarial process. Locally to the writer, it is common for parties to have to wait no less than a full calendar year to have their day in court and receive the decision imposed upon them.¹⁰ The result being that even if one succeeds in their legal arguments and cost recovery attempts, the toll of your right prevailing is costly. It requires funding, patience and perseverance with no guarantee of satisfaction.

In light of this, it is wise for parties experiencing conflict to consider the proportionality aspect of resolving their issue. That is, to consider if it is worth the cost of being right. This may include a cost-benefit analysis across the spectrum of most likely outcomes that includes contemplation of the opportunity cost that comes with an extended adversarial process engagement. When it is your own money being used to fund the path to conflict closure (even with the prospect of recovering

some of it at the end), it often is not seen to be worth it. This is especially the case for those who value their time (which there is no prospect of recouping) and headspace. Practically, it is often a wiser to invest in collaborative outcomes - even if that means compromising something along the way. Ultimately, this can result in agreeing to an outcome that gives you less than you want over having an outcome having less than you wanted imposed upon you. There is at least the chance of compromise selection in the former.

Mediated outcomes can also offer confidentiality. You need not declare your compromise to the world or let the public know that you opted for the conclusion that was practically best for the sake of your wallet, watch and mind. It is in that practical reality that mediation is most appealing.

It is about prioritizing resolving conflict over the cost of being right.



⁹ In North America, the notion of mediation offering the potential of a “win-win” outcome, where no party is viewed as being on the losing side is widely embraced, to the extent the writer would suggest it is cliché.

¹⁰ This timeline is commonly accepted in the writer’s jurisdiction.

Nudging Disputants to a Win-Win Settlement: A Case Study of Family Business Conflict.



John C G, LEE

Professor LEE C G, John is a certified mediator with the Singapore International Mediation Institute, a fellow with AIADR, Malaysia and a former chartered arbitrator with the ADR Institute of Canada. He is a trainer in mediation advocacy and arbitration. John serves with the Singapore Ministry of Law, International Chamber of Commerce Singapore, Consumer Association of Singapore, World Intellectual Property Organisation, and Zhuhai International Court of Arbitration, China. John area of interest is in international commerce, intellectual property and sustainability and family business. He is an author with over a dozen publications, the most recent book which he co-author is entitled: "ADR: The Future of Dispute Resolution" Currently, John is an adjunct professor with Renmin University of China and is a visiting professor with Brawijaya University and Triskati University, Indonesia In his last full-time employment, John was the CEO of a Chinese State-owned enterprise, a joint venture of China Jilin Government and a subsidiary of Temasek Holding (Singapore Sovereign Fund).



G. Roy D.E Goh

Prof. Roy Goh is a published author and a dispute resolution lawyer by training, with more than 15 years of commercial business experience. His diverse qualifications include, post-Graduate Diploma in Business Administration, Bachelor of Laws (Hons. 2nd Upper) from the University of Essex, Master of Laws in ASEAN+6 Cross-Border Legal Practice from the College of Law (AUS) and Doctor of Business Administration (Specializing in International Business Law) respectively.

Roy is appointed international arbitrator and mediator on the panel of leading Chinese, Indian, and Thai international arbitral centres, and he also serves as Visiting Professor (Law) with the European International University-Paris.

Abstract

In recent years, dispute resolution such as negotiation, conciliation and mediation requiring collaborative agreement of all parties to achieve a resolution are gaining traction. The conventional assumption that disputants are rational, well-informed decision-makers who will opt for the optimal solution is often lacking. Mediation and behavioural economics offer innovative tools that have shown promise in cases where conventional approaches have faltered.

Analysing a practitioner case study of family business succession dispute resolution, this paper addresses these gaps and the tools available to

nudge disputants towards an optimal "win-win" settlement.

Introduction

Most traditional choice theories operate under the assumptions of utility maximization, objectivity, complete knowledge, and rationality. However, this can lead to a sub-optimal equilibrium, highlighting the fallacy of assuming all participants are logical, well-informed, and motivated solely by self-interest. This often manifests in real-world conflicts, making it essential to address players' irrational behaviours influenced by emotions, cognitive biases, or external factors.¹

¹ Colman, A. M. (2003). Cooperation, psychological game theory, and limitations of rationality in social interaction. Behavioral and Brain Sciences, 26(2). <https://doi.org/10.1017/S0140525X03000050>

Family businesses, exhibit a unique sense of responsibility toward both past and future generations, viewing the business as a cherished heirloom that must be preserved for the future. Family businesses are vulnerable not only to external crises but also to internal challenges, such as conflicts between family members, difficulties in succession planning, and issues related to family dynamics and communication.²

Given the strong emotional connections involved, the researchers further highlight that separation and third-party interventions are effective in conflict management as they help reduce the emotional intensity of family disputes. Mediation stands out as a strategy that involves a neutral third party, either a single mediator or co-mediators, to help disputing parties reach a voluntary and mutually satisfactory resolution. Unlike adversarial methods, mediation focuses on collaboration, fostering an environment where participants can openly express their interests, needs, and concerns.

Incorporating insights from behavioural economics into the analysis, recognizing common cognitive biases and behavioural patterns allows for a more realistic understanding of how individuals might deviate from strictly rational decision-making and how disputants can be nudged to settle in a more optimal equilibrium.

Case Study: Family Business Succession Conflict

Case Background:

Mr Agus (not his real name) has two sets of children, two sons and two daughters from his first marriage with an Indonesian lady who he has divorced and later married a Malaysian lady, who gave birth to two sons and one daughter.

In the last decade before his death, in 2021, he has been grooming his two sets of children, to manage his family businesses, namely, his elder children, from his first marriage to manage the Indo-

nesian businesses and the younger children, from his second marriage to manage the Malaysia and Singapore businesses. In Mr Agus's Will, both sets of children have almost equal share of the family business and his surviving wife is willed to have the matrimonial homes in Singapore and Malaysia. It has been Mr Agus express wish that his businesses should continue as one family business and like him, his children should hand it down to their children (that is his grandchildren). Unfortunately, his unexpected death before he could either appoint who amongst his children would be the group CEO/Chairperson or implement an organizational structure that will lead the overall family business went undecided. (was left undecided?).

Issues arising:

The elder children would like to lead the family business given that they are more experienced and senior by Asian family culture. The younger children disagree, because in their view, it should be based on merits and who is a better fit for the future development of the family business.

Both sets of children have lived geographically apart, mostly in Malaysia and Indonesia and socially spending little time together as siblings. Hence, their interactions are at best causal friends.

Notwithstanding uncle Yusuf, Mr Agus younger brother is well respected by both sets of nephews and nieces, he will need to produce a long-term solution acceptable to both sets of nephews and nieces to head-off any future destructive siblings' rivalry.

Upon the initiative of their uncle, a third-party neutral was sorted to mediate and resolve this family business succession matter.

Mediation:

Mediation distinguishes itself by employing a neutral third party, single or co-mediators, to guide disputing parties toward a voluntary and mutually agreeable resolution. Unlike adversarial ap-

²Yilmaz, Y., Raetze, S., Groote, J. de, & Kammerlander, N. (2024). Resilience in Family Businesses: A Systematic Literature Review. In *Family Business Review* (Vol. 37, Issue 1). <https://doi.org/10.1177/08944865231223372>

Views

aiming to create an environment where participants can openly communicate their interests, needs, and concerns. Through this process, the mediator facilitates dialogue, enabling the discovery of shared ground and the development of innovative solutions addressing the core issues of the dispute.³

In their classic book on negotiation⁴ provided valuable insights and strategies for achieving mutually beneficial agreements. The authors introduce the concept of BATNA emphasizing the importance of knowing your best alternative before entering a negotiation, and WANTA represents the worst possible outcome a party could face if negotiations break down, and no agreement is reached. It is the least favourable option among the available alternatives. Understanding BATNA provides leverage and helps in making informed decisions during the negotiation process. If the proposed agreement is less favourable than BATNA, parties have the option to reject the deal and pursue alternative courses of action.

WATNA represents the worst possible outcome a party could face if negotiations break down, and no agreement is reached. It is the least favourable option among the available alternatives. It helps negotiators set realistic limits and boundaries during the negotiation, preventing accepting agreements that could lead to outcomes worse than their WATNA.

Behavioural Economics

Simon⁵ & Lam⁶ suggested that humans have bounded rationality, in which people make decisions based on various cognitive limitations. Thus, unlike the traditional utility economic models, the premise of behavioural economics builds upon

understanding common cognitive biases, irrationalities, and deviations that normal people exhibit which often drive them to make decisions that are not in their best interest or beneficial to them.

BE pays special attention to three aspects of human behaviours (a) use of immediate cognitive resources such as heuristics in decision-making, (b) temporal aspect of judgments, and (c) social influence on individual decision-making.

The renowned Nobel Prize recipient in economics Thaler, along with Kahneman⁷ and Tversky⁸ developed the theoretical frameworks and established behavioural economics as a recognized division of mainstream economics. By integrating cognitive psychology to economics, these behavioural economists intended to understand the way that human cognition really works in economic decision-making and discover the common cognitive biases underlying irrational behaviours

Structure of the Mediation Session:

The mediation session was design into three parts,

First Phase (Day One)

Both sets of siblings are to present their respective proposals – separating the family business, how they will grow their part of the business (SWOT Analysis and Strategy). Followed by private sessions with each set of siblings.

Second Phase (Day Two and Three)

Both sets of siblings present their respective proposals based on their deceased father's wish to jointly manage the family business (SWOT Analysis and Strategy).

³ Goh, R. D. E., & Lee, C. G. J. (2021). ADR: The Future of Dispute Resolution.

⁴ Fisher, R., & Ury, W. (1981). Getting to Yes, Negotiating Agreement Without Giving In (Harvard Negotiation Project). In Penguin Books.

⁵ Simon, H. A. (1997). Models of bounded rationality: Emperically Grounded Economic Reason. MIT Press, 3.

⁶ Lam, D. (1997). Cognitive behaviour therapy territory model: Effective disputing approach. Journal of Advanced Nursing, 25(6). <https://doi.org/10.1046/j.1365-2648.1997.19970251205.x>

⁷ Thaler, R. H. (2018). Behavioral economics: Past, present, and future. Revista de Economia Institucional, 20(38). <https://doi.org/10.18601/01245996.v20n38.02>

⁸ Tversky, A., & Kahneman, D. (1992). Advances in prospect theory: Cumulative representation of uncertainty. Journal of Risk and Uncertainty, 5(4). <https://doi.org/10.1007/BF00122574>

At the end of both their presentations, a brainstorming session follows with all parties taking part.

Final Phase (Fourth and Final day)

Summarized the (a) strategy for the coming 10, 20 years, (b) how the family business, as whole or as separated into two should be organized and (c) what is the agreement on family business succession.

Outcome:

The final agreements of all the parties: Siblings and Uncle Yusuf were:

- (1) maintain the family business in its entirety, which is no separation.
- (2) A family council will be set up, consisting of a maximum of nine members which will have the final say in the appointment of family members to senior position at the group and operating unit levels, shareholding, dividend, and matters related to the family business and family members involvement in the family business.
- (3) The uncle will chair the first family council, Uncle Yusuf, with two members each from the two set of siblings. Female family members have the same rights and representation as male family members.
- (4) Within the next three months, the family council will announce the criteria for each senior position to all eligible family members; appointments will be based not only on these criteria but on proven track record and merits of the individual.
- (5) The entire shareholding of Mr Agus and Uncle Yusuf in the family business will be held in trust, and any sales or pur

chase of any family business shares are subject to the final approval of the family council.

Discussion:

On the first day of mediation, both sets of siblings wanted the Singapore HQ operation, which include the public listed company to be part of their business, as they can see the competitive advantages of finance, tax, higher corporate profile, international trade: procurement, sales and marketing. At private session with each set of siblings, with open-ended probing questioning and nudging, they realized that without the scale of the family business, each will not be able to achieve the same level of competitive advantage even if the Singapore operation is part of their business.

The cognitive biases of overconfidence and inadequate knowledge on the separation of the family business were overcome by the end of the first day. On the second day, with trust, relationship and effective communication established between mediators and all parties, the mediation intervention approach shifted from eliciting-facilitating to guiding-directing.⁹

On the third day of mediation, during brainstorming session, from the interaction and body language of the two sets of siblings, when it became clear that all the cognitive bias has been overcome, mediator(s) transit to the role of a wise counsel mediator.¹⁰ We begin by asking more probing and at times inconvenient questions.

By late afternoon on the third day, parties had reached a general agreement but agreed to meet again on the fourth day, so that all have a chance to "sleep over" and amendment or further clarification, if needed.

On the morning of the fourth day, the general agreement remains unchanged and it was reduced to a simple written agreement, with all parties signing off. All proceeded for an early lunch where the ambience being warm and spontaneous.

⁹Alexander, N., Lu, T., Chen, A., & Yuen, R. (2022). The Hong Kong Mediation Manual, Third Edition, 2022 (Third).

¹⁰Alexander, N., LEE, J., & Lum, K.-W. (2019). Singapore Mediation Handbook. LexisNexis.

Views

Conclusion

The analysis of this case study unravels the irrationality and cognitive biases that underlie human behaviours and decision making and exhibit the useful application of mediation and behavioural economics to nudge parties towards a more rational and optimal equilibria.

Multi-disciplinary approach in dispute resolution is not new nor isolated. Judiciaries are becoming more multi-disciplinary in its dispensing of justice. In his opening address at the International Family Law Conference in 2016 the Chief Justice of Singapore¹¹ highlighted the Singapore's family justice system implementation of therapeutic justice (TJ), which aim to preserve constructive familial relationships even amidst discord. Besides judges, it involves a team of professional and experienced mediators, counsellors, psychologists, and social workers staff its social science arm. Family business disputes resolution will benefit from such a multi-disciplinary approach.

¹¹ C.J. Sundaresh Menon of Singapore. (2016). Opening Address of The Honourable The Chief Justice of Singapore at the International Family Law Conference on 29 September 2016.



AIADR 6th Annual General Meeting Highlights

2024



18

We are pleased to provide an overview of the AIADR 6th Annual General Meeting (AGM), held on Friday, June 21, 2024. This hybrid event, conducted both via Zoom and in person, was a key moment for our organization, offering a detailed look at AIADR’ accomplishments, challenges, and future strategic directions. The AGM reinforced our commitment to transparency while celebrating significant milestones that highlight our growth and resilience.

The event commenced with an enlightening fire-side chat moderated by Samrith Kaur and featuring esteemed members of the AIADR Governance Council for the term 2018 – 2023. Each council member brought invaluable perspectives and experiences:

- Datuk Sundra Rajoo reflected on his journey with AIADR and the transformative impact of his leadership during the past term. He emphasized the organization’s growth trajectory, addressed the challenges encountered, and highlighted key milestones achieved under his guidance.

- Dr Li Hu provided a comprehensive overview of the Governance Council’s strategic contributions to AIADR’s mission. His discourse encompassed the council’s initiatives in advancing industry standards and adapting to emerging trends, underscoring the importance of agility and innovation in dispute resolution practices.

- Dr. Christopher Malcolm offered a forward-looking assessment of AIADR’s competitive positioning within the evolving global landscape of dispute resolution. He outlined strategic imperatives for sustaining AIADR’s relevance and enhancing its operational efficiencies, stressing the significance of continuous improvement and differentiation strategies.

- Mr. Yeung Man Sing addressed two critical aspects of the dispute resolution sector: current trends and their potential impact on AIADR’s strategies, as well as the essential changes AIADR should consider to ensure ongoing effectiveness and relevance.

Following these enriching discussions, the

Highlights

AGM proceeded to the pivotal task of electing new council members and adopting resolutions aimed at steering AIADR's future course. The reappointment of Datuk Professor Sundra Rajoo as President, Dr. Li Hu and Dr. Christopher Malcolm as Vice Presidents, and Mr. Yeung Man Sing holding dual role of Vice President and Honorary Secretary, affirmed AIADR's commitment to continuity and strong leadership.

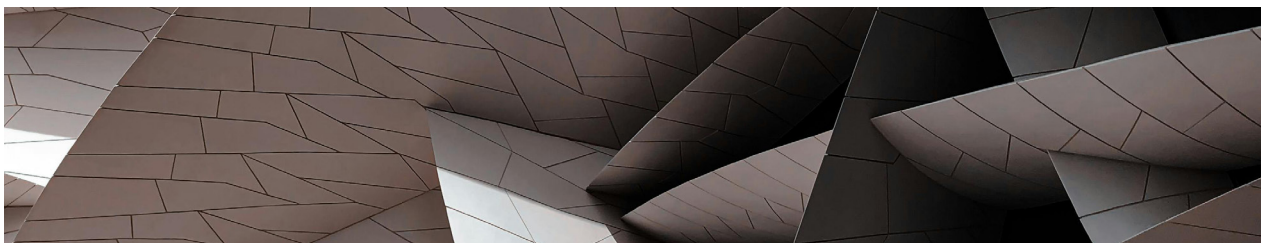
Notably, Ms. Samrith Kaur's appointment as Honorary Treasurer introduced fresh perspectives and expertise to the council, enhancing its diversity and strategic oversight capabilities. This leadership transition signals AIADR's proactive approach in fostering inclusive governance and harnessing diverse talents to drive organizational excellence.

We would also like to extend our deepest appreciation to Dato' Quek Ngee Meng, who stepped down from his roles as Vice President and Honorary Treasurer. His dedication, leadership, and invaluable contributions have been instrumental

in AIADR's development and success. We are profoundly grateful for his service and commitment to advancing the organization's mission.

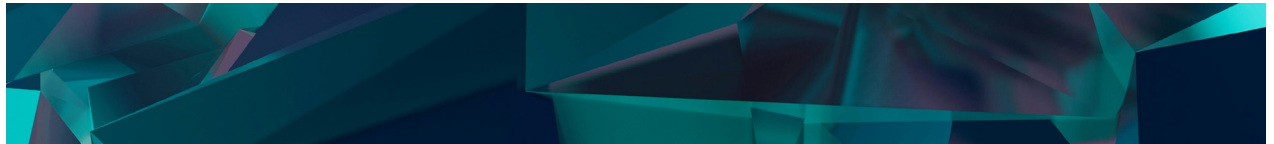
The AGM concluded on a positive note, underscoring AIADR's commitment to advancing peaceful and effective dispute resolution globally. As AIADR looks forward, it remains dedicated to innovating and collaborating to address ongoing challenges, reaffirming its pivotal role in international dispute resolution.

For those interested in revisiting the insightful discussions and strategic outlook shared during the AGM especially during the fireside chat, the recorded webinar is accessible on AIADR's official YouTube channel, providing a comprehensive recap of the event's highlights and key takeaways. If you are interested in watching the webinar, please visit our YouTube channel or click the link provided below: https://www.youtube.com/live/4OzoMy-flhrg?si=caFfg5N_6E37tq2z



Highlights From AIADR's Past Events

2024

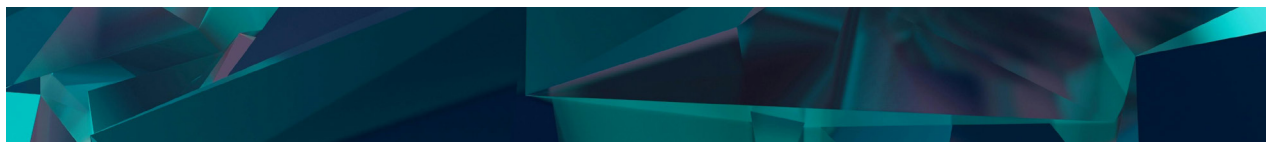


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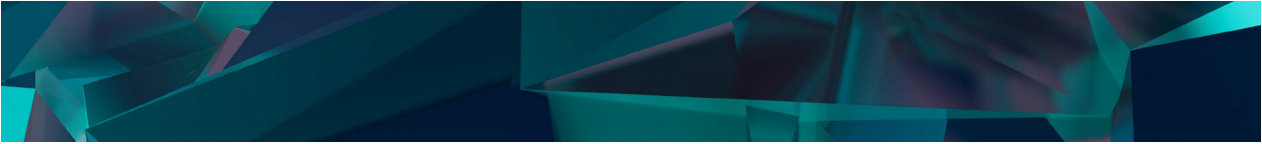
AIADR signed a Memorandum of Cooperation with Yingke Law Firm during the Opening Ceremony of the Malaysia Office of the Yingke Global One-Hour Legal Service Ecosystem, which took place on 24th June 2024.



AIADR's fellow members Dato Ricky Tan & S.C Lai conducted a in-house training organized by AIADR for Yingke Law Firm lawyers to better understand the practice of ADR and to offer their clients enhanced value.



Highlights From AIADR's Past Events

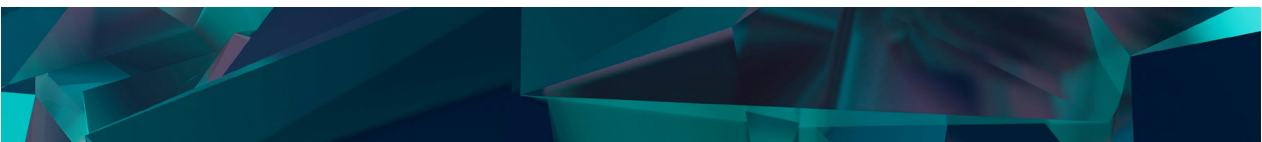


2024

21



AIADR officially signed a Collaboration Agreement with Brickfields Asia College (BAC) for the Mediation Training Course.



2024

Upcoming Events.

22

3 August - 8 September 2024
AIADR Mediation Competition

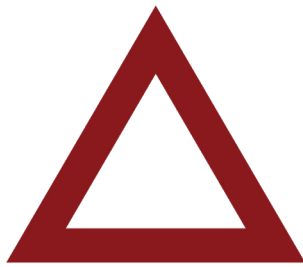
23 - 28 August 2024
AIADR BAC Mediation Training Course

5 September 2024
AIADR Online Networking Night



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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 welcomed.

Next Cut-off Date for Submission of Contributions:

Newsletter: 1st September 2024

Journal : 1st October 2024

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