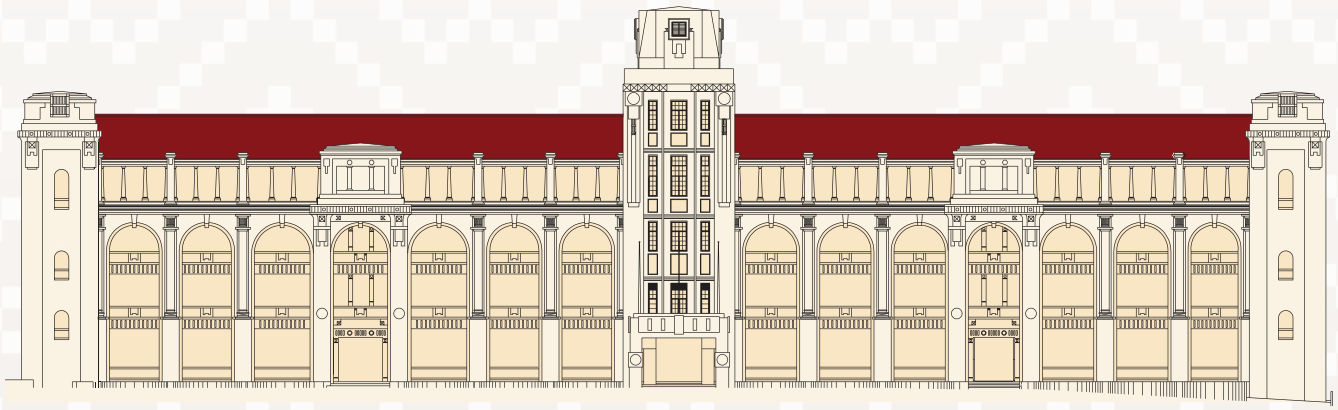
ASIAN INTERNATIONAL ARBITRATION CENTRE

NEWSLETTER 2025



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This edition of the Newsletter is edited and designed by the AIAC Newsletter Team. Edited by: Danesh Chandran, Heather Yee, Afreen Aysha Fazal & Kho Yii Ting. Copy-edited and Designed by: Mohammed Fakrullah Bahadun, Mohammad Syahir Alias & Nurul Ain Sumarji.

MESSAGE FROM CEO AND DIRECTOR

Datuk Almalena Sharmila Johan
Chief Executive Officer

As we move through 2025 and look ahead to 2026, our strategic focus remains on strengthening the AIAC's position as a modern, internationally harmonised, and user-responsive arbitral institution.

A defining milestone in this journey is the officiation of the AIAC Suite of Rules 2026, which will come into force on 1st January 2026. Representing one of the most significant institutional reforms in the AIAC's history, the new Suite of Rules introduces enhanced governance and procedural innovations designed to promote efficiency, transparency and global confidence. Central to this reform is the establishment of the AIAC Court of Arbitration, bringing the Centre in parallel with leading international arbitral institutions and reinforcing the quality of AIAC-administered proceedings.

Together, these reforms reaffirm our commitment to strengthening institutional excellence, credibility and innovations in the progressively evolving ADR sphere. I thank you for your continued support and partnership as we advance the AIAC's mission in 2026 and beyond.

Dato' Mary Lim Thiam Suan
Director

AIAC's postcard for 2025 will clearly show that it has been a whirlwind year of successful events and activities, none of which would have seen the light of day but for the dedication and commitment of each member of this inspiring institution. More will take place in 2026, affirming AIAC's commitment to adaptability and inclusivity in accordance with the best standards in international practices in dispute resolution. I look forward to our continued journey of growth and collaboration with our partners and the ADR community of Malaysia and beyond.

KEY INSIGHTS: AIAC SUITE OF RULES 2026

The officiation of the AIAC Suite of Rules 2026 marks one of the most significant milestones in the AIAC's institutional reform initiatives, embodying a strategic transition towards a modernised, internationally harmonised, and user-responsive arbitration framework. Building upon Malaysia's pro-arbitration legislative landscape and the Centre's mandate, the Suite of Rules 2026 introduces structural and procedural innovations designed to enhance efficiency, transparency and global confidence in AIAC-administered dispute resolution.

Central to this reform is the establishment of the AIAC Court of Arbitration ("AIAC Court"), effective 1st January 2026. This marks an enhanced model, transitioning to a more collective, accountable and expert-driven institutional structure. This development aligns the AIAC with leading global institutions and provides a robust framework for overseeing arbitrator appointments, addressing procedural challenges, and preserving quality of the draft awards. The introduction of the inaugural AIAC Court signifies a new level of institutional maturity, bringing together diverse professional input, thorough collective deliberation and improved procedural consistency.

In addition to governance reforms, the new Arbitration Rules introduces a series of procedural amendments aimed at addressing the increasing demand for speed and proportionality in arbitration. Among others, the monetary thresholds for fast-track arbitrations have been raised for both domestic and international matters, thereby making expedited procedures more accessible for a wider array of disputes. Alongside that, the streamlined provisions for emergency arbitration and a more defined mechanism for summary determination, ensure that parties can secure urgent interim relief or prompt dismissal of clearly unmeritorious claims. These procedural enhancements are vital in an era where commercial urgency necessitates strategic advantage. The new Rules also acknowledge the increasing significance of hybrid in dispute resolution methodologies by formally integrating mechanisms such as Arb-Med, Med-Arb, and Arb-Med-Arb. This reflects a market trend towards more collaborative and settlement-oriented approaches.

The AIAC Mediation Rules 2026 promote early and effective consensual resolution of disputes, whether as a standalone process or in conjunction with arbitration. These Rules modernise the mediation framework by strengthening party autonomy while introducing oversight by the President of the AIAC Court for the appointment, confirmation, and replacement of mediators. These Rules enhance flexibility through negotiable mediator fees, support for hybrid and concurrent ADR processes, and streamlined procedures aimed at efficient and effective dispute resolution.

The AIAC Islamic (*i*)-Arbitration Rules 2026 are specifically designed for resolving disputes in a Shariah-compliant manner, including those arising from Islamic finance and commercial transactions. These Rules embody Shariah-guided features, notably, the broadened references to experts such as, Shariah Council or Shariah Experts, who are well-versed in Islamic laws and jurisprudence. Critically, the i-arbitration framework preserves not only efficiency, neutrality and the core values of Shariah-based dispute resolution, but also predictability and enforceability of the arbitral awards.

The Asian Sports Arbitration Rules 2026 provide a tailored framework for resolving sports-related disputes, spanning across disciplinary, contractual and governance matters, with procedures calibrated for speed, confidentiality and sector-specific expertise. Together with AIAC's administration of the UNCITRAL Arbitration Rules and supporting protocols/guidelines, the AIAC Suite of Rules 2026 reflect the Centre's continued commitment to upholding procedural flexibility, inclusivity and responsiveness to diverse dispute resolution needs.

By embedding robust governance, streamlining procedures, enhancing transparency and aligning with international best practices, the AIAC Suite of Rules 2026 are positioned to meet the needs of businesses, states and practitioners in navigating an evolving alternative dispute resolution ecosystem.

AIAC x CIARB MALAYSIA ASEAN CONFERENCE 2025

By: Ms. Crystal Wong Wai Chin[1], Chairperson of Ciarb Malaysia

A Meaningful Gathering of Minds – Reimagining the Future of ASEAN Arbitration

The AIAC x Ciarb Malaysia ASEAN Conference 2025 was more than a regional meeting - it was a milestone moment for ASEAN's dispute resolution community. Held at the Asian International Arbitration Centre (AIAC), the conference drew an impressive crowd of participants from legal, business, academic, and government sectors across Southeast Asia and beyond. The conference buzzed with conversations on innovation, reform, diversity and collaboration - a reflection of ASEAN's growing influence as a global arbitration hub. Every session was filled with fresh perspectives and meaningful exchanges that highlighted one clear message: the future of arbitration in ASEAN is dynamic, inclusive and forward-looking.

Opening Ceremony: Setting the Tone for Transformation

The conference began with Ms. Crystal Wong Wai Chin, Chairperson of Ciarb Malaysia, delivering a heartfelt welcome that called for unity and progress within the ASEAN arbitration community. YBhg. Datuk Almalena Sharmila Johan, CEO of AIAC, officially opened the event, emphasising the importance of institutional leadership in guiding regional cooperation.

Delivering special remarks on behalf of YB Dato' Sri Azalina Othman Said, Minister in the Prime Minister's Department (Law and Institutional Reform), YBhg. Dato Dr. Punitha Silivarajoo (Deputy Director-General (Policy and Development), Legal Affairs Division) underscored ADR's pivotal role in ensuring business continuity and regional stability. Her message resonated deeply - arbitration is no longer a niche mechanism; it is a strategic pillar of ASEAN's economic resilience.

Session 1: ASEAN Arbitration at a Turning Point – Disruption, Reform and the BRI Factors

The first session sparked a high-energy debate on how the Belt & Road Initiative (BRI) and digital transformation are reshaping the ASEAN's dispute landscape. Panellists like Dr. Ong Kian Ming, Dato' Mary Lim Thiam Suan, Mr. Mahesh Rai, and Ms. Lu Fei discussed how cross-border investments are driving demand for faster, more adaptive arbitration models. The dialogue was candid - balancing economic growth with fair dispute resolution that will define ASEAN's next decade.

Session 2: Foundations of Justice - Evolving Construction Arbitration in ASEAN

With infrastructure projects booming across the region, this session drew keen interest from engineers, developers, and legal professionals alike. The discussion delved into whether the current arbitral framework can keep up with the scale and technical complexity of today's construction disputes. Mr. Rajendra Navaratnam, Mr. Foo Joon Liang, Mr. David Bateson, and Mr. Kamesam Shankar, moderated by Ms. Vatsala Ratnasabapathy, shared real-world insights, reminding everyone that arbitration isn't just about procedure - it's about ensuring justice keeps pace with progress.

Session 3: The Art of Persuasion in ASEAN Arbitration

This dynamic session explored what truly persuades an ASEAN tribunal - logic, tone, or cultural awareness? Mr. Ng Jern-Fei KC, Ms. Heidi Chui, and Mr. Nahendran Navaratnam compared advocacy techniques across jurisdictions, highlighting that persuasion in ASEAN arbitration blends Western precision with Eastern subtlety. Ms. Heather Yee Jing Wah of AIAC moderated a lively exchange that left participants reflecting on how emotional intelligence and respect for cultural nuances are emerging as powerful advocacy tools.

[1] *Crystal Wong is a partner at Lee Hishammuddin Allen & Gledhill. She is the co-head of the firm's China Desk. Crystal has an active arbitration practice in the ASEAN region and her regular academic contributions have increased the scholarship in the area of ADR.*

Session 4: Advancing Women in ASEAN Arbitration – Influence, Leadership and Change

This was among the most inspiring moments of the conference. Ms. Sitpah Selvaratnam, Ms. Donna Ross, Ms. Shamala Devi Balasundaram, and Ms. Karen Ng, led by Ms. Sneha Ravi Iyer, spoke passionately about mentorship, visibility and systemic change. Their stories, from courtroom challenges to leadership breakthroughs, reflected how women practitioners are not just participating but pioneering the field of arbitration in ASEAN.

Session 5: The Next Generation – Young Arbitrators and Practitioners Shaping ASEAN's Future

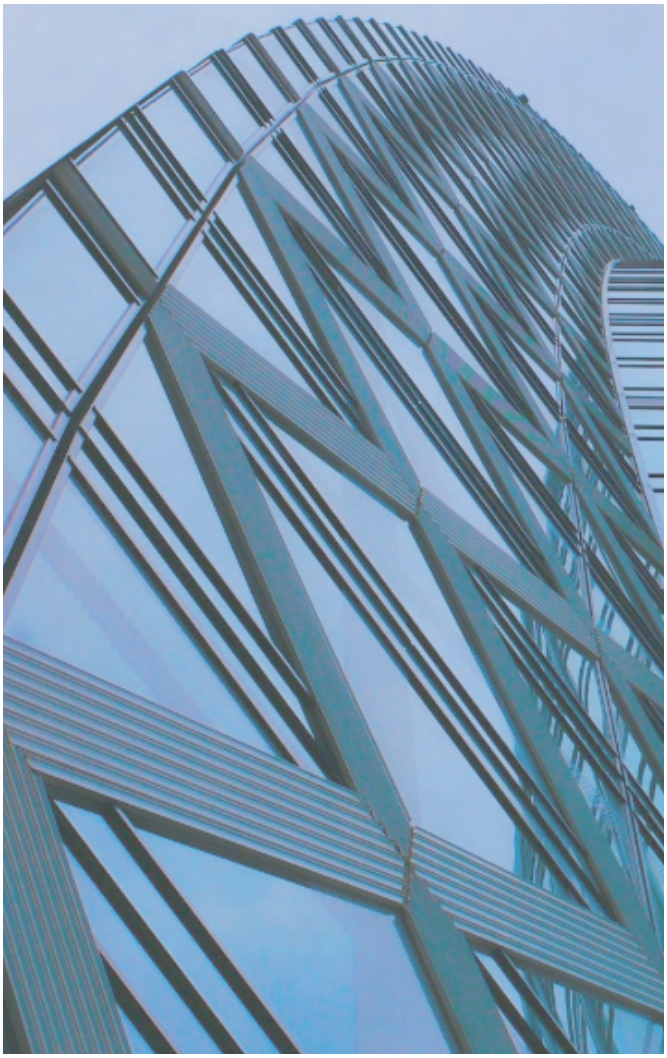
Closing the conference, a panel of emerging practitioners and rising stars shared their vision for the future. Ms. Serene Hiew, Mr. Tan Jun Hong, Mr. Lim Tse Wei, Mr. Xing Chengdong, and Mr. Ng You Xian, moderated by Ms. Aayushi Singh, discussed innovation, technology and mentorship. Their optimism was infectious - AI, digital platforms and regional collaboration are opening new pathways for young professionals to thrive.

Reception Hosted by 39 Essex Chambers

The day ended on a high note with a networking reception hosted by 39 Essex Chambers. Participants from across ASEAN mingled, exchanged ideas and celebrated the success of a day filled with insight and inspiration. The sense of community and collaboration was unmistakable - friendships and partnerships were formed that will carry ASEAN arbitration forward.

A Resounding of Success

The AIAC x Ciarb Malaysia ASEAN Conference 2025 was more than an event - it was a collective statement of purpose. From the opening remarks to the final toast, the conference reflected ASEAN's diversity, dynamism and determination to lead the evolution of dispute resolution globally. AIAC and Ciarb Malaysia extend heartfelt thanks to all speakers, moderators, participants and sponsors for their invaluable contributions in making this event a resounding success.



BIM – AIAC ADR SUMMIT 2025

EMPOWERING PROFESSIONAL EXCELLENCE: BUILDING A NATIONAL PROFESSIONAL ECOSYSTEM AND ADVANCING ETHICAL AI AND ADR PRACTICES

By: Mr. Kalaiarasan Rasadurai[2], Senior Associate, Skrine

On 14th May 2025, 5 speakers and a moderator were put to task by Balai Ikthisas Malaysia (BIM) and AIAC to explore various appropriate dispute resolution modes within an hour. To tackle this challenge and the battle against participants eyelids for a session immediately after lunch, the moderator, Mr. Kalaiarasan Rasadurai and the speakers engaged in an interactive and light-hearted session.

In a series of 6 questions and answers, Mr. Vishnu Menon, illuminated the audience on the AIAC's role in administering and supporting Alternate Dispute Resolution (ADR). One highlight was when Mr. Vishnu explained how AIAC facilitates the transition between different ADR mechanisms, and he then shared an example of one such instance which aided in the successful resolution of that dispute. Mr. Vishnu also clarified that AIAC does not see other arbitral institutions in the region as competitors but is rather interested in regional collaboration to expand the ecosystem for ADR.

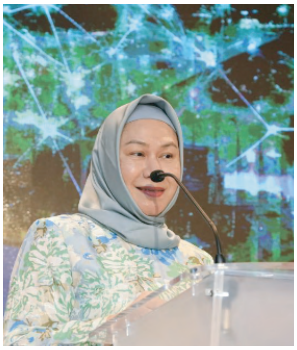
Mr. Suhaib Ibrahim then explored arbitration by setting out the key features and benefits. During the Q&A session, Mr. Suhaib was asked whether there are avenues for parties to reduce or control the cost involved in an arbitration. To this, he pointed out that parties can, among others, adopt fast-track arbitration mode, which is cheaper and faster.

When the table turned to adjudication, Mr. Shannon Rajan, cheekily equated adjudication to a 'jealous mistress'. This is perhaps given how effective adjudication has been in attracting contractors to opt for it. Mr. Shannon went on to explore adjudication and its key features and emphasised that adjudication has achieved its purpose in the past 11 years since the Construction Industry Payment and Adjudication Act 2012, came into force in Malaysia. On the moderator's suggestion and question, Mr. Shannon agreed that adjudication has become unnecessarily technical or procedural thereby impairing parties' ability to manoeuvre through adjudication on their own, without lawyers or claims consultants.

Ms. Shanti Abraham in her successful pursuit of convincing participants that mediation is one of the best alternative dispute resolution modes, shared an interesting insight on "A Hundred Million Dollar Mediation". This led to a discussion on how Malaysia could tap into these interesting or high-value mediations. In response to a query from the moderator, Ms. Shanti noted that mediation can be resorted to at any stage of a dispute. She also explained the rise in the adoption of Arb-Med-Arb procedures.

Ir. Harbans Singh K.S, needed no script or slides to pull off his magic. Taking cue from Mr. Shannon's analogy, Ir. Harbans suggested that expert determination would perhaps be the 'second wife' as it is new and a hot cake in the market, which was recently introduced by BICAM. In response to a question from the moderator, Ir. Harbans acknowledged that "ED" (abbreviation for 'expert determination') is not binding on parties but insisted that the voluntary nature of it is what makes expert determination attractive.

At the end, the moderator had to remind parties to exercise caution in repeating the abbreviation, "ED", out of the conference hall, as it may connote a different meaning for those unfamiliar with expert determination.



[2] *Kalaiarasan Rasadurai, FCIArb is a dispute resolution lawyer in the Construction and Engineering Practice of Skrine. He primarily practices in the field of construction, engineering, oil and gas, energy, civil and commercial disputes.*

AN OVERVIEW OF THE AIAC-SOAS SPORTS ARBITRATION TRAINING COURSE 2025:

KEY TAKEAWAYS AND LEGAL REFLECTIONS

By: Mr. Victor Wong Rong Zhe[3], Pupil-in-Chambers, LY Ooi & Chai; Sub-Committee Member of Sports Law Association of Malaysia (SLAM)

My engagement with sports law began during my university years, where I later had the privilege of tutoring the subject. Despite this prior academic exposure, the recent AIAC-SOAS Sports Arbitration Training Course 2025 proved to be a profoundly eye-opening experience. The programme offered not only a deeper understanding of the legal framework governing sports but also practical insights into the mechanisms of dispute resolution in sports, particularly by way of arbitration.

One of the highlights of the course was the mock arbitration sessions, which simulated real-world disputes concerning issues such as doping violations and player transfers. The learning experience was significantly enhanced by immediate commentary and constructive feedback by the distinguished panel of lecturers.

A central topic discussed throughout the course was to what extent arbitral tribunals may legally review decisions made on the field of play. Reference was made to the award in the Behdad Salimi case that Court of Arbitration for Sport (CAS) definitively reiterated the long-standing principle: "*CAS jurisprudence has consistently reaffirmed that CAS Arbitrators do not overturn the decisions made on the playing field by judges, referees, umpires or other officials charged with applying the rules of the game unless there is some evidence that the rule was applied arbitrarily or in bad faith*."

This doctrine signifies the essential autonomy of sporting officials, who possess specialised expertise in the field of play and are entrusted with the application of technical rules in real-time. Legal intervention shall be therefore strictly limited to circumstances where the application of the rules is proven to be arbitrary or in bad faith.

Another key topic involved a comparative analysis of jurisdictions with and without codified sports legislations. Dr. Mohamed Abdel Raouf offered an intriguing perspective that countries without a codified set of sports legislations, tend to adopt a more liberal and flexible approach in the regulation of domestic sports. These jurisdictions often permit greater autonomy within sports bodies, allowing disputes to be managed within the framework of *lex sportiva*.

In contrast, jurisdictions such as Egypt, whose Constitution expressly governs sports, adopt a more regulated approach. It is in my humble view that limited legislative interference can be advantageous for development in sports, while this autonomy must always be balanced with accountability, transparency and the safeguarding of athlete welfare by the sports bodies.

Sports arbitration is indeed an indispensable cornerstone of modern sports justice. Its advantages over traditional litigation are apparent as it mandates specialised expertise and arbitrators who understand the nuances of *lex sportiva*. In addition, it strikes the perfect balance by respecting the autonomy of sports bodies while strictly guaranteeing procedural fairness and due process, with awards being internationally enforceable.

[3] *Victor Wong Rong Zhe is a pupil-in-chambers at LY Ooi & Chai. He is a Sub-Committee Member of the Sports Law Association of Malaysia. He holds a Bachelor of Laws (Hons.) from Multimedia University.*

A NEW FRONTIER GROUNDED IN HERITAGE:

HIGHLIGHTS FROM THE ISLAMIC ARBITRATION CONFERENCE 2025

By: Ms. Liza Khan (Norliza Rasool Khan)[4], Founder, Liza Khan Chambers

The Islamic Arbitration Conference 2025, held at the AIAC, on the theme "*Advancing Islamic Arbitration on the New Global Frontiers*" was a success. The much-needed conference co-organised with AIAC's Strategic Partner, the Organisation of Islamic Cooperation Arbitration Centre (OIC-AC) was officiated by YB Dato' Sri Azalina Othman Said, Minister in the Prime Minister's Department (Law and Institutional Reform), who championed the need for stronger international cooperation.

In her welcome remarks, Datuk Almalena Sharmila Johan, CEO of the AIAC, invited participants to reimagine Islamic arbitration through innovation and empathy, a global vision supported by Dr. Umar A. Oseni of the OIC-AC. Delivering the exclusive insight, YBhg. Dato' Dr. Afifi Al-Akiti (Oxford Centre for Islamic Studies) explored how classical traditions can be integrated with contemporary legal frameworks, emphasising that Shariah principles promote arbitration systems that are just, ethical and culturally attuned.

A cornerstone of the conference was the exchange of a Memorandum of Understanding (MoU) between the AIAC and the OIC-AC, a strategic partnership aimed at strengthening capacity-building and the harmonisation of best practices.

In Session 1, titled "*The i-Roadmap: Navigating Shariah Compliance in Arbitration*", YM Tunku Farik Bin Tunku Ismail discussed the Takaful and Retakaful experience whilst Mr. A. Harun Korkmaz tackled the enforceability of Shariah-compliant awards and Ms. Hurriyyah Kamaruzzaman highlighted the efficiency, confidentiality and enforceability of the AIAC i-Arbitration Rules 2023.

Following the conclusion of Session 1, the AIAC's Case Counsel, Ms. Nazira Salim presented two AIAC's landmark contributions in this field: the AIAC i-Arbitration Rules 2023 and the Islamic Standard Form of Building Contract (i-SFC) 2024.

The Panel in Session 2 on "*i-SFC: Contractual Harmony and Construction Dispute Prevention*" explored the operational realities of the new i-SFC 2024. Mr. Mubashir Mansor emphasised good faith and disclosure. Whereas, Sr. Muhammad Ariffuddin bin Arifin focused on the contract's adjudicative mechanisms and Tuan Haji Mohamad Redzuan Idrus underscored the essential values of honesty, *amanah* (trust) and the prohibition of *riba* (usury), stressing that a Shariah-compliant ecosystem must not permit unjust enrichment.

The final session moderated by Ms. Liza Khan explored Islamic dispute resolution systems. Mr. Mohamed Ridza Abdullah, Dr. Can Eken, Dr. Umar Oseni and Professor Dr. Younes Soualhi explored the concept of arbitration and mediation under the Islamic dispute resolution system and concluded that Islamic arbitration principles of a just and fair outcome, is rapidly expanding.

YABhg. Tun Dato' Seri Zaki bin Tun Azmi, former Chief Justice of Malaysia in his closing remarks reaffirmed the importance of strengthening Islamic arbitration frameworks and the crucial need to integrate ethical integrity, legal clarity and cultural relevance. Whilst calling for strengthened collaboration with OIC member states and the OIC-AC, he commended the AIAC for pioneering solutions like the i-Arbitration Rules and the i-SFC 2024.

[4] *Liza Khan (Norliza Rasool Khan) is the founder of Liza Khan Chambers and an Advocate & Solicitor of the High Court of Malaya with 25 years of experience in legal practice. She specializes in corporate and commercial law, focusing on advisory and dispute resolution in areas like capital markets, securities law, corporate governance, ESG, and AI Governance.*

ADVANCING ASEAN'S VISION:

THE INTERSECTION OF ARBITRATION AND ISLAMIC FINANCE

By: Professor Habib Ahmed[5], Sharjah Chair in Islamic Law and Finance; Durham University, United Kingdom

The ASEAN Law Forum 2025, held from 19th – 21st August 2025 in Kuala Lumpur, Malaysia, centred on the theme of "*Enhancing Access to Justice in the ASEAN Community: Bridging Legal Cooperation for Inclusive Growth in the Digital Age*." The forum brought together ministers, policymakers, jurists, scholars and practitioners from ASEAN and partner countries to discuss emerging legal, technological and institutional challenges in regional law and governance and to advance the region's shared vision of inclusive growth through legal cooperation and digital innovation. Through commitments to legal cooperation, arbitration reform and innovation in justice delivery, ASEAN aims to advance collaboration in arbitration, mediation and digital justice in order to achieve the objectives of equitable and sustainable development of the Vision 2045.

The theme of Parallel Session 7 of the ASEAN Law Forum 2025 was "*Advancing ASEAN's Vision: The Intersection of Arbitration and Islamic Finance*." The session was chaired and moderated by Dr. Aida Othman, Managing Director of ZICO Shariah, Malaysia, and the panellists were Dr. Rami S. Abudaqqa, General Secretary, International Islamic Centre for Reconciliation & Arbitration (IICRA), UAE; YBhg. Tan Sri Dato' Seri Dr. James Foong Cheng Yuen, Chairman, Financial Markets Ombudsman Service, Malaysia and Professor Dr. Habib Ahmed, Sharjah Chair in Islamic Law and Finance, Durham University, United Kingdom.

Dr. Rami's presentation highlighted the pivotal role of arbitration in strengthening the governance and credibility of Islamic finance across ASEAN. He discussed how the sector's rapid growth has outpaced legal and regulatory development, leading to challenges in ensuring Shariah compliance in dispute resolution. Drawing on experiences from IICRA, Dr. Rami underscored the importance of developing Shariah-competent arbitrators, ethical fintech frameworks, and legitimate third-party funding mechanisms to enhance access to justice.

In his presentation, Tan Sri James Foong discussed the evolution of the Financial Mediation and Ombudsman Scheme (FMOS), which serves as Malaysia's unified alternative dispute resolution (ADR) platform for the financial sector, providing an independent, impartial and cost-free avenue for consumers to resolve grievances against financial institutions. FMOS was jointly established by Bank Negara Malaysia (BNM) and the Securities Commission (SC) on 1st January 2025 by consolidating the Ombudsman for Financial Services (OFS) and the Securities Industry Dispute Resolution Centre (SIDREC). Tan Sri James emphasised that FMOS enhances consumer protection, strengthens confidence in both conventional and Islamic finance, and serves as a model for the ASEAN's regional financial redress framework.

Professor Habib Ahmed discussed different issues related to the theme of the session, where he suggested Islamic finance can play an important role in contributing to ASEAN's visions and argued that the standardisation of Sharia is essential to enhance confidence and predictability and strengthen the credibility of Islamic arbitration in ASEAN. In this regard, Sharia standards of the Accounting and Auditing Organisation for Islamic Financial Institutions (AAOIFI), which reflect broad consensus across jurisdictions, can be adopted as the default reference for Islamic finance contracts. Sharia councils affiliated with arbitration institutions (such as AIAC's Shariah Council) should adopt AAOIFI standards when rendering opinions, and this would create consistency and improve the enforceability of arbitral awards.

The panellists asserted that Islamic finance offers an important instrument to support the goals of an economically integrated, inclusive and competitive region and help to achieve 'economic integration' and 'rule-based governance', two pillars of its Vision. However, this would require institutionalising Islamic arbitration standards and harmonising legal frameworks. They argued that AIAC can position itself as the ASEAN's hub for Islamic arbitration and training, fostering regional coherence and capacity-building.

[5] *Habib Ahmed is a professor and Sharjah Chair in Islamic Law & Finance at Durham University Business School, Honorary Professor at the Department of Islamic Banking, University of Jordan, and Member of the Board of Trustees at NZF Worldwide, UK.*

EXPLORING THE FRONTIERS OF ADR IN CHINA AND MALAYSIA

By: Mr. Leonard Yeoh[6], Senior Partner and Head of the Dispute Resolution practice, Tay & Partners

The Asian International Arbitration Centre (AIAC), the China International Economic and Trade Arbitration Commission (CIETAC) and the CIETAC Hong Kong Arbitration Center successfully co-hosted a seminar in conjunction with the 2025 China Arbitration Week, drawing strong participation from members of the legal and ADR fraternity across multiple jurisdictions, including Malaysia, Mainland China, Hong Kong SAR and Singapore.

The seminar commenced with the welcoming remarks by Mr. Wang Chengjie, Vice Chairman and Secretary General of CIETAC, and Datuk Almalena Sharmila Johan, CEO of the AIAC. Both speakers emphasised the longstanding and mutually supportive ties between China, Malaysia and the broader ASEAN region, particularly in advancing sustainable development and promoting economic growth through effective dispute resolution frameworks.

The first session, "*Evolving ADR Legislation, Guidelines and Practices in China and Malaysia*" was moderated by Ms. Crystal Wong Wai Chin (LHAG) and featured a distinguished panel comprising Mr. Matthew Suen (Denis Chang's Chambers), Mr. Guowang Xie (Beijing Jingyue Law Firm), Ms. Mariana Zhong (Hui Zhong Law Firm) and Ms. Tan Hui Wen (Jeff Leong, Poon & Wong). The panel explored recent reform trajectories in both jurisdictions, addressing implementation challenges and offering forward-looking insights on emerging ADR developments.

In discussing cross-border dispute resolution, the speakers examined the proposed amendments to the PRC Arbitration Law, the influence of soft-law instruments, and shared reflections on practices that have proven effective and those that have not. A notable segment focused on the potential use of artificial intelligence in document-intensive arbitrations, particularly in streamlining the discovery process.

The second session, "*Enforcement of Arbitral Awards in Cross-Border Trade and Investment Disputes*" was moderated by Ms. Heather Yee Jing Wah (AIAC) and joined by Mr. Leonard Yeoh (Tay & Partners), Mr. Jintao Ou (CIETAC Hong Kong Arbitration Center), Mr. Wing So (Resolution Chambers) and Ms. Xiaoyu Zhang (Jincheng Tongda & Neal Law Firm), offered a deep comparative analysis of the arbitration regimes in Mainland China, Hong Kong SAR and Malaysia.

The speakers unpacked key jurisdictional similarities and differences, especially in procedural requirements, recognition and enforcement pathways, and the varying judicial philosophies that influence the enforcement of arbitral awards. The panel also provided candid insights into the practical realities of cross-border enforcement and highlighted notable cases where courts declined enforcement, illustrating how due process concerns, procedural irregularities and public policy considerations may affect judicial outcomes. Their analysis provided participants with a realistic understanding of the challenges and expectations in enforcing arbitral awards across borders.

The panel further examined the Arbitration (Amendment) Act 2024, which is expected to streamline and expedite the enforcement process once in force. While acknowledging that corresponding amendments to the Rules of Court 2012 may be necessary for full implementation, the speakers welcomed the reform for its potential to reduce delays, costs and procedural redundancies.

In his Closing Remarks, Mr. Danesh Chandran (AIAC) underscored the importance of sustained collaboration between Malaysia and China in shaping the future of ADR. The seminar ended on a thoughtful note with a reminder from Dato' Mary Lim Thiam Suan, Director of the AIAC, that meaningful progress is only possible through collective and continuous effort.

[6] *Leonard Yeoh is the Senior Partner and Head of the Dispute Resolution practice group at Tay & Partners. With over 29 years of legal experience, he has acted as counsel in a broad spectrum of complex disputes before all levels of the Malaysian and Singaporean courts, as well as in both domestic and international arbitrations.*

RESOLVING CROSS-BORDER DISPUTES IN VIETNAM AND MALAYSIA:

STRATEGIES AND ADR MECHANISMS

By: Mr. Nguyễn Thành Vàng [7], Lawyer, Dong Nai Province Bar Association

On 26th September 2025, the Asian International Arbitration Centre (AIAC) hosted an engaging and timely panel session entitled "*Resolving Cross-Border Disputes in Vietnam and Malaysia: Strategies and Alternative Dispute Resolution (ADR) Mechanisms*." Held at Bangunan Sulaiman, Kuala Lumpur, the event brought together leading practitioners and bar association representatives from both countries. The session sparked meaningful conversations on the practical, institutional and strategic challenges of managing cross-border disputes in these two dynamic Southeast Asian jurisdictions.

The discussion centred on three key themes:

a. How differing legal systems, cultural nuances, and jurisdictional frameworks in Vietnam and Malaysia influenced dispute resolution strategies;
b. The strengths and limitations of arbitration and other ADR mechanisms in handling transnational disputes; and
c. The evolving role of bar associations in supporting lawyers engaged in cross-border work.

These issues were especially relevant as commercial ties between Vietnam and Malaysia continued to grow, highlighting the need for reliable, effective and culturally attuned dispute resolution pathways.

The panel was expertly moderated by Mr. Jalalullail Othman, Deputy Chairperson of the Bar Council International Professional Admissions Committee, who set the stage with his reflections on the importance of cooperation between the two jurisdictions and the increasing complexity of cross-border legal practice.

A distinguished panel of speakers then shared their insights:

- Mr. Nguyễn Thành Vàng, Arbitrator and Member of the Dong Nai Province Bar Association, offered a practical and insightful overview of how Vietnamese practitioners navigate cross-border disputes, highlighting real-world challenges faced by parties and counsel.
- Mr. Vishnu Menon, International Case Counsel at the AIAC, provided an institutional lens, discussing procedural efficiencies, case-management trends, and the Centre's ongoing efforts to facilitate smoother dispute resolution between parties from Vietnam and Malaysia.
- Mr. Abang Iwawan, Member of the Bar Council and Chairperson of the Bar Council Arbitration Committee, outlined Malaysia's robust legal framework for arbitration, emphasising recent reforms and the Malaysian Bar's commitment to strengthening cross-border engagement and professional mobility.

Together, the speakers examined how parties from both jurisdictions could better navigate procedural choices, including seat selection, language considerations, and the varying enforcement landscape factors that frequently determine the success of dispute-resolution processes.

The session also offered a forward-looking exploration of comparative arbitration practices, the interplay between culture and negotiation styles, and the role of ADR institutions in facilitating dispute management. The speakers highlighted promising opportunities for deeper collaboration between the Vietnamese and Malaysian bar associations, particularly in joint training, knowledge exchange and capacity-building.

A lively Q&A segment followed, allowing participants to engage directly with the panel. Questions ranged from the enforcement challenges to cultural obstacles in negotiations, prompting thoughtful responses and sparking further discussion among attendees.

This panel session continued the AIAC's mission to enhance cross-border understanding and strengthen professional networks across Asia. By bringing together legal communities from Vietnam and Malaysia, the event reinforced AIAC's commitment to building capacity, promoting knowledge and empowering the next generation of dispute resolution professionals.

As cross-border commerce expands, conversations such as this panel session proves essential in ensuring that ADR mechanisms evolve in line with the needs of practitioners, businesses and institutions. The AIAC closed the session by expressing its appreciation to all participants and its hope that the discussions would pave the way for deeper regional cooperation in the years ahead.

[7] *Nguyễn Thành Vàng is a seasoned lawyer and arbitrator with over 35 years of professional experience in dispute resolution, arbitration, and business law. Combining extensive experience as both a lawyer and arbitrator, Mr. Vàng offers valuable perspectives on the practice and development of arbitration in Vietnam, particularly in the fields of business, investment, and commercial law.*

3RD AYAP SUMMIT-

GLOBAL CHALLENGES, REGIONAL RESPONSES: SOUTHEAST ASIA IN FOCUS

By: Mr. Lee Kai Jun[8], Co-Chair of AIAC Young Practitioners' Group

The Asian Young Arbitration Practitioners (AYAP) recently convened the 3rd AYAP Summit at the AIAC as a key lead-up event to the inaugural Asia ADR Week 2025. Themed "*Global Challenges, Regional Responses: Southeast Asia in Focus*," the Summit brought together a diverse array and truly cosmopolitan cohort of professionals and experts from across Southeast Asia and the BRICS countries in the field of Alternative Dispute Resolution (ADR) and fostered highly engaging and intellectually invigorating discussions.

The Summit commenced with the Welcome Remarks by Mr. Danesh Chandran, AIAC's Assistant Director, who underscored the indispensability of sustained, cross-border collaboration among young practitioners in strengthening the ADR ecosystem. This was followed by Ms. Tatiana Polevshchikova, who offered a thoughtful reflection on the Summit's trajectory since its inaugural edition in Hong Kong and its second iteration in Cambodia.

The Summit was then graced by an inspiring keynote address from the Director of AIAC, Dato' Mary Lim Thiam Suan, who illuminated the attendees on the dynamic and ever-evolving landscape of ADR, including the burgeoning deployment of AI and emphasised the pivotal role of young practitioners in embracing and harnessing AI to reshape the future of ADR.

The first panel session entitled "*Malaysia and BRICS: A New Era for ASEAN Trade?*" was expertly moderated by Ms. Cindy Wong Xien Yee (Messrs. Wong Xien Yee). The speakers comprised of Mr. Jerry Li Lianjie (Hainan International Arbitration Court), Ms. Cindy Goh Joo Seong (Messrs. Cheang & Ariff), Mr. Jeremy Ho (Messrs. Ho Chong Yong) and Mr. Slyvester Lai (Messrs. Arthur Lee, Lin & Co). The panel explored the economic impact of BRICS and discussed how Malaysia's participation as a "partner country" of BRICS may spur the evolution of the ADR field, enhancing the effectiveness and efficiency of ADR in this changing global landscape.

The second panel session entitled "*Contracts Under Stress: Tariffs, Sanctions, and Force Majeure*", delved deeply into the multifaceted challenges of contract disruption. Masterfully moderated by Mr. Rinat Gareev (Whitecliff Management), the panel session featured four speakers, Mr. Lee Kai Jun (Messrs. Wayne Siang, Kai & Co), Mr. Soh Zhen Ning (Messrs. Rahmat Lim & Partners) and Ms. Victoria Khandrimaylo (Hong Kong International Arbitration Centre) and Mr. Antonin Sobek (Mayer Brown). The panel examined how practitioners from both civil and common law jurisdictions navigate contractual disruption arising from wars, sanctions, tariffs and pandemics. The panel offered nuanced insights on the doctrines of force majeure and frustration from both the civil and common law perspectives.

The final panel session entitled "*Dispute Resolution in the Natural Resources Sector*," was moderated by Ms. Chananya Rattanacharoen (Watson Farley & Williams Ltd). The panel brought together Ms. Chelsea Pollard (Morgan, Lewis & Bockius LLP), Ms. Monisha Cheong (LVM Law Chambers LLC), Mr. Nicholas Lee (Quinn Emanuel Singapore), Ms. Maria Lusia Dominique D. Mauricio (Office of the Solicitor General, Philippines) and Ms. Jocelyn Lim. (Messrs. Mah-Kamariyah & Philip Koh). Drawing on experience from complex, real-world cases, the panellists examined how arbitration addresses intricate contractual clauses in natural resources disputes while navigating complex geopolitical sensitivities and regulatory volatility.

The Summit concluded on a resounding high note of momentum and optimism, offering fresh insights and practical perspectives in the face of rapid global change. It emphatically reaffirmed the vital role of young practitioners in charting the future of ADR and underscored AYAP's unwavering commitment to nurturing a dynamic, interconnected and forward-looking community of ADR professionals. As participants return to their respective jurisdictions, they are invigorated with renewed energy, a shared sense of purpose and a clear resolve to forge a more resilient, innovative and collaborative ADR landscape in Asia and beyond.

[8] *Kai Jun is a partner at Messrs. Wayne Siang, Kai & Co who specialises in Construction, Engineering & Energy practices. He is the co-chair of AIAC's Young Practitioners' Group, adjudicator, mediator and a Fellow of the CIArb and AIADR.*

ASIA ADR WEEK 2025 – KAIROS: SEIZING THE ADR MOMENT

By: Mr. Arvind Daas Naaidu[9], Arvind Law LLC

In a stream of *kronos* (time), *kairos* (opportunity) and *krisis* (climax) are capable of producing a decisive point necessitating change. The kairotic crisis, occurring at this crossroad, was respectively described as "*the right moment, the time of fulfilment*" by Edinger (1996) and as a "*passing instant when an opening appears which must be driven through with force if success is to be achieved*" by White (1987).

The World Arbitration Caseload revealed a strong rise in arbitration, primarily in Asia. In 2024, Asia's global share of arbitration was at 74%. The remaining cases, trailing Asia, were handled elsewhere in the United States (20%), the United Kingdom (4%) and France (2%). Asia accounts for two of the three busiest arbitral institutions of the world.

On 7th October 2025, the Asian International Arbitration Centre, located in Kuala Lumpur in the heart of South East Asia, unveiled the Asia ADR Week 2025 themed "*Kairos: Seizing the ADR Moment*." It was a culmination of a series of prelude events in five states in both East and West Malaysia. AIAC's launch of the Suite of Rules 2026 officially kicked off the Asia ADR Week. In direct service to arbitration, AIAC claimed its place, declaring that its time has come.

The AIAC brought together a contingent of dignitaries and experts to organise what often could be dispersed and fragmentary material in this field *via* a series of sessions consisting of a kairotic program filled with insights. The advantages of international commercial arbitration over national courts was discussed, with Professor Gary Born, labelling the 6E's, namely, expert, efficient, expeditious, even-handed, enforceable and electronic.

Impactful sessions included backlashes against ISDS mechanisms, rise of institutional courts of arbitration in shaping best practices, geopolitical tensions straining global order, targeted reforms impacting post award journeys, growth of E-sports in Malaysia and experts' and consultants' role in construction proceedings involving the use of innovative "tutorials" by them. The intense debate concerning "double-hatting" illustrated a tussle between expertise/efficiency and conflicts of interest in the arbitral process. What follows below are some reflections.

Stakeholders should be aware of the potential drawbacks of AI technologies despite its usefulness. "Hallucinations," a recorded hazard, and confidentiality leaks of sensitive data involved in training AI systems have prompted rules and guides by JAMS, SCC, the SVA&MC. Drafters should consider incorporating these aids into arbitration agreements, be prepared to disclose usage and prompt logs and, to some extent, depart from *iura novit arbiter* ("arbitrator knows the law") principle.

Sanctions diminish arbitral advantage in all respects. Russian courts, in reliance on changes to the Arbitrazh Code of Procedure, have not hesitated to disregard arbitration agreements in violation of Article II(1) of the NY Convention. In the *Gazprom JV* dispute, the Russian attitude prompted Linde plc to obtain, pursuant to the contracts' arbitration clause, a permanent anti-suit injunction in a HK Court in January 2024 to restrain RusChemAlliance LLC from litigating in Russia.

Seat or supervisory court's powers are not ousted by an exercise of jurisdiction by an enforcement court. Award debtors are not entitled *ex debito justiae* to restrain an award creditor from enforcing an arbitral award in other jurisdictions on grounds of an application to set aside the award in the court of the seat of arbitration.

Concerns expressed by an arbitrator in an earlier arbitration about the effects of third-party funding may be scrutinised and relied on as grounds by a party in receipt of such funding in a subsequent arbitration to apply to disqualify him.

Indeed, by evoking *Kairos*, the AIAC has stamped its mark on Asian ADR, not unlike Lincoln, who seized "the providential moment" in drafting the Emancipation Proclamation, and South African leaders who wrote the Kairos Documents challenging social injustice.

[9] *Arvind Daas Naaidu is a Singapore based lawyer specializing in international commercial arbitration transcending substantive law, seat, arbitration rules and soft law. He engages in cross- border advocacy or assistance in written advocacy in the memorial style or otherwise for arbitrations or other proceedings seated or commenced anywhere.*

THE EGYPTIAN ARBITRATION LAW AFTER THIRTY YEARS:

A NATIONAL JOURNEY THROUGH A COMPARATIVE LENS

By: Ms. Valeria Senatorova[10], Chief Executive Officer, Russian Arbitration Center

The Conference marked the 30th anniversary of Egypt's Arbitration Law with a thorough and constructive look at its progress and its future trajectory. Held as a key component of Egypt Arbitration Week — a series of events organized by various law firms and institutions to address contemporary issues in international arbitration — the gathering facilitated meaningful dialogue among the arbitration community.

The Conference, organised by the Cairo Regional Centre for International Commercial Arbitration, as a leading institution in the region, brought together prominent Egyptian legal professionals and international experts for a series of in-depth sessions that combined retrospective analysis with practical, future-focused debate.

The event was inaugurated by a powerful keynote from Professor Dr. Mohamed Abdel Wahab, who set the tone for the day by championing a strategic dialogue between arbitration practitioners and law-makers. He articulated a clear vision: to make Egypt a preferred seat of arbitration. Professor Wahab argued that achieving this goal requires a collaborative effort to identify necessary legislative and procedural refinements, ensuring the law remains competitive, efficient and aligned with global best practices for the next coming years.

The keynote was followed by the first session that featured leading local experts who took a practical look at the current arbitration landscape. Discussions addressed existing challenges and considered necessary updates to the legal framework, with particular focus on the judiciary's role in interpreting the Arbitration Law. The strong attendance by esteemed judges from various courts demonstrated a clear readiness for dialogue and mutual understanding between the judicial and arbitration communities.

The second session expanded the view to encompass the role of arbitral institutions globally. Representatives from various international centers shared how arbitration law has developed in their respective jurisdictions, highlighting a crucial and universal trend: the active role of institutions in shaping legal practice and procedure. The discussion particularly emphasised the growing need for specialised commercial courts to support arbitration proceedings and examined the vital role governments play in developing and promoting arbitration frameworks within their national legal systems.

The final session provided a focused case study with speakers from France and Germany, who discussed ongoing reforms in their jurisdictions. A lively debate ensued regarding the role of courts at the seat of arbitration, with active participation from the audience enriching the discourse.

In conclusion, the Conference served not only as a retrospective but also as a proactive forum, aiming to contribute meaningfully to the ongoing reform of arbitration in Egypt through strengthened collaboration between all stakeholders in the arbitration ecosystem.

[10] *Valeria joined the team at the Russian Arbitration Center in 2018 and has since advanced from a case administrator to the Director. In recent years, she has been responsible for educational initiatives, the enhancement of RAC's Rules and practices, and international development.*

THE 2025 ADNDRC DOMAIN NAME WORKSHOP AND SEMINAR

By: Professor Yun Zhao[11], Henry Cheng Professor in International Law, The University of Hong Kong

The 2025 Asian Domain Name Dispute Resolution Center Domain Name Practice Development Workshop and Seminar on Global Brand Preservation and Domain Name Strategy was successfully held in Beijing on the afternoon of 19th May 2025 in a hybrid format. The conference was hosted by the Asian Domain Name Dispute Resolution Center (ADNDRC), and co-hosted by the China International Economic and Trade Arbitration Commission (CIETAC) Online Dispute Resolution Center, the Hong Kong International Arbitration Centre (HKIAC), the Korea Internet Dispute Resolution Committee (KIDRC), and the Asian International Arbitration Centre (AIAC). Nearly 150 experts, scholars and lawyers participated in this conference with speakers in the fields of domain name dispute resolution and brand protection from China, Hong Kong, South Korea, and Malaysia.

The CIETAC Secretary-General, Mr. Wang Chengjie emphasised the importance of domain names as a company's core online identifier and carrier of its digital brand assets. Discussions on best practices for the protection of corporate digital brands and the resolution of domain name disputes are of great significance for safeguarding corporate trademark rights and promoting corporate innovation and development.

Four panelists spoke in the first session, "*Keeping Your Name: Building a Globalized Digital Brand Defense System*". Their presentations covered topics such as "*The Latest Policy Developments of ICANN*" (Zhang Jianchuan, ICANN Asia-Pacific Stakeholder Corporation Senior Director), "*The Exploration of Dispute Resolution of Online Virtual Property*" (Xue Hong, Professor of Beijing Normal University), "*How Trademark Protection Agencies can Tackle Domain Name Infringement*" (Zhang Yu, China General Manager of Markmonitor) and "*The Significant Impact and Significance of Global Digital Brand Building and Trademark Protection*" (Liu Hongyu, Director at National Engineering Research Centre for Internet Domain Name System). They shared the latest industry development opportunities and provided comprehensive solutions from different perspectives on domain name protection.

Representatives from the four offices of the ADNDRC (Louise Wong and Huang Qiqi from Hong Kong, Yune Gie SUNG from Korea, Vishnu Menon from Kuala Lumpur, and Zhang Zhiyu from Beijing) gave presentations in the second session, "*Rules and Strategies for Domain Name Disputes*". They shared views on how to enhance the international image and deliberated on common procedural issues in domain name dispute resolution. This was followed by a presentation by Professor Zhao Yun from the University of Hong Kong on common substantive issues in domain name dispute resolution through case studies, building on his extensive experience in the field.

With the aim to offer better protection for corporate digital brands, this seminar achieved a great success in strengthening communication and gathering consensus among the stakeholders.

By: Professor Hong Xue[12], Co-Director,CIETAC Domain Name Center; Director, Beijing Normal University Institute of Internet Policy & Law

The 2025 Asian Domain Name Dispute Resolution Center's (ADNDRC) Training Program on Domain Name Practice Development and Seminar on Global Brand Preservation and Domain Name Strategy was held on 19th May 2025 in Beijing. The events were organized by the ADNDRC and co-organized by CIETAC Online Dispute Resolution Center, HKIAC, KIDRC and AIAC. The trainings and seminars were conducted in the hybrid mode. Scholars, entrepreneurs, legal professionals and other representatives specializing in domain name and legal practices from China, Hong Kong, Korea and Malaysia participated in person or online. Of the many sessions, Mr. Zhang Jianchuan, introduced the new developments on the ICANN domain name policies, particularly on the UDRP review and the new gTLD program. Ms. Liu Hongyu, introduced the implication of global digital brand construction and trademark protection. Mr. Zhang Yu, talked about how to identify domain name infringements by trademark protection organizations.

[11] *Prof. Zhao is Henry Cheng Professor in International Law and Associate Dean (Mainland Affairs), Faculty of Law, the University of Hong Kong (HKU). He is currently Representative of Regional Office for Asia and the Pacific (ROAP) of the Hague Conference on Private International Law (HCCH).*
[12] *Prof. Hong Xue is the Co-Director of CIETAC Domain Name Center and Director of Beijing Normal University Institute of Internet Policy & Law.*

ARBITRATION-IN-PRACTICE (AIP) WORKSHOP SERIES 2025:

ELEVATING PRACTICAL EXCELLENCE IN ARBITRATION

By: Mr. James Ding Tse Wen[13], Partner, CH Tay & Partners

The Asian International Arbitration Centre (AIAC) was proud to present its Arbitration-in-Practice (AIP) Workshop Series 2025 — a curated sequence of five dynamic sessions designed to equip newly accredited arbitrators, emerging practitioners and arbitration enthusiasts with practical insights into arbitral processes and proceedings. Delivered through a blend of lectures, tutorial, and panel discussions led by esteemed domestic and international arbitrators, the series offered the rare opportunity to engage with real-world challenges and strategic solutions in arbitration.

Session 1 – Setting the Stage: An Analysis on the Powers, Duties and Obligations of the Arbitral Tribunal (19th April 2025)

I was privileged to have moderated the inaugural session that laid the groundwork for these series by dissecting the powers, duties and obligations of the arbitral tribunal. The participants explored the legal architecture underpinning tribunal authority, procedural discretion and ethical boundaries — essential knowledge for navigating the pre-hearing phase.

Session 2 – Arbitration in Action: The Conduct of Effective Hearings (31st May 2025)

Focused on the conduct of effective hearings, this session reviewed the tactical guidance on managing evidentiary presentations, witness examination and procedural efficiency. Practical tools to enhance advocacy and tribunal management during the hearing phase were highlighted, with insights drawn from seasoned arbitrators' experiences.

Session 3 – The Final Step: Keeping an Eye on Effective and Enforceable Awards (26th July 2025)

Turning to the post-hearing phase of an arbitral proceeding, this workshop examined the anatomy of enforceable arbitral awards. From structuring the dispositive reasoning to addressing jurisdictional and procedural pitfalls, the session empowered participants with the applied knowledge and practical insights to craft arbitral awards that withstand scrutiny and facilitate enforcement across jurisdictions.

Session 4 – Case Law Updates on Arbitration within and beyond Malaysia (27th September 2025)

This session delivered a panoramic view of recent judicial developments in arbitration, both within Malaysia and internationally. The participants engaged with evolving jurisprudence, statutory interpretation and comparative insights that shape the arbitration landscape — a vital update for practitioners and arbitrators seeking to stay ahead of legal trends.

Session 5 – Voices in Arbitration: Let's Discuss! (29th November 2025)

Concluding the AIP Workshop Series, this interactive forum invited open dialogue on emerging themes, persistent challenges and future directions in arbitration. With a focus on inclusivity and innovation, the session encouraged diverse perspectives and collaborative reflection, fostering a vibrant community of practice.

[13] *James is qualified in England and Malaysia, and sits both as counsel and arbitrator. His areas of practice include construction, engineering, energy and commercial disputes. He holds master degrees in construction management, law and dispute resolution. He sits on the AIAC panel of arbitrators and adjudicators.*

AIAC'S ADJUDICATORS CONTINUING COMPETENCY DEVELOPMENT (CCD) WORKSHOP SERIES 2025

By: Ms. Karen Ng Gek Suan[15], Partner, Karen, Mak & Partners

Construction adjudication in Malaysia is no longer in its formative years. The statute is familiar. The procedures are well trodden. What now defines the quality of our adjudication system is not speed alone, but the standards by which it is conducted, argued, and ultimately decided. The real questions today are more searching; 'how adjudicators manage increasingly complex disputes; how advocates shape cases under compressed timelines; and how decisions stand up when placed under judicial scrutiny?'.

It was against this backdrop that the Continuing Competency Development ("CCD") Workshop Series 2025 unfolded. Structured across five carefully sequenced sessions, the programme traced the full life cycle of an adjudication dispute, from the judicial interpretation of CIPAA, to adjudicator case management, to drafting strategy and advocacy, to the discipline of decision-writing, and finally, to an open dialogue on CIPAA and adjudication. Taken together, the workshop series offered a clear snapshot of an adjudication system that is now mature, heavily utilised and under close judicial scrutiny.

The series opened on 12th April 2025 with "*Year in Review: Case Law Updates on Adjudication*", moderated by YA Dato' Lee Swee Seng, with Ir. Harbans Singh, Mr. Kevin Prakash, Mr. Deepak Mahadevan and I on the panel. From the speaker's seat, what stood out most was not merely the volume of judicial decisions, but the consistency of our Courts' message. Across a range of enforcements, stays, jurisdictional and procedural challenges, the Courts have consistently upheld the spirit and legislative intent of CIPAA as a swift, interim payment mechanism, even as they subject decisions to supervisory scrutiny. Issues of jurisdiction, enforcement and natural justice now sit at the very core of everyday adjudication practice. The discussion underscored how quickly Appellate guidance can recalibrate risk for parties in live disputes, and how essential it has become for practitioners and adjudicators alike to remain closely aligned with the Courts' approach to CIPAA.

Attention then shifted, on 17th May 2025, to the realities of running an adjudication in "*From an Adjudicator's Perspective: Issues and Challenges in the Conduct of Adjudication Proceedings*". With Mr. Thayananthan Baskaran, Mr. Sudharsanan Thillainathan, Ms. Ranjeeta Kaur, Ms. Jocelyn Lim and YA Tuan Azlan Bin Sulaiman, moderated by Dato' Mary Lim Thiam Suan (Director of AIAC), the discussion moved decisively to ground-level practice. Tight timelines, voluminous records, technical expert evidence and tactical procedural manoeuvring are now part of the CIPAA adjudication landscape. The session was a timely reminder that modern adjudication demands not just decisiveness, but firm and defensible process control.

The July workshop on "*Strategising Your Case: Drafting Proper Notices, Claims and Written Submissions for Adjudication Proceedings*" resonated strongly with many of us in practice. With Sr. John Wong, Ms. Lynnda Lim, Mr. Wong Hin Loong and Ms. Serene Hiew, moderated by YA Dato' Lim Chong Fong, the session reinforced a familiar truth: many CIPAA disputes are shaped, and sometimes settled, at the document stage. In a regime driven by speed, drafting discipline remains one of the few variables firmly within a party's control.

> "If the early years of CIPAA were about speed and survival, 2025 felt like the year Malaysian adjudication began to measure itself by quality."

[15] *Karen Ng is a partner at Karen, Mak & Partners and focuses on building and a Building and Construction lawyer. She frequently advises on building and construction contracts and represents clients in courts, arbitrations, adjudications and Royal Commission of Enquiry Proceedings.*

On 13th September 2025, focus turned to the durability of adjudication outcomes in "*The Art of Drafting Enforceable Adjudication Decisions*". With Mr. Wilfred Abraham, Mr. Lam Wai Loon, Ms. Tan Swee Im and Datin Chu Ai Li, moderated by Mr. Lam Ko Luen, the discussion reflected the growing judicial scrutiny of adjudication decisions and the increasing importance of analytical clarity, jurisdictional reasoning and defensible treatment of evidence. For adjudicators, this is no longer an academic concern, it goes directly to whether their decisions ultimately carry commercial effect.

The series concluded on 8th November 2025 with an "*Open Forum Discussion on CIPAA and Adjudication*", and it was a privilege to have YA Dato' Lim Chong Fong as moderator, alongside Mr. Foo Joon Liang, Ms. Janice Tay and Ms. Uma Kurup. The forum provided a platform for a broad and lively discussion on the practical challenges and recurring issues in CIPAA practice. The discussion also turned to the anticipated reforms to CIPAA, reflecting a shared recognition that while CIPAA has served its core purpose of preserving cashflow in the construction industry, refinements are both inevitable and necessary in light of a more complex and sophisticated disputes environment. This dialogue gave the series a forward-looking close, signaling a profession that is not only responding to existing pressures, but actively engaging with the future shape of adjudication in Malaysia.

The CCD Workshop Series 2025 reflected a Malaysian adjudication community that is no longer focused on whether CIPAA works, but on how well it is being practised. It captured a system in consolidation, shaped by judicial guidance, commercial realities and contemporary adjudication practice. Beyond technical training, the series provided a platform for collective reflection on current adjudication practice.

> "Adjudication will always be fast. The real test now is whether it continues to be fair, rigorous and worthy of trust."

"IN CONVERSATION WITH"

MS. MAY TAI[16]

Independent Arbitrator; Vice President, ICC Court of Arbitration

1. You have strong ties to Malaysia but have spent much of your professional life abroad, building an exceptional career in international arbitration. Could you share a bit about your early journey, what inspired you to pursue a career in law, and how has your Malaysian background shaped your outlook as an international practitioner?

Growing up, I was often reminded by my family that I enjoyed debating and engaging in arguments, which led them to suggest that I should become a lawyer. This idea stuck. As a teenager, helpfully, I developed a deep love for reading, eagerly devouring any book I could find. This passion for reading proved to be an excellent foundation for a legal career, where the ability to absorb a lot of information and continuously learn about different people, industries, technologies, and legal systems is essential.

My Malaysian heritage has also played a significant role in guiding me toward international arbitration. Malaysia is renowned for its multi-racial, multi-cultural, and multi-lingual society, and growing up in such a diverse environment naturally makes me feel more at home with the complexities of cross-cultural interactions. Similarly, the international arbitration landscape mirrors these characteristics, often presenting comparable challenges but with the added complexity of navigating multiple legal systems.

2. You have had an incredibly rich career from practising as counsel for two decades to now sitting as a full-time independent arbitrator. What motivated your transition from advocacy to arbitration?

Working as counsel, particularly in advocacy, has always been both exciting and deeply rewarding. There is a unique satisfaction that comes from conducting a successful cross-examination, an experience that is hard to surpass in the legal profession. However, counsel work—especially on large and complex cases—brings with it significant demands. And if you are practicing as a partner of a large law firm, then there are also considerable responsibilities associated with people management and "P&L responsibility" in a large law firm. Although I enjoyed every minute of my time at HSF Kramer (as its now called) starting from as a trainee to Asia Managing Partner, I realised that this was not a path I wanted to follow indefinitely.

Shifting from counsel work to taking on arbitrator appointments has provided me with a great deal of flexibility, allowing me to pursue other personal and professional interests. In addition to sitting as arbitrator, I am also an independent non-executive director of a bank, I serve as Vice President of the ICC Court, and accept ad hoc advisory roles for clients or cases that genuinely interest me. Had I remained a partner at a law firm, I would have had to turn down these roles or manage them alongside my "day job" and thus sacrificing more sleep (which I also enjoy!) This transition has enabled me to pick the activities that I find meaningful and challenging, and find time for the fun stuff.

3. You have sat as sole arbitrator, co-arbitrator, and presiding arbitrator in different arbitral proceedings. How does your approach differ depending on the role you are playing on a tribunal?

This is a very interesting question. Yes and no. The dynamic on a tribunal really depends on the type of case and make up of the other arbitrators. Sometimes you are the only arbitrator who is qualified in the governing law of the contract. Sometimes you are the only one who speaks the language of the witnesses or you have more industry / technical expertise. In these circumstances, the other arbitrators can rely heavily on you even if you are not the presiding arbitrator. But, in majority of cases, the presiding arbitrator takes the lead on procedural issues as and when they come up.

4. You have also been involved with many arbitral institutions. How do you see the global arbitral landscape evolving, especially in terms of collaboration between institutions?

The major arbitral institutions are continually adapting to address the increasing demand for arbitration services. Their evolution is driven by the desire to expand both the market and their respective market shares, which they seek to achieve by offering improved, tailored services that remain cost-effective for users. As between major institutions, I think the relationship is one of "cooperative rivals." They cooperate on fostering growth in the field of international arbitration and frequently learn from one another's innovations, but each institution is also focused on securing a larger portion of the market for itself.

Despite this competitive aspect, there is a strong foundation for collaboration among institutions, and there is hope that such cooperation will grow. Joint efforts, particularly on critical issues such as the responsible use of AI, represent opportunities for institutions to work together for the benefit of the broader arbitration community.

5. Having spent much of your career at the intersection of East and West, what do you think are the key ingredients for effective cross-cultural dispute resolution?

Successfully navigating cross-cultural disputes demands a high degree of open-mindedness and patience. Investing time and effort to truly understand the perspectives and backgrounds of all parties involved often leads to better outcomes. Over the years, I have witnessed how cultural differences can result in dramatically different interpretations of the same email or meeting. For example, one party may perceive a communication as an aggressive declaration of war, while another may view it as a positive step towards settlement. These misunderstandings highlight the importance of cultural awareness in dispute resolution.

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[16] *May sits as a sole arbitrator, co-arbitrator and presiding arbitrator in ICC, HKIAC, SIAC, UNCITRAL and CIETAC proceedings. She has experience sitting as an emergency arbitrator for ICC and HKIAC proceedings. She is also an experienced counsel and advocate for ICC, ICSID, HKIAC, SIAC, CIETAC, LCIA, SCC and UNCITRAL proceedings. She is a CEDR accredited mediator and on the ICSID panel of conciliators. On 1st July 2024, May was appointed as a Vice President of the ICC Court of Arbitration and a Council Member of the ICC Institute. May is also a Co-Chair of Equal Representation in Arbitration (ERA) Pledge APAC Steering Community.*

It is essential for lawyers to recognize that there is rarely a single correct approach to resolving conflicts (and that includes your own approach!) Embracing flexibility and being prepared to respectfully and constructively challenge yourselves and your clients on their views are crucial skills. Achieving this requires considerable time, patience, and a nuanced understanding of cultural dynamics.

I often advise younger lawyers that persuading clients or arbitrators may necessitate presenting arguments multiple times in different ways. I also once had a client from a different cultural background ask for forgiveness in advance, explaining that he would likely pose the same question several times, each phrased differently. While this approach may seem exhausting to busy practitioners, when done thoughtfully, it can lead to better understanding and outcomes.

6. From your expertise in cross-border China-related and Asian disputes, would you be able to share some insights on the trends we see in commercial arbitration in the region and the role an institution like AIAC could play in dispute resolution in the region?

China stands as the world's largest trading nation, and Asia as a whole is a powerhouse contributing 55% to global manufacturing and 41% to global GDP. These impressive statistics illustrate why disputes related to China and Asia are expected to increase; it is a natural consequence of the region's economic success that litigation and arbitration follow areas of significant commercial growth.

From the perspective of an arbitrator, operating out of Asia and holding a 'neutral' nationality can provide distinct benefits. This unique position allows for a broader and more impartial approach to cross-border disputes, which can be particularly valuable in complex cases involving parties from different jurisdictions.

The AIAC shares similar advantages, including its geographic location and neutral standing. However, AIAC faces the challenge of competing against larger, more established institutions in the field. To raise its profile, AIAC must undertake significant efforts to enhance its visibility and reputation within the global arbitration community.

7. The AIAC has been undergoing a period of transformation and renewed positioning within the global arbitration landscape. In your view, what opportunities and challenges lie ahead for the Centre as it seeks to strengthen its global presence and deliver greater value to users?

It is evident that leading arbitral institutions have achieved their success through several key factors: state-of-the-art facilities, regularly updated rules, a diverse and international arbitration court and secretariat, and the presence of specialised judges who oversee arbitration-related court litigation. These elements have contributed to the growth and prominence of major centers and represent important benchmarks for any institution aspiring to play a greater role in the region's dispute resolution landscape.

However, achieving these benchmarks is only part of the challenge. It is equally important that these features are publicised effectively and that the institution consistently upholds high standards. Isolated instances of behavior perceived as unfriendly to arbitration can have damaging and long-lasting effects on the reputation of an institution or the arbitral seat.

8. There is often a perception that an arbitral institution's success is measured primarily by its caseload. In your opinion, should arbitral centres be evaluated based solely on case numbers, or should a more holistic set of criteria such as quality of service, procedural innovation, user trust, diversity, and community engagement be considered?

While caseload is undeniably important, it is by no means the only measure that matters. Institutions often highlight a broad range of other metrics that they believe are important to users. These can include not only the number of cases handled, but also the range or quantum of cases, which provides insight into the institution's capacity to manage both high-value and lower-value disputes.

Diversity plays a crucial role as well. Institutions may emphasise the nationality diversity of parties and arbitrators, including factors such as gender and age, to demonstrate their ability to handle cases of all nationalities and industries. Arbitration costs are another essential consideration—naturally, users are attracted to institutions offering more cost-effective services.

Efficiency is also key, with many users paying close attention to the average time required to complete a case. In practice, much like any other decision-making process, users are likely to have a range of criteria in mind. The more boxes an institution can tick, the more appealing it becomes.

Interestingly, even seemingly minor details can influence a user's choice. For example, the availability of better food options at the seat of arbitration may appear trivial, but for hearings that last several weeks, such considerations can become surprisingly important to the overall experience!

9. As Co-Chair of the Equal Representation in Arbitration (ERA) Pledge APAC Steering Committee, what advice would you offer to young arbitration practitioners, particularly women and those from emerging jurisdictions who aspire to become arbitrators?

Much like the journey to establishing a leading arbitral institution, the process of becoming a successful arbitrator follows a familiar and proven path. I have no shortcuts to offer; dedication and consistent effort are required. First and foremost, technical excellence is a must, and this can be achieved through various ways—not solely by working on numerous cases over many years (which is the route I took).

Building a strong reputation is equally important. This involves increasing visibility by attending and speaking at professional events, authoring insightful articles, and most importantly, appearing before different arbitrators as advocate.

Alongside technical skills and reputation, possessing the right temperament and discipline is vital. Qualities such as fairness, open-mindedness, diligence, and punctuality help establish oneself as a trustworthy and effective arbitrator.

10. Looking ahead, what do you envision as the next major evolution in international arbitration whether in technology, procedural design, or diversity and how can institutions and practitioners prepare for it?

Artificial intelligence will significantly transform the conduct of arbitration proceedings, and this shift may occur more rapidly than initially anticipated. As advancements in AI technology continue to accelerate, it is essential for arbitral institutions, legal counsel, and arbitrators to remain well-informed about the capabilities and potential applications of these tools. Staying abreast of technological developments will ensure that all stakeholders can respond effectively when the changes come.

SPECIAL CONTRIBUTION: MEDIATION FOR INTERNATIONAL INVESTMENT DISPUTES

By: Ms. Shanti Abraham[17], Shanti Abraham & Associates

1. How has the integration of mediation within the framework of international investment law progressed over the last decade, particularly in light of the more recent changes to Investor-State Dispute Settlement ('ISDS') mechanisms?

Disputes—particularly when they arise between individuals, companies and states or governments—become complex when they cross national borders. A range of dispute resolution options including arbitration and mediation, have emerged to help address and ideally resolve these cross-border, investment related conflicts.

The integration of mediation into international investment law has developed in response to possible concerns arising from the more expensive and lengthy Investor-State Dispute Settlement (ISDS) system which primarily focuses on arbitration, followed by possible setting aside or enforcement actions depending on the motivations of parties. High costs and protracted duration together with the uncertainty of compliance of the actual awards remain a challenge.

With this backdrop there has been a surge of pre-arbitration solution-seeking. In that context, negotiations and increased conversations on mediation has been observed. This shift has been augmented by the development of specific rules and the inclusion of mediation provisions in newer BITs and MITs, thereby mainstreaming mediation as a natural mechanism.

Some procedural rules specifically for investor-State mediation include the ICSID Mediation Rules in 2022.

I was privileged to be included in some of the reform discussions (UNCITRAL Working Group III) as part of my role as Chairperson of the Investor State Mediation Taskforce for IMI. It was exciting to see how mediation has been a key topic in the broader discussions on ISDS reform within the UNCITRAL Working Group III. There was active participation from States and a general consensus on the need to supplement the existing arbitration system with alternative dispute resolution (ADR) methods and this led to draft provisions and guidelines for investment mediation.

2. From your observation, what have been the primary impediments to effective mediation in investor-state disputes?

This depends from whose vantage point one speaks from.

From the State perspective, the primary impediments to effective mediation in investor-state disputes (ISDS) stem largely from lack of an established system or protocol to even explore mediation. Added to that is possible political sensitivities, governance challenges within states, lack of knowledge, and a prevailing preference for the perceived finality and legitimacy of arbitration awards. The fear of public scrutiny and allegations of corruption also may paralyse government thought leaders if concessions are given which are later challenged. In that regard, States must provide appropriate protections to decision makers involved in investor state mediation efforts. At this juncture it does seem easier for States to just abdicate or defer decision making to an arbitrator.

This appears a global challenge. Accordingly, it is not surprising that there is a limited track record and awareness for mediation compared to arbitration. This general lack of awareness of the benefits and possibilities of mediation prevails among investors, state officials and legal counsel.

I remain hopeful that there is recognition among both States and investors of the benefits of mediation. Reduced costs is often touted as the key reason for mediation. However, I would suggest that finding an effective solution within a reasonable time and the ability to find creative, mutually beneficial solutions remain one of the more attractive aspects of mediation currently.

A double-edged sword is the confidentiality and flexibility involved compared to adversarial arbitration. Where States are involved, structure is perhaps expected and confidentiality may sometimes be misunderstood. I must emphasise that despite this notable progress in framework and policy, the actual use of investor-State mediation in practice remains low, with very few publicly known cases.

From investors perspective, if the arbitration is funded – then cost may not be an issue. However, if cost is fractionalised – then the advisors have little incentive to expedite matters unless the client (or funder) actively selects advisors who lead with problem-solving and design and approach that steps away from longer and more lucrative processes.

Mediation had also suffered from the perception that it was a casual, non-serious mechanism for resolving disputes where legal representation was optional, diminished and devalued – thereby making it relatively unpopular among lawyers as clients did not value legal input or strategy in devising mediation procedures.

I leave you with this question – Taking ASEAN as an example – which State has created a clear protocol for ISDS mediation so that Investors know that mediation is a possibility? If it exists – it is not well known.

3. What steps do you think will help facilitate party preparation for mediation in investment disputes, and how does the involvement of legal counsel influence the pre-mediation phase, such as in caucusing or interest-based negotiation strategies?

To facilitate party preparation for mediation in investment disputes, parties should focus on information gathering and strategic planning. The involvement of legal counsel is crucial in guiding clients through this preparatory process, particularly in developing and implementing effective negotiation strategies.

It is important to identify the decision-makers including the possible invisible decision makers. Mediation design can assist to ensure that the right individuals attend the mediation at the right time to be able to steer the discussion towards a resolution. Typically, time and process must be provided for a final decision-making body to endorse whatever final decision that has been reached, whether it is a government ministry or corporate board.

Choosing the right mediator (or mediators) is crucial as well. An experienced and neutral mediator or mediators can help to steer the matter towards the direction of resolution even if the parties (or certain individuals within parties) endeavour to derail mediation efforts. Patience and persistence counts.

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Naturally a formal mediation must have its applicable mediation rules and logistics requirements: This may include establishing a procedural framework, agreements, exchange of documents as well as other pre-mediation plans.

4. In what manner do multilateral instruments, such as Bilateral Investment Treaties (BITs), the Energy Charter Treaty, or the procedural rules such as the UNCITRAL Mediation Rules or the AIAC Mediation Rules, shape the procedural architecture and substantive outcomes of mediation in investment disputes?

Multilateral instruments and procedural rules mentioned above, shape investment dispute mediation by providing frameworks that often encourage initial amicable settlement and provide procedural architecture and rules to be followed. This is intended to encourage effective outcomes.

Multilateral instruments generally mandate a "cooling-off" period for negotiation, creating space for the commencement of mediation and presumably allow for the establishment for a mediator's role. Specific procedural rules and details are generally open for the parties to agree upon.

The main challenge is motivation to kick start the mediation process for all parties involved.

Even with strongly encouraged or even mandatory consultation/mediation, there are delays and hesitation to kick start the mediation process and very few advisors have been public about their efforts, challenges and success stories in getting parties to the table and through a mediation.

We are currently missing success stories to encourage innovative thinking. This is despite well drafted procedural rules like the UNCITRAL or AIAC Mediation Rules which provide a comprehensive framework covering mediator appointment, the conduct of meetings, and confidentiality, which parties can agree to use.

5. Are there any ethical dilemmas that arise for arbitrators and counsels when transitioning from an arbitration paradigm to a mediation framework within the same ISDS proceedings?

One elephant in the room apart from the fear of taking responsibility for decision making – is the huge revenue difference between arbitration and mediation. An ISDS case tends to aid in visibility or prominence for the State legal advisors or is a huge coup for a firm(s) seeing that many ISDS often involve several law firms lined up, each legitimately hoping to make an impact on the matter.

If the arbitration advisors are consulted for their views on a mediation approach, there may be too much temptation to perhaps scuttle a mediation opportunity in favour of running the arbitration for a while and then endeavouring a settlement in the later part of the action after a fair amount of resources have been committed.

Thus far, it is rare to hear that separate advisors have been engaged to run parallel mediation strategy. We should keep our ears peeled for this hopeful development.

In some jurisdictions, the idea of a double hatted arbitrator/mediator is being discussed. There are significant ethical dilemmas arising from a dual role of a mediator who then may switch to arbitrator/decision-maker. Arbitrators and counsels may find it challenging to navigate the conflicting demands of a binding, adversarial process (arbitration) with the consensual, facilitative process of mediation, which is designed for negotiation and creative concessions.

6. What do you think institutions can do to augment the efficiency and uptake of mediation in ISDS?

Institutions can augment the efficiency and uptake of mediation in Investor-State Dispute Settlement (ISDS) by embedding mediation into the legal framework, providing robust administrative support, and promoting capacity-building and awareness. These measures address the structural and policy impediments that currently limit the use of mediation.

States should incorporate explicit and meaningful mediation clauses in their State-linked agreements and international investment agreements to establish a clear legal basis for its use and provide for a proper mediation process which can be initiated at any time by any party. Institutions can offer a specific set of investment mediation rules that set out basic procedures including the appointment of mediators, confidentiality requirements, and timelines. Institutions like AIAC already have a pool of competent mediators. However, awareness of mediation as a credible procedure appears to be one of the many gaps. Mainstreaming mediation is likely to encourage greater use of the process.

7. From a critical perspective, do you think that asymmetries in bargaining power between investors and host states could undermine the efficacy of mediation in ISDS?

This is hard to say without empirical evidence.

At this stage – the lack of willingness to mediate and the lack of a professional mediation strategy at the first signalling of a dispute, remain potentially high on the list of impediments for mediation in ISDS. Asymmetries in bargaining power may be one element, but it could also be the simple lack of structure and awareness of benefit of mediation by both sides that results in the default to arbitration.

Mediation focuses on interests of the parties. This somewhat takes the spotlight from who may hold more cards in a negotiation and steers it towards what the parties may want or prefer instead.

8. In light of Malaysia's expanding cross-border trade with countries, what roles could regional arbitral institutions particularly the AIAC play in facilitating efficient and cost-effective dispute resolution mechanisms?

AIAC can continue to do what it has been doing very effectively, which is keeping a spotlight on the various efficient and cost-effective dispute resolution mechanisms available. Beyond that, there needs to be a focus on actual successful outcomes. It is not enough for a mediation settlement agreement to be reached or an arbitration award to be issued, if at the end of the day, it gets challenged or set aside.

I would encourage AIAC to continue follow up until the full conclusion of a matter (i.e. compliance) and not just when parties receive the paper award. It may be encouraging to recruit those parties who are satisfied with the outcomes they achieved, to share their journey (bearing in mind confidentiality obligations as well).

There are too many stories of paper awards and court actions for setting aside– which end up being costly and protracted in the end with no discernible gain for either side for the amount of effort put in.

9. Do you think the Singapore Convention has any effect on ISDS?

The Singapore Convention certainly put a spotlight on mediation as a problem-solving tool. Whether it actually has any effect on ISDS remains to be seen.

The United Nations Convention on International Settlement Agreements Resulting from Mediation (the "Singapore Convention") aims to provide a uniform and efficient framework for the enforcement of international mediated settlement agreements.

Malaysia joined more than 40 other countries in becoming a signatory to the Singapore Convention on Mediation in 2019 which saw China, India and the USA also becoming signatories and championing mediation as a credible problem-solving mechanism.

Malaysia is pending ratification of the Singapore Convention and at the operative time, there would ideally be seamless access to Malaysian courts for the enforcement of mediated settlement agreements and/or conversion of mediated settlement agreements into court orders.

This aim of the Singapore Convention was to address perceived drawbacks of mediation in terms of cross-border enforcement, which arbitration had a distinct advantage in view of the New York Convention.

10. Are concurrent mediation proceedings suitable for international investment disputes?

Concurrent mediation proceedings, which is featured in the AIAC Mediation Rules 2026, potentially can be used successfully in international investment disputes.

I share one example where I was the appointed mediator in an international investment matter. The claimant party prepared the Notice of Arbitration in advance in relation to an investment dispute (not investor state matter).

Quite brilliantly, the claimant solicitors from a regional law firm, signalled the counterparty to inform them that arbitration under certain international rules was looming and a preliminary draft of the Notice of Arbitration was extended to the counterparty with an invitation to consider mediation.

It was show of confidence and strength and sincerity in their case narrative. If the counterparty was willing, the mediation was to commence within a month and the parties would commit (together with the mediator to mediate for a period of one week). If no resolution was reached, then the claimant would file the arbitration and the parties would proceed with arbitration.

In theory, concurrent mediation could have also been carried out even if the parties were anxious to get on with arbitration at the same time (i.e. to file the Notice of Arbitration) and if costs was not a concern.

The overhang of an arbitration-in-waiting worked wonders, in my mind, for 2 reasons. Firstly, the receiving advisors had time to reflect on their case and prepare their documents without committing to a full arbitration process. Secondly, there was a confident overture that there were issues to be worked on and a book-ended mediation meant that both sides were encouraged to authentically engage in the mediation process.

The key ingredients in the success of that mediation was the genuine and confident conduct of the lawyers of the claimant party (large firm in a country in ASEAN) who conveyed a respectful invitation to mediate because they had a good case and then worked with their equally confident and principled counterparty to create a firm but fair framework for the mediation process and not create self-serving or adversarial obstructions.

Tick box mediation is a scourge and should be spotlighted for what essentially is an excuse for advisors to stretch out a dispute.

11. What pedagogical and practical recommendations would you offer to young lawyers aspiring to cultivate expertise in mediation within the sphere of international investment law?

Firstly, corporate lawyers need to educate themselves on what a genuine mediation process looks like so that poor drafting of a mediation clause is not the reason adversarial parties take advantage to scuttle mediation. Corporate errors are often taken advantage of by parties with poor intentions to avoid mediation.

Next, dispute lawyers should be confident enough to cultivate a problem-solving mindset and ensure clients value such approaches.

Young lawyers cutting their teeth in practice struggle on many levels. If they do not hit billing targets, opportunities for partnership or public recognition get curtailed. This is the elephant in the room that few of us are prepared to be candid about.

However, clever lawyers who resolve problems early and effectively for their client ought to be celebrated by institutions and their firms and well rewarded by grateful clients. Without adequate reward or prominence, the default will be long drawn proceedings at the cost and peril of clients.

SPECIAL CONTRIBUTION: ESPORTS AND DISPUTE RESOLUTION

By: Mr. Eugene Low[18], Partner, Hogan Lovells

1. **What makes esports a "legal ecosystem" of its own compared to traditional sports? What kind of disputes are most common in the industry?**

   There are some unique features about esports. One feature is that unlike traditional sports where no one "owns" the sports, esports is premised on games which are inevitably "owned" by someone (e.g. game developers), or more precisely, the intellectual property rights (e.g. copyright) of which are owned by someone. Another feature is that despite its popularity, esports is still not globally recognised as "sports", and this makes the dispute resolution system for traditional sports not always suitable for esports.

   Common disputes in esports include employment disputes (especially since many esports players are very young), contractual disputes (e.g. concerning sponsorship and prize money), intellectual property dispute (e.g. infringement, licensing, streaming), and integrity disputes (e.g. doping, cheating, gambling).

2. **Esports is inherently global, with players, teams, publishers and tournaments often spanning multiple jurisdictions. Does this complicate dispute resolution?**

   Very much so. The global nature of esports in particular gives rise to challenges in identifying the right parties, the applicable law and dispute resolution mechanism (e.g. litigation, arbitration, or other forms of dispute resolution), and the effectiveness in enforcement.

3. **We are seeing a movement towards specialised forums, like the International Games & Esports Tribunal (IGET). From your perspective, why is the industry shifting toward tailor-made dispute resolution systems? Do you think that specialised tribunals actually deliver something that general commercial arbitration cannot?**

   This move is partly driven by the fact that the dispute resolution system for traditional sports does not always fit esports, whereas the general commercial arbitration system is also not always suitable, especially for integrity-type disputes.

   It is probably too early to assess the effectiveness of these specialised forums (note: IGET launched in 2025), but one potential benefit is that these specialised forums can more easily provide a pool of experts who "speak the same language" as the esports stakeholders.

4. **In the esports world, publishers hold a unique level of control because they own the game itself. How does this power dynamic influence the way that disputes are handled?**

   Indeed. In simple terms, the owner of the game is entitled to make its own rules. We are seeing that some game publishers are developing their own dispute resolution mechanisms.

5. **Riot Games recently created its own arbitration court for players in Europe and the Middle East. What do you think about this trend of publisher-led dispute resolution mechanisms?**

   Publisher-led dispute resolution mechanisms are still in their early days. If they prove to be effective, we may see more game publishers developing their own dispute resolution mechanisms. Another trend we may observe is that some game publishers may opt for dispute resolution mechanisms through the specialised forums mentioned above.

6. **How important is subject-matter expertise when appointing arbitrators or mediators in an esports dispute? Can a general commercial arbitrator meaningfully decide on issues like cheating mechanics or in-game exploit rules?**

   Broadly speaking, whether this is an esports dispute or a general commercial dispute, it is beneficial to have an arbitrator (or mediator) who has industry knowledge. This can help drive efficiency of the process as the arbitrator can guide the parties to get to the point more quickly. Subject-matter expertise can also help the arbitrator in understanding the (real) issues at stake and adjudicating the dispute in a fair manner. This is not to say a general commercial arbitrator cannot meaningfully decide on issues like cheating mechanics or in-game exploit rules – just that the arbitrator may need more guidance from the parties and possibly expert evidence.

7. **Some commentators have floated ideas like blockchain-based systems or automated resolution for in-game disputes. Do you see technology playing a significant role in the future of esports dispute resolution?**

   Yes, why not? Esports is a very creative and dynamic industry, and let's not forget that some of the early examples of use of AIs were for computer/video games. The esports world would not shy away from new technologies.

8. **Looking ahead, do you think the industry is moving towards a unified global framework, like a kind of "CAS for esports", or will we continue to see a patchwork of publisher-specific and tribunal-specific systems?**

   Personally, I am expecting to see a patchwork of publisher-specific and tribunal-specific systems.

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