ASIA ADR WEEK 2023

AIAC
ASIAN INTERNATIONAL ARBITRATION CENTRE

PRISM:

THE SPECTRUM OF ADR

PERSPECTIVE. RELIANCE. INNOVATION. SYNERGY. MOVEMENT

24TH - 26TH AUGUST 2023 | BANGUNAN SULAIMAN, AIAC

Since the dark ages, disputes have been a persistent issue for mankind. However, over time, society has made efforts to resolve the deepest and darkest conflicts, and make progress. One successful model that has emerged is Alternative Dispute Resolution (ADR).

Mahatma Gandhi once said, "even a single lamp dispels the deepest darkness". The AIAC aims to embody this idea by being a powerhouse that facilitates ADR in a holistic approach. This year's Asia ADR Week hopes to bring together ADR practitioners from across the globe to shine a light on the growing landscape of conflict resolution, prevention and solution.

Join us in our mission to study the frames which magnifies the impact of the work performed by the ADR community, relying on the primary patterns of dispute settlement whilst also addressing new developments which widen the formations reflected by ADR in the ever-changing canvas of international law.

Admission fees:

PHYSICAL	VIRTUAL
MYR1,500/ USD350	MYR450/ USD100

HYBRID EVENT (VIRTUAL & IN-PERSON)

CPD/CCD POINTS AVAILABLE

REGISTER NOW!

Supporting organisations:

United Nations UNCITRAL Regional Centre for Asia and the Pacific

AADR Asian Institute of Alternative Dispute Resolution

AALCO Hong Kong Regional Arbitration Centre 亞非法協香港區域仲裁中心

International Centre for Dispute Resolution | American Arbitration Association

Asia Case Management Center

BIAC Beijing Arbitration Commission 北京仲裁委员会 北京国际仲裁中心 Beijing International Arbitration Center

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#CAREERS IN ARBITRATION

CIETAC China International Economic and Trade Arbitration Commission

HKIAC

ICC

KCAB International

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IAMC Hyderabad

Society of Construction Law Malaysia

SIDREC Securities Industry Dispute Resolution Center

THAC Thailand Arbitration Center

TDM transnational-dispute-management.com +OGEMID

For further information and sponsorship opportunities, please contact enquiry@aiac.world/ +603 2271 1000

PROGRAMME

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DAY 1 (THURSDAY, 24TH AUGUST 2023)

09:00 – 10:00	Registration
10:00 – 10:05	**ASIA ADR WEEK 2023 Welcome Speech**
10:15 – 10:20	**ASIA ADR WEEK 2023 Opening Remarks**
10:20 – 10:35	**ASIA ADR WEEK 2023 Special Remarks**
10:35 – 10:50	**ASIA ADR WEEK 2023 Special Address**
10:50 – 11:05	**Launch of the ASIA ADR WEEK 2023: "Prism – The Spectrum of ADR"**
11:05 – 11:30	Networking break
11:30 – 12:15	**Keynote Session : *The Light Beyond the Horizon - Understanding the Diversion Dimension of ADR***

This keynote session will delve into the multifaceted world of ADR and explore how it encompasses a broad spectrum of perspectives and methodologies Various dispute resolution mechanisms, such as mediation, arbitration, adjudication, and domain name proceedings, represent a unique perspective and solution to resolving conflicts. More importantly, the dynamics within the disputes are illuminated by various factors.

This keynote aims to deepen the participants' understanding of these dimensions and shed light on their significance in achieving effective and sustainable resolutions.

12:15 – 13:30	Lunch
13:30 – 15:00	**Session 2 : *Cooperation to Resolution: The Great Arbitration Alliance***

Amidst the ever-changing landscape of international commercial disputes, it is crucial for arbitral institutions to be unified in promoting alternative dispute resolution proceedings. In this session, we have assembled a powerhouse panel of representatives from arbitral institutions established under AALCO, such as the AIAC, the Cairo Regional Centre for International Commercial Arbitration (CRCICA), Regional Centre for International Commercial Arbitration Lagos (RCICAL), Tehran Regional Arbitration Centre (TRAC), Nairobi Centre for International Arbitration (NCIA), and AALCO Hong Kong Regional Arbitration Centre (HKRAC).

The speakers will explore how arbitral proceedings can be more efficient and digitally accessible for the parties. With a focus on cost, time, and speed, the speakers will also elevate the standards of arbitral proceedings and the importance of establishing a transparent arbitration rules and procedures. They will also address the importance of preserving the personality and individual approach of arbitration centres while adopting global arbitration standards, cooperation, and exchanging experiences.

15:00 – 16:30 **Session 3 : *Annulled But Not Forgotten: Enforceability of Arbitral Awards***

The New York Convention states that foreign arbitration awards may not be recognized or enforced if they have been annulled by the courts of the arbitral seat. However, jurisdictions have taken divergent approaches to this issue, with some jurisdictions prohibiting enforcement of annulled awards, while others consider enforcement based on public policy considerations.

The panel of speakers in this session will delve into the underlying rationale between these contrasting perspectives, and analyse notable case laws that have shaped the treatment of annulled awards. The speakers will also explore the potential for establishing an international standard concerning the enforcement of awards that have been annulled. By analysing these key aspects, the session aims to provide valuable insights into the complex landscape surrounding the enforcement of annulled arbitration awards.

16:30 – 17:00 Networking break

17:00 – 18.00 **Session 4 : *Rapid Fire Debate***

Debate 1: *The Role of Expert Witnesses in Arbitration: Independent Advisors or Sources of Conflict?*

Expert witnesses serve to provide enlightenment to the tribunal in the analysis of niche issues that require specialized views. As the designation suggests, expertise in fields such as life sciences, foreign legal systems, and even to obscure subject matters should (ideally) help the arbitral tribunal in coming up with a holistic and independent appreciation of the entire arbitration proceedings.

However, an expert to one party may actually be disadvantageous to the other. A disinterested person's outlook on an issue may be unfavorably skewed due to a multitude of factors, such as jargons, an incorrect presentation of facts, vehement opposition from the other party, the ability of the parties to afford experts, and, in the event multiple experts are appointed – conflicting opinions.

House A: *This House contends that expert witnesses, with their expertise and appointment process, enhance the independence and thoroughness of the Arbitral Tribunal's assessment of specialized subject matters.*

House B: *This House contends that expert witnesses are susceptible to providing conflicting opinions due to various factors, including the manner of their appointment.*

Debate 2: *Emergency Arbitration: Swift Relief or Questionable Effectiveness?*

Emergency Arbitration is hailed as a procedure that offers urgent interim measures in arbitration, allowing for the swift preservation of rights and assets. Its appeal lies in the speed and efficiency it provides, especially when compared to traditional arbitration processes. However, critics argue that the haste of emergency arbitration may compromise the quality of the awards. Additionally, concerns surround the interpretational challenges of granting interim relief and the enforceability of emergency arbitration awards on both domestic and international levels.

House A: *This House contends that Emergency Arbitration is an effective and immediate solution for parties seeking interim relief, providing valuable remedies in urgent situations.*

House B: *This House contends that Emergency Arbitration is an inadequate means of delivering interim relief in arbitration proceedings due to potential issues with the emergency arbitrator's appreciation of the facts and issues on the enforceability of the award.*

18:30 onwards Networking event

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DAY 2 (FRIDAY, 25TH AUGUST 2023)

08:30 – 09:30 Registration

09:30 – 11:00 **Session 1 : *Advancing towards Zero-Dispute: The Role of AIAC SFC(s) in Spearheading Dispute Prevention***

The AIAC's Standard Form of Building Contracts represents a significant advancement in the Centre's efforts to achieve zero disputes within the construction industry. The AIAC's SFC is the first suite of building contracts in Malaysia to comply with the CIPAA. It introduces additional provisions to facilitate the resolution of disputes and deadlocks between parties. These mechanisms include mediation, which encourages parties to maintain progress on the project even in the presence of disputes, while ensuring that their rights are protected until completion.

This session will delve into the avoidance-aligned clauses in line with the best international standards for specific projects. The session will also discuss the motivating factors to encourage a 'nip it in the bud' scheme involving payment disputes and provide attendees with profoundly insightful takeaways in hopes to discover zero-dispute futuristic outcome in the construction sector.

11:00 – 11:30 Networking Break

11:30 – 13:00 **Session 2 : *Navigating Disputes: Unveiling the Layers of Multi-Tiered Dispute Resolution Clauses***

In recent times, multi-tiered dispute resolution clauses have become a popular approach for providing a comprehensive dispute resolution framework to parties. However, these clauses often come with various pre-requisites that must be met before a final and binding decision can be reached.

The panel will discuss the potential advantages and disadvantages of such clauses and the approaches of courts and other institutions to their interpretation and enforcement. In addition, we will look at modern approaches to substantive obligations found in such clauses such as attempts at amicable settlement and duties to negotiate in good faith.

13:00 – 14:30 Lunch

14:30 – 16:00 **Session 3 : *Singapore Convention on Mediation: The Recognition of International Settlement Agreements***

The Singapore Convention, hailed as the New York Convention for mediation offers a uniform and efficient framework for enforcing international settlement agreements. This convention ensures that the settlements reached by parties are binding and enforceable through a simplified and streamlined procedure.

With 55 signatories, including Malaysia and ratification in 9 countries, the Singapore Convention continues to gain momentum globally, advancing its objective in facilitating international trade and commerce by enabling disputing parties to enforce and invoke settlement agreements across borders with ease.

The panel of speakers in this session will discuss the impact of the Singapore convention in different jurisdictions and delve into the ongoing efforts to implement it at a domestic level.

16:00 – 16:30 Networking Break

16:30 – 17:45 **Session 4 : *Rapid Fire Debate***

Debate 1: *AI in Dispute Settlement: Catalyst or Compromise for the ADR Community?*

With the pervasive influence of Artificial Intelligence ("AI"), its presence has now extended to the ADR landscape. As AI makes its way into various domains within the legal field, conflicting views emerge regarding its actual value in facilitating dispute settlement. While some laud the practicality of the tool and the ease of application of the most relevant and valuable settlement information, others dispute the privacy and security risks which the use of such technology carries – while further questioning its impact on the mediation job market. Is AI poised to become an exceptional intermediary in dispute resolution?

House A: *This house believes that AI is an effective tool to aid mediators, negotiators and conciliators in achieving optimal solutions and advancing the objectives of the ADR community.*

House B: *This house believes that AI is not a dependable tool as it lacks the human touch required to find a common ground. This house also believes that AI can be a treacherous tool for parties who decide to reach an agreement without an accredited dispute resolution professional to assist.*

Debate 2: *The Art of Negotiation: Is the Model Clause the Preferred Clause?*

A staple in the arbitration industry, UNCITRAL's arbitration model clause has been widely adopted in countless contracts across several industries, and has served as a baseline for arbitration institutions to suggest their own model clauses. Arbitral Institution model clauses are drafted to reflect the institution's procedural framework and can be tailored to fit the Parties' needs.

Institutions such as CIArb also provide different model clauses, including a "Catch All" clause envisioning negotiation, suggested ADR and arbitration as a last resort. The present debate will centre on the practicality of application of model clauses as opposed to ad-hoc dispute resolution clauses.

House A: *This house believes that model clauses provide a reliable framework for negotiation and ensuring equitable footing for all parties involved.*

House B: *This house believes ad-hoc clauses tailored to the contractual relationship and the parties' needs are necessary to guarantee a satisfactory outcomes in negotiations.*

17:45 onwards Networking event

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DAY 3 (SATURDAY, 26TH AUGUST 2023)

08:30 – 09:30 Registration

09:30 – 11:00 **Session 1 : *ADR Across Borders: Enforceability and Effectiveness Unveiled***

In the realm of cross-border business transactions, international arbitration has emerged as the preferred method for resolving disputes. This preference is rooted in the numerous advantages arbitration offers, including a neutral forum, flexible procedures, impartial arbitral tribunal, as well as enforceable award, all while maintaining the confidentiality in arbitral proceedings. Apart from that, arbitration also mitigates the risks associated with potential biases and the adversarial nature of foreign court intervention, thereby safeguarding business relationships.

The panel of speakers in this session will explore the enforceability of the arbitral awards under the auspices of the New York Convention as well as the effectiveness of international arbitration in resolving cross-border disputes while also shedding light on the potential pitfalls, challenges and disadvantages that parties and practitioners should be mindful of.

11:00 – 11:30 Networking Break

11:30 – 13:00 **Session 2 : *Breaking New Grounds: ADR Unleashed in Niche Sectors - Sports, Domain Names, and Maritime***

In the ever-evolving landscape of ADR, disputes are arising from diverse sectors beyond commercial or investment realms. In the same vein, ADR, particularly arbitration has gained recognition as a versatile mechanism capable of addressing specialised areas catering to niche sectors and industries.

Join our esteemed panel of expert as they delve into the disputes, industry practices and key considerations within unique niche areas; sports, domain name and maritime conflicts. The speakers will also address the nuanced challenges and intricacies faced by practitioners in these specialised areas while highlighting notable developments.

13:00 – 14:30 Lunch

14:30 – 16:00 **Session 3 : *From Pixels to Resolutions: Exploring the Digital Revolution in ADR and the Rise of ODR***

In our increasingly interconnected world, technology has become an integral part of every aspect of our lives, we can hardly imagine a life without it. Its significance has been further magnified since the onset of the COVID-19 pandemic, amplifying our reliance on digital tools and platforms. The impact of technology on the field of ADR is undeniable. With the emergence of Online Dispute Resolution (ODR), traditional dispute resolution methods have undergone a profound transformation, ushering in a new era of digitalized conflict resolution. This shift aims to provide efficient and accessible platforms for parties and practitioners respectively.

The panel of speakers in this session will address the prominent role of technology in ADR and delve into the transformative nature of ODR. The speakers will also address the challenges faced in this digital landscape and discuss the immense potential of technology in facilitating effective and convenient dispute resolution process.

16:00 – 16:30 Networking Break

16:30 – 17:45 **Session 4 : *Rapid Fire Debate***

Debate 1: *The Colours of the IBA Guidelines: Triumph or Superfluous?*

The supreme trump card of the ADR mechanism is the distinct feature of 'party autonomy' as compared to the traditional method of dispute resolution – the freedom of parties to choose its decision makers. Independence and impartiality have always been the breeding ground in forming arbitral tribunals.

The International Bar Association ("IBA") Guidelines on Conflicts of Interest in International Arbitration ("IBA Guidelines") is regarded as the 'gold standards' that provides requirements and guidance on evaluation of conflict of interest in the form of red, orange and green lists. However, the inconsistencies in the IBA Guidelines have proved to be a stumbling block in complex arbitration proceedings that involves multiple parties, specifically in tackling issues relating to conflict of interest. Subsequently, as a way forward, the United Nations Commission on International Trade Law ("UNCITRAL") and the International Centre for Settlement of Investment Disputes ("ICSID") secretariats have jointly released four versions of Draft Code of Conduct for adjudicators, or arbitrators and judges, specifically for disputes in the area of international investment.

House A: *This House believes that requirements and guidance on the evaluation of conflict of interest should be separated for arbitrations involving disputes of different nature, to tackle the specialisation and the uniqueness of that specific area of law i.e commercial, investment etc.*

House B: *This House believes that that IBA, UNICITRAL and ICSID should work together to reach a coherent and versatile set of new guidelines on conflict of interest, that can be applied to all disputes regardless of its nature.*

Debate 2: *Balancing Justice: Breach of Natural Justice vs. Actual Prejudice in Arbitration*

In 2018, amendments to the Malaysia's Arbitration Act 2005 aimed to solidify the country's position as a favourable seat for arbitration by removing the reference to the High Court on any question of law arising out of an award (Section 42). However, Section 37 of the Act still allows parties to seek recourse against arbitral awards through various grounds, including the break of the rules of natural justice.

The Federal Court's decision in the case of *Master Mulia Sdn Bhd v Sigur Rus Sdn BHd [2020] 19 CLJ 213* has set a threshold for establishing a 'breach' of natural justice, without requiring proof of actual or real prejudice resulting from the breach. This differs from the position taken by other jurisdictions.

House A: *This House believes that the literal interpretation of the term 'breach' of natural justice in the Arbitration Act aligns with the intention of the drafters and should be upheld.*

House B: *This House believes that the Malaysia courts should adopt the approach taken by other arbitration friendly jurisdictions, which require proof of actual or real prejudice, in order to ensure consistency and align with international practices.*

17:45 onwards Networking event

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