Conference Title: "**A new Dawn of Arbitration in Asia? Digitization – Supply Chain Risks – Rethinking of Arbitration clauses and venues – Enforcement Challenges**"

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# Keynote Title: **Embracing the Dawn: Navigating Opportunities in the Modern Asian Arbitration Landscape.**

Distinguished guests,
Esteemed colleagues,
Ladies and gentlemen,

Very good morning and greetings from Malaysia.

I apologize that I had to renege on the promise of being present in person at the conference. It is because of a travel ban imposed on AIAC for the next few months while it is being restructured. But I am allowed to participate virtually which I am doing now.

However, I am sure that I will be able to meet some of you perhaps in the future. Despite not being physically present, I am truly honoured to deliver this keynote address to all of you albeit virtually.

I will explore the new dawn of arbitration in Asia with all its opportunities and challenges. The title of our conference is apt. Asia is a landscape marked by digitization, supply chain risks, the rethinking of arbitration clauses and venues, and the formidable challenges of enforcement.

Ladies and Gentlemen,

This 21st century will see Asian politics and culture taking its rightful place in the World. The change is already unfolding as a harmonious overture. This Asian Century is driven by transformative economic growth. China, India, the Middle East and South East Asia are at the forefront of this upward surge.

When I say that it is the Asian Century, it is not to be misconstrued as Asiancentricity. I am just analyzing reality as reflected in the region. Perhaps, it may present a projection into its future.

My discussion is in the light of the backdrop of the exponential demographic growth and upward economic trends in Asia. It shows that Asia will again play its historical role as a prosperous region. It will be the engine of global economic growth.

I recognise the concerns of the critics. I note the frailties, and at times, its rigidity counterpoised by the vibrancy and also, the seeming stability and instability of its political structures. However, Asia is by no means a single entity. There are tensions. Now and then, there is a lack of cooperation among nations within and outside of Asia as exemplified by the South China Seas tensions and the China-US economic rivalry.

While to a certain extent, this complexity raises concerns. However, it must be seen as a glass half full rather than empty. Economic and political tensions would exist in all regions. This is the blessing and curse of global economic competition. What is imperative is for Asian nations to blend together with the rest of the World in a cohesive partnership. One that reaps economic prosperity together.

Truly, this is the Asian Century[1]. The economic metamorphosis of Asia over the past six decades has captured the attention of scholars, statesmen, and economists alike.

"The Asian Century" paints a dynamic portrait of Asia poised for dominance in business, government, and culture sectors. The rapid economic ascent of China, India and now Indonesia is propelling them into the echelons of the world's largest economies. It is part of the crescendo in the symphony of transformation.

In the landscape of the Asian Century, the Belt and Road Initiative (BRI) emerges as a pivotal movement. It captures China's role as a trailblazer. Launched in 2013, the BRI not only enhances global connectivity but also fuels a surge in demand for arbitration services, positioning Asia, led by China, as the burgeoning hub of international dispute resolution.

The strategic commitment of China to become a destination for international arbitration, particularly exemplified by initiatives in Beijing, Nanning, Shanghai, Shenzen and the Great Bay area resonates as a defining movement in the unfolding Asian Century saga.

The region’s dominance in global economic growth leads its ascent as a domestic arbitration hub, striving to attract international work. It is starting to forge a new chapter where Asia shapes the trajectory of arbitration trends, echoing its historical role as an economic powerhouse.

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[1] Daniel Liberto, *Asian Century: What It Is, How It Works, Criticism*, Investopedia, 15th October 2022. (https://www.investopedia.com/terms/a/asian-century.asp#:~:text=The%20Asian%20Century%20refers%20to%20the%20dominant%20role%20that%20Asian,growing%20economies%20and%20youthful%20demographics. , last visited 29th Nov. 2023)

Moreover, the economic collaboration between China and the Middle East adds a nuanced melody to the Asian Century. As the partnership deepens, China's influence resonates across critical sectors, potentially sculpting arbitration practices and policies in the region. This economic integration further solidifies Asia's status as the world's largest regional economy, setting the stage for the continent to fuel and shape the global economy.

Ladies and Gentlemen,

In the Middle East, it is interesting to observe the evolution of the Dubai International Arbitration Centre.

The Middle East has become a powerhouse in the global scene of arbitration. It hosts more than 10 arbitral institutions in different jurisdictions, such as:

1. **UAE**:
   (a) Abu Dhabi Commercial Conciliation & Arbitration Center (ADCCAC);
   (b) Dubai International Arbitration Centre (DIAC);

2. **Bahrain**:
   (a) Bahrain Chamber for Dispute Resolution (BCDR-AAA);
   (b) Gulf Cooperation Council (GCC) Commercial Arbitration Centre;

3. **Saudi Arabia**:
   (a) Saudi Center for Commercial Arbitration (SCCA);

4. **Qatar**:
   (a) Qatar International Center for Conciliation and Arbitration (QICCA);

5. **Oman**:
   (a) Oman Commercial Arbitration Center (OCAC);

6. **Kuwait**:
   (a) Kuwait Mediation & International Arbitration Chamber;

7. **Iran**:
   (a) Tehran Regional Arbitration Centre (TRAC);
   (b) Iran Chamber of Commerce Arbitration Center

One of the most promising dispute resolution structures in the region is the Dubai International Financial Centre - London Court of International Arbitration (DIFC-LCIA). It was operating for some years before it was recently changed.

The UAE is a civil law jurisdiction with the Dubai International Financial Centre, located in a sort of aircraft carrier detached from the rest of UAE, using the Common law to govern its operations and decisions. Its current Chief Justice is Tun Zaki Azmi who is a former Malaysian Chief Justice. Preceding him as DIFC Chief Justice was Mr. Michael Hwang SC from Singapore.

The idea behind this aircraft carrier concept is to attract international parties and international arbitrators to resolve their disputes at this detached jurisdiction.

There was a sudden change in September 2021. All the centres in the Emirate of Dubai were abolished by executive decree. It then concentrated all institutional arbitration into the Dubai International Arbitration Centre which was given the power to administer cases referring to now-defunct DIFC-LCIA structure.

There is some debate as regards to drastic abolition of the DIFC-LCIA arrangement. It has also invoked some litigation. Recently, the US Eastern District Court of Louisiana ruled that "*Whatever similarity the DIAC may have with the DIFC LCIA, it is not the same forum in which the parties agreed to arbitrate.*".[2] As such, arbitration agreements referring to DIFC-LCIA cannot be automatically resolved under DIAC, without the agreement of the parties, even though the decree provides that DIAC will '*supervise*' these cases.

Another trend in this area is that all the key arbitral institutions adopt a similar organisational structure, which devolves key powers of the Registrar, Chief Executive Officer to the Arbitral Centre's Court. Most of these courts have members from different backgrounds and nationalities. Whether it will really take off is left to be seen.

Ladies and Gentlemen,

That said, mirroring this back to Malaysia, we too strive to keep up with the development in the region.

As the heart of Malaysian arbitration, the Asian International Arbitration Centre (AIAC) stands as a testament to the transformative power of innovation in the field of ADR. The AIAC prides itself on being independent and impartial arising from its international organisation status with immunities and privileges under Malaysian law and public international law.

Over more than 45 years of existence, the AIAC has witnessed if not all, most of the challenges an arbitration institution can face. And I am proud to state that through the years the AIAC stood tall in the face of these challenges. There were difficulties in

[2] US District Court, Eastern District of Louisiana, *Baker Hughes Saudi Arabia Co. Ltd v. Dynamic Industries Inc. et al*, 6th Nov. 2023.

2018 which continued until early 2023. I returned as Director to the Centre in March this year and have restarted and moved the trajectory of progressing the reputation and effectiveness of the Centre.

Evolving beyond its regional origins, earlier AIAC started to become a global beacon, shaping the landscape of dispute resolution through a multifaceted approach that encompasses capacity building, dynamic rule evolution, trailblazing initiatives, diverse expertise, and a pivotal role as a thought leader.

The dynamic evolution of AIAC's rule framework underscores its adaptability to the ever-changing dynamics of the global business and legal landscapes. The series of amendments to its Rules reflect a commitment to responsiveness, ensuring that AIAC's ADR mechanisms remain not only relevant but also effective in addressing emerging trends.

AIAC's commitment to innovation extends beyond traditional legal disputes, as demonstrated by its pioneering initiatives. One notable example is the introduction of the Asian Sports Arbitration Rules, a groundbreaking framework tailored to address disputes within the sports industry.

Another would be the AIAC Islamic Arbitration Rules 2023, an innovative framework that caters to the Islamic Finance community by giving them all the benefits of arbitration while being compliant with Shariah principles. This forward-thinking approach showcases AIAC's dedication to providing resolutions that transcend conventional legal challenges, embracing innovation across diverse sectors.

The centre's diverse panel of arbitrators, adjudicators, and mediators is a testament to its unwavering commitment to neutrality and the upholding of procedural integrity. This extensive pool of expertise not only guarantees impartial decision-making but also enriches the quality of AIAC's dispute resolution processes, ensuring a comprehensive approach to handling a wide array of cases.

Recently, the Malaysian Government has announced that they intend to produce a development plan for the AIAC[3]. I see that this will entail a change in the structure of the Centre. The details of this restructuring are not clear yet.

However, this proactive action taken by the government might lead to a radical change in the structure of the AIAC and its mandate. Same as you, we are awaiting instructions on the form and impact of this shift in position.

[3] This was announced through the social media of YB Dato' Sri Azalina Othman Said, Minister in the Prime Minister's Department in charge of Law and Institutional Reforms. (https://twitter.com/azalinaothmans/status/1727627782384193750?s=48&t=oiOR8LybaGA9hqIud3cWog, last visited 29th Nov. 2023)

Ladies and Gentlemen,

In terms of the Asian arbitral institutions, China holds the lead in terms of the number of arbitral institutions. It has over 247 arbitral institutions[4].

The next dynamic economy is India which I counted as having about 21 arbitral institutions[5].

The rest of Asia hosts over about 40 such institutions[6]. This array of institutions makes Asia a fertile ground for growth and development, and a potential player that may shape the future of international arbitration.

The Asian arbitral institutions are of three main types.

First, the first type are bodies created and funded either by the Municipal, Provincial or Central Governments.

The second type is private law entities created by a trust or taking the form of a private corporation operated by way of Boards or Trustees arrangements.

The third type are international organisations set up under Host Country Agreements that benefit from immunities and privileges under the Vienna Convention and public international law. This latter represents the striking opposite of the first type and guarantees the highest level of independence, or perhaps so it seems.

This diversity of arbitral institutions in Asia comes with flourishing and contrasting experiences.

For years, Indian parties preferred ad-hoc arbitrations mostly presided over by retired judges. However, in recent years, the India Authorities have started initiatives to encourage institutional arbitration.

Also, foreign and international arbitral institutions have catered for the need of Indian parties to resolve their disputes.

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[4] Beijing arbitration Commission (BAC), Frequently Asked Questions. (https://www.bjac.org.cn/english/page/zc/problem.html#:~:text=There%20are%20over%20200%20arbitration,Economic%20and%20Trade%20Arbitration%20Commission, last visited on 22nd Nov. 2023)

[5] International Council for Commercial Arbitration (ICCA), Arbitral Institutes Directory. (https://www.arbitration-icca.org/institutes, last visited on 22nd Nov. 2023)

[6] GAR, Asia-Pacific Directory. (https://globalarbitrationreview.com/survey/the-guide-regional-arbitration/2022/article/asia-pacific-directory, last visited on 22nd Nov. 2023)

For example, from 2013 to 2023, the Singapore International Arbitration Centre (SIAC) has administered more than 1,300 cases involving Indian parties[7]. I suspect that ICC would have similar kinds of figures.As personally, I have presided and participated as an arbitrator on a number of Indian-linked disputes.

It shows that Indian parties are prepared to accept administered arbitration by credible institutions. On the other hand, it may suggest a lack of confidence in Indian arbitration institutions by Indian and foreign parties. It has also been suggested, particularly given the number of cases filed in the Indian courts, that the litigation process is slow. In turn, it may be a deterrent in itself as an effective support for the arbitration framework.[8]

However, in recent years, India has consistently moved to use legislation to make arbitration more effective and speedier. In 2015, there was an amendment to the Indian Arbitration and Conciliation Act 1996[9] that imposed time limits on rendering awards. This move caught the international arbitration community by surprise.

The statute stipulates that the arbitral tribunal must issue its award within 12 months, which may be extended by 6 months. This now does not apply to international arbitrations.

Arbitral time was also monetized. If the arbitral tribunal issues the award within the first 6 months, they may ask for additional fees. On the contrary, exceeding the time limit of 18 months arising from the arbitral tribunal's inaction, a reduction can be imposed up to 5% for every month of delay.[10]

Another key shift was the 2019 amendments which imposed limitations on party autonomy by regulating the qualification and experience of arbitrators under the 8th Schedule. [11] This has generated some criticisms.[12]

More importantly, the amendment also created the Arbitration Council of India (ACI) a corporate body that will regulate many aspects of arbitration in India, including grading

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[7] Harish Salve KC, Forward to SIAC India Newsletter, 3rd Issue, Jan. 2023. (https://siac.org.sg/wp-content/uploads/2023/01/SIAC-India-Newsletter_Issue_-3.pdf, last visited on 27th Nov. 2023)
[8] Mridul Godha & Kartikey M., The New-Found Emphasis on Institutional Arbitration in India, Kluwer Arbitration Blog, 7th January 2018 (https://arbitrationblog.kluwerarbitration.com/2018/01/07/uncitral-technical-notes-online-dispute-resolution-paper-tiger-game-changer/, last visited on 22nd Nov. 2023).
[9] Arbitration and Conciliation Amendment Act 2015, inserted Section 29A. (https://legalaffairs.gov.in/actsrulespolicies/arbitration-and-conciliation-amendment-act-2015, last visited 29th Nov. 2023)
[10] *Id.*
[11]Arbitration and Conciliation Amendment Act 2019, inserted Part 1A, Section 43J, Eighth Schedule. (https://legalaffairs.gov.in/actsrulespolicies/arbitration-and-conciliation-amendment-act-2019, last visited 29th Nov. 2023)
[12] Subhiksh Vasudev, *The 2019 amendment to the Indian Arbitration Act: A classic case of one step forward two steps backward?*, Kluwer Arbitration Blog, 25th August 2019. (https://arbitrationblog.kluwerarbitration.com/2019/08/25/the-2019-amendment-to-the-indian-arbitration-act-a-classic-case-of-one-step-forward-two-steps-backward/, last visited on 27th Nov. 2023)

arbitral Institutions, accrediting arbitrators, and developing guidelines and policies in relation to arbitration.[13] Although established by law since 2019, this body has yet to take form.

The latest amendment in 2021 has taken away the 8th Schedule,[14] potentially making the market more welcoming for international arbitrators and international arbitral institutions. [15] This task is left to the Arbitration Council of India (ACI). Will it go by way of internationalisation or nationalisation? We all wait with bated breath.

On the other side of the Himalayas, China's abundant number of arbitral institutions have been unable to transition to have an international presence, except for CIETAC and Shanghai International Arbitration Centre which has established themselves as first-rank arbitral institutions in China. Even so, their reach is limited to China and Hong Kong.

But perhaps the most important shift is the opening of the market for international arbitration institutions, which is indicative of a growing awareness of the role of internationalisation of the arbitration ecosystem in China.

For example, China's (Beijing) Pilot Free Trade Zone is one of the six Free Trade Zones (FTZ) in China that will benefit from opening-up measures including in the context of arbitration.[16] This aims to support reputable foreign arbitration institutions and dispute resolution organizations to set up branches and representative offices in the said FTZ . Also, it aims to encourage arbitration services for commercial disputes, arising from international commercial business or investment.

The State Council of China has made the policy document to this effect, accessible to the public entitled: "*Notice Regarding the Implementation of Several Measures to Promote Institutionalized Opening-Up of Qualified Free Trade Pilot Zones and Free Trade Port in Accordance with International High Standards*."[17]

Before I move to the next point, allow me to bring your attention to a jurisdiction that I think has the ability to impact arbitration in Asia, in the upcoming years. Indonesia

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[13] Arbitration and Conciliation Amendment Act 2019, s*upra note11.*
[14] Arbitration and Conciliation Amendment Act 2021, Section 4. (https://legalaffairs.gov.in/actsrulespolicies/arbitration-and-conciliation-amendment-act-2021, last visited 29th Nov. 2023)
[15] Shubham Sharma, India: Arbitration And Conciliation (Amendment) Act 2021: What It Holds For Foreign Investors, Mondaq, 8th March 2022. (https://www.mondaq.com/india/arbitration--dispute-resolution/1169106/arbitration-and-conciliation-amendment-act-2021-what-it-holds-for-foreign-investors, last visited on 22nd Nov. 2023)
[16] Giulia Interesse, China Releases New Measures to Further Open-Up its Free Trade Zones, China Briefing, 6th July 2023. (https://www.china-briefing.com/news/china-releases-new-measures-to-further-open-up-six-ftzs-ftps/, last visited on 22nd Nov. 2023).
[17] https://www.gov.cn/zhengce/content/202306/content_6889026.htm, last visited on 22nd Nov. 2023.

benefits from significant economic growth and may play a key role in the context of arbitration in Asia and the Pacific.

This can be achieved only if Indonesia adopt the UNCITRAL model law framework, among other measures, which provides security to foreign parties and the adherence the international best practices. Incidentally, foreign arbitral bodies cannot operate in Indonesia.[18] The only foreign body present there is the ICC but it does not "*manage submission of disputes or act as appointing authority*"[19].

The BANI Arbitration Centre has the potential to become a reputable dispute resolution institution in the region. With a diverse panel of both domestic and international arbitrators, this centre can cater to local needs. In recent years the case numbers of the centre have been on a gradual rise (2020, 79 registered cases; 2021, 90 registered cases).[20] No statistics are available for the subsequent years.

These new trends in India and China are indicative of the willingness and readiness to meet the challenges of the day and the necessity of opening up and internationalising the practice of arbitration in each of these countries. A feeling that will soon find resonance in the region, and might be a key vector for jurisdictions like Indonesia to internationalise its framework.

Ladies and Gentlemen,

The Asian arbitration ecosystem benefited from the economic growth of the region as a whole. In recent years, we have witnessed the mushrooming of arbitral centres in Asia. It's worth noting that 5 of the top 10 most preferred seats worldwide are in Asia (Singapore, Hong Kong, Beijing, Shanghai, Dubai).[21]

Nevertheless, only 3 Asian institutions figure in the most preferred arbitration institutions (SIAC, HKIAC, CIETAC).[22] This is emblematic of the lack of trust in the Asian arbitration institutions and due to factors, which I will extrapolate later.

In my opinion, Asian arbitral institutions can be divided into two tiers.

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[18] Lia Alizia & Rudy A Sitorus, *Commercial Arbitration: Indonesia*, GAR, 28th March 2023 (https://globalarbitrationreview.com/insight/know-how/commercial-arbitration/report/indonesia#2920F1724765B300EFE00DDB78702FAEEC46178E, last visited on 22nd Nov. 2023).
[19] *Id.*
[20] https://practiceguides.chambers.com/practice-guides/comparison/733/11422/18468-18469-18470-18471-18472-18473-18474-18475-18476-18477-18478-18479-18480; last visited on 22nd Nov. 2023.
[21] Queen Mary University of London, International Arbitration Survey 2021, p. 6. (https://arbitration.qmul.ac.uk/media/arbitration/docs/LON0320037-QMUL-International-Arbitration-Survey-2021_19_WEB.pdf, last visited on 22nd Nov. 2023)
[22] *Id.*

The 1st tier has developed practices compatible with the top international institutions and is able to harness the trust of the users, regardless of their jurisdiction. They typically exist in city-state jurisdictions or off-shore jurisdictions that create a separate legal framework, which international parties are more comfortable with.

The 2nd tier are institutions of reasonable repute that play a key role in their jurisdiction but have yet to acquire that international recognition.

The challenge that 1st tiers institution creates is that they are detached from the realities of the region. They rely heavily on European and American arbitrators and are not able to ensure knowledge and skill transfer to many local arbitrators and counsels. This explains the constant call for diversity and inclusion.

Yes! Gender disparity in the context of international arbitration is a reality that we all need to fight against it and face it. I am happy to say that appointing authorities tend to be more inclusive than parties.[23] More needs to be done on this front, in the Asian and global context.

The lack of diversity based on ethnicity or national identity, on the other hand, has been a reality for far too long in Asia. Three main reasons have contributed to this underrepresentation:

*i.* *Historical Imbalances:*

Historically, arbitrators from Europe and the US have benefited from a head-start so to speak. They have garnered much experience in many niche fields of arbitrations. When the South of the globe started to be more engaged in the process of international arbitration, these arbitrators were normally more qualified and better apt to handle different types of arbitrations.

*ii.* *Cultural and Language Considerations:*

Differences in legal traditions, languages, and cultural norms may influence the selection of arbitrators. The dominance of English as a primary language in international arbitration may also impact the inclusion of arbitrators from non-English-speaking regions.

*iii.* *Lack of effort to address diversity:*

[23] ICCA, *Report Of The Cross-Institutional Task Force On Gender Diversity In Arbitral Appointments And Proceedings*, ICCA Reports No. 8, 2020. (https://cdn.arbitration-icca.org/s3fs-public/document/media_document/ICCA-Report-8-Gender-Diversity_0.pdf, last visited on 22nd Nov. 2023)

Many Arbitral institutions are not taking seriously the lack of diversity based on ethnicity and national origin. This is reflected in the statistics of many centres which do not provide the background of the appointed arbitrators. We need more awareness raised about this matter.

Ladies and Gentlemen,

**The Tipping Point for The Asian Century:**

The concept of the Asian Century is not set in stone. It has yet to fully materialise. Prof. David P. Fidler compared this concept, in the context of international law, with the European Century and the American Century[24]. Concluding that the Asian region is on the ascendant it's faced with a challenge, referred to as the "tipping point", this test requires this region to have imaginative governance and skill.

He says that:

"*The test for the 21st century is whether the liberal, Westphalian civilisation can effectively and justly manage globalisation in a world burdened by entrenched inequalities and transnational threats to human well-being and environmental sustainability*."

This is the tipping point of Asia, its challenge and opportunity.

Following this, a similar concept may be drawn to the realm of arbitration. Where it was once a niche practice, the global scene of ADR has now taken the world by storm. It is no wonder, as the notion of arbitration has always been a system that is time-effective and cost-efficient.

However, some countries tend to garner more success than others in this field, begging the same question, what is the tipping point for the Asia region in the context of international arbitration?

Ladies and Gentlemen,

**There are two levels of analysis to this; the prominence of thought leaders and the dominance of government intervention**

[24] David P. Fidler, The Asian Century: Implications For International Law, Singapore Year Book Of International Law And Contributors, 9th Edition, 2005. (http://www.asianlii.org/sg/journals/SGYrBkIntLaw/2005/4.pdf, last visited on 22nd Nov. 2023)

In exploring the prominence of thought leaders, it is crucial for us to first understand their purpose. As we know, thought leaders are key figures in any industry that mould the future, regardless of its industry.

Throughout the test of time, arbitration is a practice that is extremely dynamic, one that calls for constant innovation to address crucial drawbacks for the betterment of the practice for the future.

A thought leader then plays an imperative role in charting this future.

This is where Asia falls short. In the building of the edifice of arbitration, Asia has always been the leading workmen in executing global best practices in arbitration.

The principles that we adopt, frameworks that we share, legislation that we refer to, more often than not are adopted from the Western realm. By learning and studying these practices is where our Asian community thrives the most, however, I posit that the Asian community, while being good workmen of execution, is rarely at the forefront when it calls for being great architects of change.

A thought leader is sometimes misunderstood, as a person who merely has a lot of….. *thoughts.* However ironically in some ways, it is the opposite.

It is not the number of thoughts that one has that makes them a leader; it is the substantive accuracy and novelty that exists within the few thoughts that matters more. The West, in particular, has been successful in this regard. The scholarly contributions and erudite and nuanced thought processes and innovation have oftentimes shaped the framework of arbitration for the better.

Drawing reference to Who's Who Legal (WWL) Thoughts Leaders Arbitration 2023[25] we can infer that, certainly, Asia does, in fact, lack prominent thought leaders in that regard, considering the potential it has.

I continue to appreciate and continue to cherish the ideas and innovation brought forth by the West. Many of us, in Asia, are still educated in the West or in Western-modeled educational institutions.

The global development of arbitration calls for Asians to get out of the backseat and start being at the helm of innovation alongside our learned brothers and sisters across the globe.

[25] Who's Who Legal, Thought Leader Report (Arbitration) 2023. (https://lbr-wwl.h5mag.com/wwl_thought_leaders_arbitration_2023/arbitration, last visited 29th Nov. 2023)

Indeed, the mantle of a thought leader transcends mere financial success or industry recognition; it is a role steeped in authenticity and empowerment. Thought leadership involves the art of influence, the ability to prompt others to perceive a particular subject in a novel light.

It encompasses more than the act of content creation or commentary on global events and trends. True thought leaders contribute alternative perspectives and insightful points to the discourse. The potency of their message lies in its alignment with their passion and expertise, ensuring that their thoughts resonate with the industry or audience.

As we claim that this is the rise of the Asian century, it is paramount that we are no longer passive when it comes to building the future of arbitration. As I stand here today, I reminisce about my journey to contribute to the world of ADR, a dream that I had set in stone, a reality that I continue to strive for.

In light of a new era in arbitration, the first tipping point of success for any arbitration institution is the contribution towards the innovative pursuit in the field, The prominence of thought leaders within the community coupled with our continuous to be at par with the ever-dynamic sense of ADR is what ensures the success of our institutions.

Indeed, to see a new dawn in arbitration, the Asian community must very well be part of the sunrise of change.

Ladies and Gentlemen,

On the second level of analysis, we draw a comparison between the different arbitration scenes around the world. While the two aspects mentioned earlier are definitely perks of arbitration, we need to go back to our roots. The success of an arbitration centre revolves around its impartiality, or more specifically the separation of the arbitral institution and the tribunal from government intervention.

Expanding firstly on the rationality as to why perhaps heavy government oversight for arbitration institutions impairs the shared vision of success for both parties to be perceived as a desired seat of global arbitration.

There are several factors where governmental intervention would drive a relatively riskier seat of arbitration. Government interference can compromise the perceived and actual neutrality and independence of arbitration centres.

When governments are or perceived to influence, directly or indirectly, over the selection of arbitrators or decision-making processes, the impartiality of the arbitral tribunal may be questioned, leading to a loss of confidence in the fairness of the

arbitration proceedings. Thus, this begs the question, to what extent does the government interfere with arbitration?

Let’s take the selection of arbitrators for example, in the instance of a governmental entity designating an individual with affiliations to and, by extension, a nuanced understanding of governmental intricacies, the prospective benefits arising from the appointee's acumen are eclipsed by an unintended hazard.

This hazard materialises in the form of a perceptible scepticism that others are likely to harbour concerning the appointee's professed autonomy.

What this entails then is a perception of biasness, one that not only the panel would be wary of, but external parties looking to arbitrate the case as well. Commercial parties looking to resolve the conflict would be more cautious of contracting arbitration in that particular seat that is decorated with government influence.

I echo the words of Paul Friedland in Selecting the Party Appointed Arbitrator: Key Considerations that notes, in such instances "*The likelihood would be that any arguments made by this appointee in favour of the government party during arbitrator deliberations would have diminished impact on the other arbitrators.”*

The impact of this is threefold:

Firstly, it impinges upon the perceptual stance adopted by the arbitration panel, potentially instigating subconscious sentiments of scepticism concerning the appointee's independence.

Secondly, it detrimentally affects the appeal of arbitration for commercial entities in search of a platform devoid of governmental entanglements.

Thirdly, it casts a shadow over the public perception of arbitration at large. In its most elemental articulation, even individuals without specialised legal knowledge discern that despite the presence of checks and balances, governments wield an undue degree of influence.

If indeed there exists conspicuous governmental linkage to an arbitration centre, it reinforces the preconceived notion that governments may exert influence over what purports to be a neutral arbitration process.

Such optics pose a deleterious impact on the advancement of arbitration in the Asian context. *While acknowledging the potential for collaborative partnerships, it is imperative that such collaborations do not compromise the inherent impartiality intrinsic to the nature of arbitration.*

It may also be argued that the sheer fiscal prowess that governments hold also contributes to the extent of influence that they may have over international organisations.

Ladies and gentlemen,

You may ask why is this so.

Is it true that the government would really want to influence the likes of international organisations given that such institutions already have been afforded their own autonomy and mandate?

Or the better question is, why is it that the world thinks international organisations are already compromised by governmental influence right from the outset?

I posit that the answer is nestled in the past.

In the words of the Spanish-American philosopher, George Santayana, “Those who do not learn history are doomed to repeat it”.

So let’s step away from arbitration in view of the bigger picture, we delve into the historical past of how international organisations, one as gargantuan as the International Monetary Fund (IMF) have occasionally fallen in the demands of global governments.

While it is important to recognise the IMF perhaps has involuntarily succumbed to the political pressure of global economic powerhouses, this scenario speaks to the sheer influence of certain governments.

A wide plethora of scholarly evidence posits that governments, throughout history, have used their political power to pressure the IMF in pursuit of goals that are self-serving in nature.

Just referring to financial literature over the past 2 decades, (fr*om the likes of Stiles KW, Stone RW, Woo B, Murdie A. amongst many others)*[26], puts forth that institutions like the IMF have often been entangled with mechanisms of favouritism due to the influence of the United States. This includes different treatments between countries in regard to the granting of loans, conditions or even inflation forecasts for a particular country during the period of elections.

[26] James Raymond Vreeland, *Corrupting International Organizations*, Annual Review of Political Science, Vol. 22:205-222, May 2019. (https://www.annualreviews.org/doi/10.1146/annurev-polisci-050317-071031, last visited 29th Nov. 2023)

However, this is not limited to just the IMF, rather it applies to many major international organisations. While theoretically such institutions should virtually always be deemed as neutral, our past tells the tale of how undue influence by governments can slowly seep into these organisations.

To quote James Raymond Vreeland from his article in the Annual Review of Political Science, "*Governments exploit international organisations in myriad ways to further strategic goals*"[27] And to various extents this is true. All administrations will always have their own agenda to pursue, the lines of whether the strategic agenda is usually for the better or for worse is unclear…..

What is clear, however, is that the same should not be applied to arbitration centres around the world as well. Albeit governmental interference is not inherently bad, the nature of a governmental administration being so intertwined with the daily lives of the people clashes with the pursuit of independence that arbitration centres must strive for.

With that said, I would like to pose the subsequent question of whether or not Asian seats have the potential to truly be called safe seats. Here I refer to the CIArb's 10 London Principles as a metric of guidance in evaluating a safe arbitral seat.

Now worry not, I won't bore you by listing all 10 principles. I posit that principles surrounding proper facilities, venues, adherence to international treaties and a safe environment for all parties are matters that are well within the control of the institution.

I would merely like to draw your attention to only the first principle that reads, for a safe arbitration seat to exist *"an arbitration law providing a good framework for the process, limiting court intervention, and striking the right balance between confidentiality and transparency".* [28]

The conspicuous prioritisation of minimising court intervention and safeguarding independence stands as no mere coincidence; it represents a foundational tenet among the myriad arbitral commandments that delineate a secure arbitration seat. The emphasis on independence is not a declaration of superiority on the part of international institutions over local governments.

Rather, it serves as a prudent measure to insulate arbitration from externalities such as political volatility, fiscal pressures, or the complexities arising from conflicting interests. This strategic positioning allows both parties involved in the arbitration

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[27] *Id.*

[28] CIArb, *A framework for evaluating the best arbitral seats*, 30th November 2018. (https://ciarb.org/resources/features/a-framework-for-evaluating-the-best-arbitral-seats/; last visited 27th Nov. 2023)

process to discharge their functions optimally, free from the encumbrances that might otherwise arise in a less insulated environment.

Remember, what parties seek in an arbitration is no longer just to save time and money.

They seek peace.

Peace comes from the promise of fairness.

Peace comes from the commitment of impartiality.

And most of all, peace that comes from the doctrine of separation; that of the government, and the arbitral organisation.

The tipping point of success then is clear. Insofar as one is able to provide peace, every desired virtue; security, efficiency, fairness, all of these traits are automatically engraved within the chambers of their respective hallowed halls.

This is what we all must strive for.

Certainly, the maxim that resonates in matters of fairness is the paramountcy of impartiality. As aptly articulated by George Bernard Shaw, the 1925 Nobel Prize laureate and British socialist, *"Justice is impartiality. Only strangers are impartial."*

The pervasive influence of governments, inherent to any nation, renders them far from strangers to any entity. While acknowledging and respecting the guidance governments may provide, it becomes evident that the optimal trajectory for the further development of arbitration necessitates a deliberate separation from governmental entanglements. Being so incredibly intertwined with our daily lives, such an approach inherently has vested interest in the betterment of our society, one of which is respectable.

However commendable a government is, arbitration assumes a distinct purpose - one exclusively vested in the pursuit of impartiality, that requires parties to be strangers of sorts.

**Conclusion:**

Ladies and gentlemen,

In Asia’s collective pursuit of success, particularly within the realm of arbitration, let us pause to acknowledge the profound journey that has brought us together in this distinguished gathering today. It is with both humility and honour that I stand before

you to deliver the keynote address, a moment etched indelibly in the recesses of my heart.

History, as a compelling narrator, consistently underscores that great leaders are forged in the crucible of adversity. Whether in the throes of war, grappling with a devastating plague, or standing resilient against kingdoms, these leaders have risen to the occasion, defining their legacy through challenges conquered and victories attained.

We, too, need to emulate this.

As we contemplate the trajectory of arbitration in Asia, the imperative emerges – evolution should spring forth from the crucible of challenges, not the comfort of tranquillity.

The dawn of Asian arbitration requires insights steeped in the intimate understanding of both the challenges and opportunities that come in succession, for it is within these crucibles that authentic innovation and enduring resilience take root.

As we move forward, let us never forget the importance of thought leadership; one that transcends the mere abundance of thoughts; it resides in the substantive accuracy and novelty embedded within those thoughts.

Asia, with its illustrious history as a custodian of global best practices, now stands at a transformative precipice - poised, to no longer be merely a follower, but a leader in all aspects.

In the unfolding narrative of the Asian century, the mantle of responsibility rests squarely upon our collective shoulders. We are not passive spectators but active architects, charged with leading the charge in innovation alongside our global counterparts.

The path to a new era in Asian arbitration demands more than just participation; it demands our bold departure from the sidelines, a commitment to be at the vanguard of change.

In this remarkable conference, we find ourselves at the inception of a journey that holds immense promise. It is not merely an event; it is a catalyst, propelling us to the forefront of innovation.

This gathering signifies a profound start, an opportunity for each of us from the world to contribute to the collective momentum propelling us towards groundbreaking advancements in the field of arbitration.

As we embark on this transformative journey, let us engrave in our collective consciousness the understanding that this is not just a voyage for personal or professional gain.

It is an expedition for a greater pursuit — the forging of an arbitration ecosystem that transcends boundaries, lifting local communities from the shadows. Our impact is destined to resonate far beyond the confines of detached islands, connecting with the very pulse of the broader landscape.

As we find ourselves running forward in awe for the future, I pray that we leave outdated practices in the dusk, and rise with novelty and hope just like the sun

So that all of us may witness: A New Dawn in Arbitration in Asia and the World.

Thank you so much and God bless.