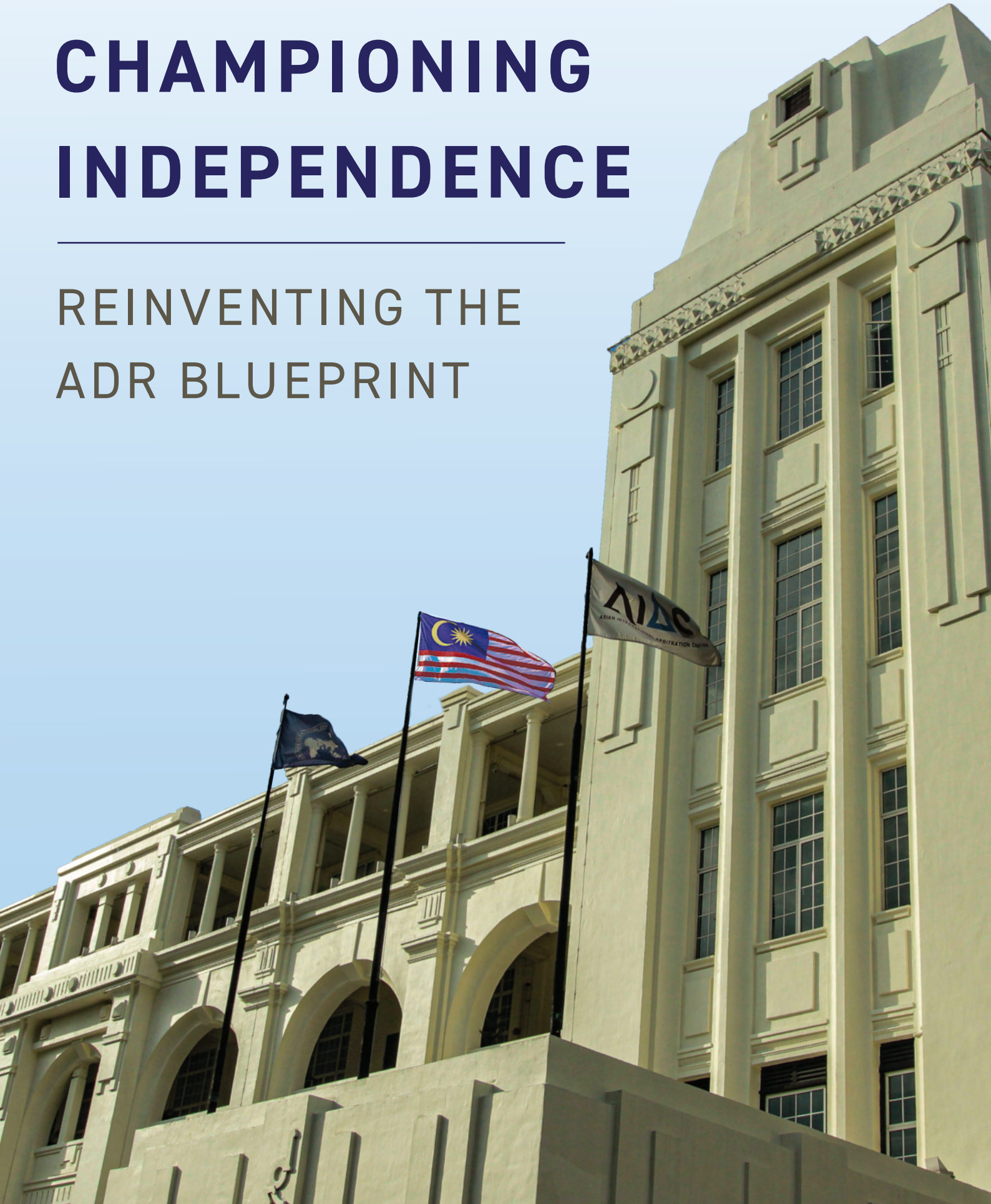
AIAC NEWSLETTER

ASIAN INTERNATIONAL ARBITRATION CENTRE
(MALAYSIA)

CHAMPIONING INDEPENDENCE

REINVENTING THE ADR BLUEPRINT



AIAC
ASIAN INTERNATIONAL ARBITRATION CENTRE
(MALAYSIA)

ASIA ADR WEEK 2022

COMPASSUS

THE ODYSSEAN COURSE TO MODERN ADR

3RD - 8TH OCTOBER 2022

Homer's *Odyssey*, is one of the most significant literary works since antiquity – chronicling the adventures of Odysseus, who embarked on a decade long journey to reunite with his kingdom and family – touching the hearts of many and foretelling a course marked with determination, perseverance and relentless ambition as relevant in today's world. Similar to his journey, the ADR landscape has faced several uncertainties and challenges particularly in the last two years.

Since its inception, the AIAC has served to act as "*compassus*" – a symbol of finding the right path in navigating through the uncharted terrains of ADR. This year's Asia ADR Week 2022 promises to showcase the strides made in this Odyssean journey and how in facing new challenges, the AIAC will serve as a compass in guiding practitioners, stakeholders and businesses in finding their way through conflict resolution in the most comprehensive and efficient manner. In keeping to the theme, "***Compassus*: The Odyssean Course to Modern ADR**", participants can expect to be steered in the right direction with discussions on best practices, innovative approaches to ADR, and legal developments – all with the guidance of "*compassus*". And as with the needle pointing North, the AIAC is unwavered in its commitment to the industry in fielding itself unto unfamiliar terrain and in mapping a new course, fit for the modern ADR world.

KEYNOTE SPEAKER

HIS ROYAL HIGHNESS SULTAN NAZRIN MUIZZUDDIN SHAH IBNI ALMARHUM SULTAN AZLAN MUHIBUDDIN SHAH AL-MAGHFUR-LAH

GENERAL ADMISSION:

Full Conference	MYR 1,700 / USD 385
Days 1 & 2	MYR 1,200 / USD 275
CIPAA Conference	MYR 600 / USD 140
Virtual Pass (Brella)	MYR 200 / USD 50

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

Hybrid Event (Virtual and In-person)

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**The AIAC invites readers to contribute articles and materials of interest for publication in future issues. Readers interested in contributing to future editions of the Newsletter, or who have any queries in relation to the Newsletter, should contact Gretchen Siow (Case Counsel) at gretchen@aiac.world or Kartinee Mageswaran (Case Counsel) at kartinee@aiac.world.

DIRECTOR'S MESSAGE

Welcome to the August 2022 edition of the Asian International Arbitration Centre's (AIAC's) Newsletter! The year 2022 has been hailed as an *annus mirabilis*, owing to the achievements and determination that the AIAC has showcased in the first half of 2022.

In January, the AIAC rang in the year 2022 with the inauguration of the AIAC Academy and the announcement of the academy faculty board line-up, which comprised of the lecturers and tutor's panel, as well as announcing the AIAC's workshop and programme line-up for the year 2022.

With the purpose of increasing competency in the larger alternative dispute resolution (ADR) community, the AIAC Academy is governed by the principles of innovation and excellence which sits in line with the AIAC's vision for a greater ADR community. The establishment of the AIAC Academy signals the AIAC's renewed focus on capacity building and competency enhancement. It is the first step to guaranteeing wider participation in ADR development. The AIAC will take into account favourably participation in these programs for empanelment purposes. As I said during the inaugural launch of the AIAC Academy, being adaptable requires quick action and reaction. In the same month, the AIAC landed in Kota Kinabalu to co-organize an informative event with the Sabah Law Society entitled: "the AIAC Roadshow Sabah 2022". Besides the comprehensive presentation about the AIAC products and services, Datuk Dr. Prasad and I had the chance to interact with the audience in an informative and fruitful discussion on the role of AIAC in the alternative dispute resolution landscape in Malaysia.

As Franklin D. Roosevelt once said, "*we cannot always build the future for our youth, but we can build our youth for the future*". Leading up to the 6th Annual AIAC Pre-Moot for the Willem C. Vis International Commercial Arbitration Moot, the AIAC conducted several mooting workshops leading up to the event. The first session was entitled: "**Failure to Launch: When Procedural Issues Delay Disputes**". This session discussed the distinction of procedural and substantive issues and the potential delays to an arbitration proceeding that may be brought about due to procedural issues. The second session, "**Incorporation by Reference: A Hidden Pitfall?**", discussed the issue of incorporation of contract by way of reference as well as the applicability and contractual obligations that arise under the United Nations Convention on Contracts for the International Sale of Goods (CISG). The final session of the AIAC Mooting Workshop was entitled, "**Upskill Your Oral Advocacy**" which focused on providing advice to mooters on ways to improve and upgrade their oral advocacy skills, particularly in remote settings.

Also, in conjunction with the 6th Annual AIAC Pre-Moot for the Willem C. Vis International Commercial Arbitration Moot, the AIAC together with the AIAC Young Practitioners' Group ("AIAC YPG") organized the AIAC YPG Conference 2022 entitled, "**Current State of International Trade and Arbitration: Has the Dust Settled?**", which featured Prof. Dr. iur. Ulrich G. Schroeter as a keynote speaker.

As a prominent institution in the field of alternative dispute resolution (ADR), the AIAC consistently takes the initiative to foster and promote ADR among the next generation of legal and ADR practitioners. The AIAC's flagship event, the 6th Annual AIAC Pre-Moot for the Willem C. Vis International Commercial Arbitration Moot, was held on 18th to 20th march 2022 with 146 teams participating from 44 countries, making it the AIAC's most successful Pre-Moot to date.

In April, as part of AIAC's global effort, the AIAC, with the support of the Konrad Partners, hosted a panel entitled "**The AIAC Arbitration Rules 2021: The Vis and Beyond**" in conjunction with the Willem C. Vis International Commercial Arbitration Moot. Before the conclusion of the AIAC's Roadshow in Vienna, the AIAC, in collaboration with the Vienna International Arbitral Centre (the "VIAC"), co-organized a panel discussion with the title "**A Meeting of Arbitral Institutions: AIAC & VIAC**." The purpose of this panel discussion was to bring attention to the role that the AIAC and VIAC have taken on in dispute avoidance, as well as to share the best practices that each institution has established to cope with the COVID-19 pandemic.

In May, the Commentary to the AIAC Arbitration Rules 2021 and the Commentary to the AIAC i-Arbitration Rules 2021 were both officially launched, with industry players attending physically at the AIAC's Bangunan Sulaiman and also virtually via Zoom. In pursuing the AIAC's mission and vision, in the middle of the year 2022, the AIAC ADR Journal was published with an array of contributions from subject matter experts. I am confident that the AIAC ADR Journal will be a step towards platforming legal academics in the realm of alternative dispute resolution. We will continue to place the AIAC in a strategic and prestigious position to be an active contributor to the ADR fraternity in disseminating ADR knowledge.

In June, the AIAC chose Sarawak as its next destination. The AIAC Roadshow 2022 - Sarawak was a wonderful opportunity for us to share our products and services. The centerpiece of this roadshow would be the unique half-day event that involved a panel discussion on ADR led by professionals from Sarawak followed by a comprehensive presentation of the AIAC Arbitration Rules 2021 and the AIAC i-Arbitration Rules 2021.

In July, the AIAC announced the AIAC YPG Essay Competition 2022, supported by the AIAC YPG. All AIAC YPG members were given the opportunity to participate in this competition with the objective of encouraging critical and innovative thinking towards resolving emerging problems in international arbitration.

In August, the AIAC published its Annual Report 2021. Our 2021 records showcase that the AIAC has administered an impressive number of cases in contrast to the past couple of years thanks to the recovery of the Covid-19 pandemic. There has been an overall rise in the number of matters handled by the AIAC in relation to arbitration, adjudication, mediation, and domain name dispute resolution. The statistics provided demonstrates that the AIAC is one of the region's top choice for comprehensive dispute resolution administration for both domestic and international disputes.

The AIAC is an ardent believer in the philosophy that a thriving ADR industry cannot be sustained without comprehensively bridging between the theoretical and practical aspects of alternative dispute resolutions. Throughout the year, the AIAC has also conducted several of its long running workshops including the AIAC Arbitration-In-Practice (AIP) Workshop Series 2022, Adjudicator's Continuing Competency Development ("CCD") Workshop Series 2022, the AIAC Mediation Skills Workshop Series 2022 and the i-Arbitration Learning Series 2022.

The AIAC was also delighted to re-launch the AIAC Evening Talk Series for the year 2022. The first evening talk was about "Res Judicata in Arbitration". Notwithstanding the fact Res Judicata doctrine has globally known to be seen as an active instrument in the judiciary system, the AIAC invited an experienced arbitrator to take us to see Res Judicata application and implication in international arbitration. In July, the AIAC hosted in house the second instalment of the AIAC Evening Talk Series for the year 2022 with full house participation to attend in-person one of the most important areas of law in cross-border commercial dealings; Joint Venture in international arbitration. With the lined up an expert panel from the UK, Singapore and Malaysia, the event was entitled: "**Joint Venture Arbitrations: Your Divorce, Your Way? (And More)**." It was a spectacular and very informative session that explored the contemporary issues and challenges of joint ventures in the face of pandemic and stagflation.

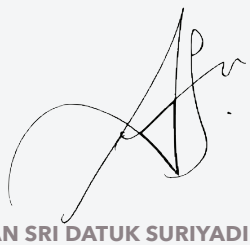
Now, no newsletter would be complete without key industry contributions. As such, in the issuance of this year, we would like to thank our Special Contributors – Hebe Luisa Romero Talavera, Laura Yvonne Zielinski, Rekha Rangachari and Anish Patel – for their invaluable insights in this newsletter.

In looking forward, in September 2022, we will be inviting all sports and sports law enthusiasts to join the AIAC's fifth annual **AIAC's September Sports Week 2022** featuring the theme "**Feel the Freedom**" as an ode to the resurgence of in person sporting events. This year's Sports Week will feature three online webinars, two in person workout sessions, an athlete meet & greet and will close off with a night of fun and wit with the AIAC Sports Trivia Night.

At the beginning of October 2022, the AIAC will also organize its other flagship event that is ADR Week 2022 with a theme, "**Compassus: The Odyssean Course to Modern ADR**". You can find further information and register to join the AIAC's ADR Week 2022 on our website in the following weeks.

As part of the new normal, I would like to assure you that our all of our long running workshops will continue to be held in hybrid mode throughout the third and fourth quarters of 2022 as means to provide the relevant knowledge in the safest possible way. I invite you all to embark on a shared commitment to enhance the ADR industry in this region and beyond.

It is our commitment to continue with the upward momentum and to endlessly push through our boundaries and barriers to bring the AIAC to even greater heights in the global ADR arena. We are looking forward to inviting our local and international friends to the Bangunan Sulaiman so that they may be a part of the AIAC's journey to new heights.



TAN SRI DATUK SURIYADI BIN HALIM OMAR
DIRECTOR OF THE AIAC

DID YOU KNOW

Bangunan Sulaiman was built in 1926 and was opened in 1933 by the British. It was named after Sultan Sulaiman (Sultan Sir Alauddin Sulaiman Shah) who reigned from 1896 until 1937 and was one of the three FMS Railways buildings before the Independence. The building was then mandated to the Registration Department in the 1970s and then was used as several government agencies offices such as the tax office, Syariah court and more. In 2011, the Malaysian government decided to designate the building to the AIAC (then – KLRCA). Bangunan Sulaiman was awarded the National Heritage status in 2018.

65 INDEPENDENCE DAY OF MALAYSIA

Image credit:
Astro Awani

KEY INSIGHT

Launch of THE AIAC ACADEMY

In recognition of the importance of comprehensive, practical, and skills-based training in shaping the community's pool of alternative dispute resolution ("ADR") professionals, the Asian International Arbitration Centre (the "AIAC") launched the AIAC Academy on 11th January 2022 with the aim of ensuring continuous and sustainable development in the field of ADR and as means of further expanding the AIAC's offering of ADR products and services.

The AIAC Academy marks the AIAC's evolution into a multi-dimensional *centre-of-excellence* by providing affordable, innovative, dynamic, practical, and comprehensive ADR training and education for existing practitioners as well as the general users of ADR.

Under the umbrella of the AIAC and in line with its capacity building mandate, the AIAC Academy features programmes that are specially curated under the supervision of distinguished members of the AIAC Academy Faculty (the "Faculty"), which was established under the AIAC Academy as an advisory committee. As part of its function, the Faculty advises, guides and provides feedback on the quality of the courses and workshops conducted by the AIAC Academy. This serves the purpose of preserving the professional, industrial and academic standards of the programmes offered under the AIAC Academy.

The AIAC Academy was inaugurated by Yang Berhormat Datuk Wira Hajah Mas Ermieyati binti Samsudin [Deputy Minister in the Prime Minister's Department (Parliament and Law)], accompanied by introductory speeches delivered by Tun Richard Malanjum, Rector of the AIAC Academy and Tan Sri Datuk Suriyadi bin Halim Omar, Director of the AIAC.

The Deputy Minister in her speech recognised the importance of capacity building initiatives in the field of ADR as a fundamental factor in fostering the continuous growth of the ADR industry in Malaysia. The Deputy Minister further expressed her confidence in the AIAC to spearhead the movement through its Academy. Echoing the words of the Deputy Minister, Tun Richard Malanjum, Rector of the AIAC Academy pointed that the Academy shall serve as a strategic hub in outreaching ADR education both domestically and internationally.

The Director of the AIAC, in his supportive remarks highlighted the AIAC's efforts and commitments made by the AIAC thus far, including the 2nd edition of the AIAC's Arbitration-In-Practice (AIP) workshop series and the 2nd edition of the AIAC Adjudicators Continuous Competency Development (CCD) workshop series, and other many others.

During the launch, the AIAC Academy Faculty Board Members were introduced to the leadership of Tun Richard Malanjum, the Former Chief Justice of Malaysia and the Fourth Chief Judge of Sabah and Sarawak serving as the rector of the Academy. Other Board Members includes Tan Sri Datuk Seri Panglima David Wong Dak Wah, Tan Sri Datuk Zainun Ali, Tan Sri Datin Paduka Zaharah Ibrahim, Ir. Harbans Singh KS, Tan Sri Dato' Cecil W.M. Abraham, Dr. Christopher To, Dr. Habib Al Mulla, Noppramart Thammateeradaycho, Dr. M. Idwan Ganie, Mr. Edmund J Kronenburg, Ms. Lucy Martinez and Dato' Associate Professor Dr. Johan Shamsuddin Bin Dato' Hj Sabaruddin.

Following the official launch, the Academy organised a panel discussion session titled *"To Learn and Re-learn: Continuing ADR Education as the Way Forward"*. Moderated by the AIAC's Senior Case Counsel, Nivedita Venkatraman. The panel was composed of Tan Sri Datuk Zainun Ali, Dato' Varghese George, and Ir. Harbans Singh KS. Coming from different backgrounds, the panel shared their thoughts and views on the importance of ADR education in shaping and creating a conducive environment for up-and-coming ADR practitioners in Malaysia, as well as their experience in serving as a counsel and subsequently, as arbitrators and mediators presiding contentious matters.

The AIAC Academy is poised to provide a platform through its training programs, seminars, workshops, and events such as the AIAC AIP workshop series, the AIAC Adjudicators CCD workshop series, the AIAC Mediation Skills workshop series, the AIAC i-Arbitration Learning Series, and the AIAC CIPAA Certificate in Adjudication. These workshops and courses are designed in a series of instalments whereby each session explores one central issue in depth in order to ensure optimal delivery to the participants. As of late, the Academy has garnered a diverse group of participants ranging from local and international practitioners, arbitrators, adjudicators, consultants, engineers and also students in our workshops.

In addition to the above, the AIAC Academy is also projected to organise certificate programmes over the course of the next two years which aim to target the niche markets within the ADR industry. The specialisations that the AIAC Academy hopes to offer in its certificate programmes include commercial mediation, maritime and shipping arbitration, and investor-state arbitration, amongst others.

In light of the launch, the AIAC is optimistic that through the many initiatives carried out under the Academy, the ADR community will continue to expand its outreach in fostering Malaysia as a globally recognised ADR hub both regionally, and internationally.

To find out more, kindly visit the AIAC's website to know about our upcoming events, programmes, and other competency-building initiatives

TO INFINITY AND BEYOND:
A Glimpse into Space Arbitration

The field of space arbitration was previously known to be one of the most unexplored sectors in the world, however, this has changed in the last couple of years. With the help of ever-growing space explorations, the development of private satellites, and the greater growth of the space economy in general, it is safe to say that the field of space arbitration has certainly gained traction in the arbitration industry. A peek into the Space Report 2021[1] published by the Space Foundation has observed consistent growth for the past 5 years, reflected in a cumulative growth valued at USD 447 billion in 2020.

The rise in space activities has concurrently led to an increase in disputes and the likelihood of disputes across various matters – commercial disputes, investment disputes, jurisdictional disputes, data sharing/mining disputes, and even physical collisions in space.

In this special contribution column, the AIAC is proud to bring to you two women dominating the area of space disputes, Hebe Luisa Romero Talavera (HLT)[2] and Laura Yvonne Zielinski (LYZ)[3] with their remarkable credentials and experiences in the field of space law and dispute resolution.

1. **Both your involvement and contribution to the space sector are remarkable! What inspired you to pursue a career in this area and, how would you describe your journey to date?**

LYZ: I am a German by nationality and have had the opportunity to study international law in France and the United States. So, my focus has been on international law since the beginning of my studies. I then started my career at Eversheds in Paris, where I was able to work on various State-State cases, including cases related to the law of the sea. Based on this experience I had the opportunity to work on my first ever satellite case in 2018 and discovered the field of international space law, following that, I decided to specialise in this area.

HLT: Thank you very much for the distinction regarding my career. What inspired me to pursue a career in this field was the academic institute in the field, the research involved, my present role as a lawyer, and the professor at the faculty I am currently engaged with. With those inspirations at hand, I had the opportunity to investigate and learn about current issues, and participated in various forums and conferences that eventually awakened my interest and sparked my passion in this area. As it is, I have already established my passion for learning the law, which paved the way for greater interest in space law.

Space law gives you many opportunities to explore and grow your career. The field is rather impressive as my career took off like a rocket to space, so to speak. Every day, I am grateful for the great opportunity I had and have. I am surprised by how this field has taken me to places. I also firmly believe that working in a space agency opens many doors, despite the vision being different than other institutions related to the space agency.

My previous background was in Paraguay's public sector in the field of electric energy. So, I used to work for many years as a legal advisor in a public electric energy company. My career and experience in public administration, and coming from a highly technical background, has also helped me grow a lot as a person. I am grateful for all the opportunities that have been presented to me and that continue to be presented to me, this interview included.

Hebe Luisa Romero Talavera

Laura Yvonne Zielinski

[1]The Space Foundation, "Global Space Economy Nears $447 Billion". Link: Global Space Economy Nears $447B - The Space Report, accessed 3rd August 2022.

[2] Hebe Luisa Romero Talavera is a lawyer and a public notary. She is currently a Ph.D. candidate in Legal Sciences from the Universidad Católica de Asunción – with thesis writing in the process. Her Master's (LLC) is in Public Administration, and Aerospace Strategy and Policy. She is also a professor at the Universidad Nacional de Asunción in the Aeronautical and Space Law and Public International Law and Legal of Energy at the Universidad Nacional de Itapúa. Currently, she is an attorney of Administración Nacional de Electricidad (ANDE). She is listed as a member of the Ibero-American Institute of Aeronautical Law and Space and Commercial Aviation. She is also an International Deputy Director and National Point Contact of ReLaCa Space. General Director Legal and International Affairs of the Paraguayan Space Agency (AEP). She is an arbitrator for the Specialized Panel of Arbitrators, established pursuant to the optional rules of arbitration of disputes relating to outer space activities. Sits as a member of the Advisory Board of the SGAC (2022-2023). Co-authors of books: On Space Law, and Sypnosis of Airspace and Space Law.

[3] Laura Yvonne Zielinski is an associate at Holland & Knight in Mexico City. She specializes in investment and commercial arbitration and in public international law. She studied law at Sciences Po in Paris and Columbia Law School in New York and has recently obtained a certificate in Strategic Space Law from McGill University. She has worked on one of the first investor-State cases in the space industry. She regularly contributes her writing and speaks about space arbitration and has recently founded the Space Arbitration Association.

2. While pursuing a full-time career as a lawyer you have also completed your Master's in Aerospace Policy and Strategy and have simultaneously co-authored a book. How do you manage your time efficiently and what are some of the challenges you've encountered in your journey thus far?

HLT: Time is valuable for everyone. The more commitments you have the more you have to value and learn to manage time. Admittedly, this is a big challenge for me. Throughout my life, I learned to value the importance of managing my time, as a well-known phrase says, "***learn to value life which teaches you to make the most of time, and value time which teaches you to value life***". Thus, I learned to establish priorities by their urgency and importance level. At this stage of my career, it is the priority that counts. I have many commitments and have to choose what to do and what not to do. However, I do believe that giving everyone the importance within my possibilities is necessary. Assessing my limit and capacity is also necessary in recognising what I can do. Keeping the mind, spirit, and body healthy is challenging but necessary. As I realised the importance of a family, I know that the family needs me and I also need my family to continue giving me the strength and encouragement for me to succeed in my career.

In the space field, one of the challenges I found was the diversity of activities that can be done and that is a tremendous challenge because you must know how to choose, see the options, the reality of the country, and bet on what you consider the best.

3. Can you tell us a little bit about your experience when you were first appointed as an arbitrator for disputes related to space? How would you describe your feelings when you got your first appointment?

HLT: I have mentioned before the excitement that I felt when I was appointed as arbitrator for space-related disputes. It was an amazing day as the Republic of Paraguay received satellite communication. The Paraguayan Space Agency and I were taken into account in determining the matters we encountered on that day. I felt proud that my country was consulted by its arbitrator and also its expert scientists. Then, when I was formally appointed by the Paraguayan Space Agency, I considered it to be a great honour to be in servitude and I shall continue to carry it high, and will continue to specialise more so I could give the best of me.

4. Could you tell us about your early experience interning at the Permanent Court of Arbitration (PCA) and how did that experience prepare you for your present career portfolio?

LYZ: The short time I spent at the PCA was one of the most formative times of my life. I was able to see different types of cases and the "backstage" of arbitration proceedings, so to speak. But most of all, I was very impressed by the practitioners, their professionalism, their academic excellence, and their community. For any lawyer interested in public international law, there is probably a no better place than the PCA at The Hague to meet like-minded colleagues and learn about this area of law. The people I met and the things I learned are still accompanying me today almost ten years later.

5. How did you pivot your career from commercial arbitration to space arbitration and what were some notable challenges you encountered when making such a transition?

LYZ: I did not pivot my career away from commercial arbitration. Space arbitration is not a different type of arbitration but rather encompasses contract-based and treaty-based arbitration related to the space sector. So, I would describe myself as a dispute resolution lawyer with a specific focus on the space industry, and I am working on different types of arbitration proceedings, including commercial arbitration.

As for the challenges I have encountered, when I first started to speak about space law and my idea to specialise in space arbitration, nobody took me very seriously and I had to fight for the credibility of my projects. However, due to the increased presence of space in the news, it seems that it has now become clear that the space industry is growing fast and it will need more arbitration lawyers and not in the far-away future.

6. In both your opinions, do you think the trends and demands for space disputes have changed since your early pursuits in this field? If so, how has it changed?

LYZ: Unfortunately, I have not yet worked long enough in space law to have a real answer to this question. But I do notice that space law is becoming ever more present in the news and daily conversations. By following the international space press closely, one can see that new start-ups are entering the space market continuously and new applications are being developed at an impressive speed. Actual space disputes are still numbered but the expectation is that the strong growth of the space industry will inevitably lead to an increase in disputes. I expect that most of the disputes we will see in the coming years will be contractual but I could imagine that there will also be more space-related investment treaty arbitrations or even disputes arising out of space collisions.

HLT: I think that not much has changed in terms of the disputes themselves. Though I think that the activities are very dynamic, and I observed that the rules have changed in part, I am foreseeing that more rules will be created in some countries.

7. What are some of the common types of claims that arise in the space sector?

LYZ: We have seen several commercial arbitration proceedings relating to the space industry. Those have arisen for example out of manufacturing defects, the late delivery of satellites, their insertion into a wrong orbit, or the cancellation of contracts for example. There have also already been investor-State proceedings in the space industry relating for example to the lease of the S-band frequency spectrum or the right of a Government to use a private company's satellite capacity. I believe that we will soon be seeing more commercial but also more investment arbitrations related to outer space.

HLT: The demands that are arising at the moment in the space field are of a commercial or damaged nature. In the Republic of Paraguay, we have not yet had, we hope not to have in fact, issues of such nature. We think that everything should be resolved by friendly means, but we understand and know the risks of all kinds of conflicts that may exist.

8. In the field of space law, several fundamental principles have been introduced to guide the conduct of space activities. It also addresses matters such as preservation of the space and Earth's environment, the rescue of astronauts, and international cooperation for exploration the outer space, among others. Could you elaborate further on that?

LYZ: Yes, there are five UN Treaties on international space law; the Outer Space Treaty, sometimes called the "Magna Carta" of space law, the Rescue Agreement, the Liability Convention, the Registration Convention, and the Moon Treaty, although the latter has not been ratified by the main space-faring nations and is, therefore, less relevant. The Outer Space Treaty contains the main principles of international space law such as the fact that the exploration and use of outer space shall be carried out for the benefit and in the interest of all countries, and that outer space is not subject to national appropriation, and those space activities

shall be carried out following international law. It also provides that the Member States shall assist an astronaut in need, that States shall bear responsibility for their national activities in outer space, and that any object launched into space shall be authorised and supervised. The latter three principles were elaborated further in the other treaties that I mentioned.

HLT: Fundamental principles that have been established to guide the conduct of space activities include long-term sustainability guidelines, space governance, space debris mitigation guidelines, space traffic management, near-Earth objects, and Agenda 2030, which are some of the current principles that I could think of, as regards to the matters set in the question.

9. In your opinion, what are some of the considerations or issues that should be deliberated when a state wishes to develop the national regulatory frameworks to adopt a regulatory framework both for governmental entities and non-governmental entities?

LYZ: Under Article VI of the Outer Space Treaty, States are internationally responsible for any private activities in outer space that qualify as their 'national activities', and obliged to authorise and continuously supervise such activities. For this reason, a State wishing to enact a domestic space law should make sure that its regulatory framework is consistent with international law and provides its national entities with the legal security required to enable space activities. This includes clear rules on insurance requirements, liability rules for possible space accidents, approval processes for space launches, and national security requirements, among others. In 2012, the International Law Association proposed the Sofia Guidelines for a Model Law on National Space Legislation to offer guidance to States in developing the national regulatory frameworks for space law.

HLT: First of all, it is necessary to take into account the United Nations Charter, international instruments in general, and specifically those related to space, the *corpus iuris spatialis*, the peaceful use of outer space, that is, to take into account all the principles related to outer space.

10. From a practitioner's point of view, why do you think it is crucial for the national space law to be regulated?

LYZ: Regulation is crucial to ensure legal security is preserved. Space activities are costly, so space companies and industrial players could benefit from clear rules set by the jurisdiction as it would allow them to gauge and allocate their risks accordingly.

HLT: National space law must be regulated because only through the adoption and implementation of an effective national legal framework can the peaceful and secure use of outer space be guaranteed in a State.

11. How do you as a practitioner in the field of space arbitration navigate through the conflicting state laws in space, state jurisdiction, or any other predicament in between attending to grievances and complaints made by the spacefarer?

LYZ: I think the fragmentation of space law is the reason why space companies need international counsel. As an international lawyer myself, we have to apply different domestic laws and understand legal systems beyond our own, including international law. In that sense, space activities do not differ from other international activities as it is administered partly by international law. Although, the lack of development of applicable laws that administers space activities represents an additional difficulty that space lawyers need to be aware of and navigate the unchartered territory with delicacy.

HLT: The Republic of Paraguay is still in the infancy stage of developing the space law. It is an emerging country and we have not been in any aggravating situations that relate to space disputes. So far, the most serious case we recorded was the fall of a space object to the Paraguayan land surface, which did not cause any damage per se, but we learned to manage administrative procedures and security protocols required when such an event happened.

12. If you had to pick one skill that is most important to have as an arbitrator, what would you say it is? Do you think most young practitioners/arbitrators have that skill? What could they do to cultivate this skill set?

LYZ: I am not an arbitrator yet, so I will reformulate the question to address what I think is the most important skill for a lawyer who is interested to pursue a career in the field of space law. In my opinion and based on my still limited experience, the most important skill is to understand your client and your client's business or interest. This knowledge will help you find the right argument and ideas to provide the right solution. Lawyers are problem-solvers and to find the best solution, you first have to understand the problem. For young lawyers, I think it is a piece of good advice to not only focus on the law per se but also observe the more senior lawyers they work with to see how they address a client and how they approach a legal issue. You can be a good lawyer by knowing the law, but to be a great lawyer, I think you also need to understand a client's business.

HLT: Good listening and knowing how to listen are both important skills in the referee role of an arbitrator. When young professionals develop those skills very early in their career, should they choose space law as their area of specialty, then they are holding the key to succeeding in their career.

As it is, you can already cultivate the ability to listen in everyday life. It can take place day to day, during a family gathering, at work, as a couple, with friends, and in other forms of relationships, we have. With mastery of those skills at hand, it can greatly improve relationships of all kinds that one has and allows one to succeed in their career, especially as an arbitrator.

13. What would you advise for students and law practitioners in their early years of career who are seeking to become an arbitrator in high niche areas such as space arbitration?

LYZ: One general piece of advice I would give to young lawyers is to be open to opportunities and to take advantage of anything that comes their way. It is difficult to plan certain things and I think being flexible is the best way to make sure that your plan does not make you miss an opportunity. You might think you would like to specialise in space law but if your firm lets you work on several insurance cases, take advantage of this and learn about insurance: If your interest in space persists, you might then later become a space insurance expert. Based on my experience, the spectrum of what one can do is much broader than young lawyers realise, so my advice is, to learn as much as you can, your time to specialise will come.

HLT: I would highly advise that they move forward with their intentions and it will be the best decision they can make. If they choose to specialise in a high niche area such as space arbitration, I would recommend that they give their best and always be well-prepared and ready to be in service at any time. The opportunities are out there and they could only be seized by being prepared and luck – that is being at the right time and the right place.

SPECIAL CONTRIBUTION

The Greener Good:

An Interview with the Green Protocols Working Group

The drive towards sustainable change looks set to continue in 2022, with climate change issues continuing to receive attention from ESG-minded businesses and governmental bodies. The legal community is likewise keen on reducing the environmental impact of dispute resolution activities, in particular, in the (previously) jet-setting world of international arbitrations.

One such initiative is the Campaign for Greener Arbitrations which aims to significantly reduce the carbon footprint of the arbitration industry. The AIAC interviewed members of the Working Group involved in the drafting of the Framework for the Adoption of the Green Protocols (Framework) and six associated Protocols (Green Protocols) to guide organisations and individuals to reduce the carbon footprint of the international arbitration community through specific actions.

Our interviewees, Rekha Rangachari[1] (RR) of New York International Arbitration Center ("NYIAC") and Anish Patel[2] (AP) of Three Crowns LLP – shared about their respective roles in the Steering Committee, addressed some of the obstacles to significant collective action to combat climate change in international arbitration, and the urgent need for a significant nudge to envisage a brighter, greener future for all stakeholders in the international arbitration.

The excerpts from their interview are below:

1. Can you share with us a little bit about yourself and how you got involved in arbitration?

RR: Thanks for hosting us in e-style, AIAC. I serve as Executive Director of the New York International Arbitration Center (NYIAC), an NGO created in 2013 to promote all things New York in the purview of international disputes (New York as a seat, application of New York law, and New York as a venue for arbitral hearings). I was first introduced to international arbitration as a law student at the University of Miami, when its International Arbitration Institute was launched. Having access to leading practitioners and academics in parallel with competing in the Vis Moot opened many doors to this fascinating, ever-evolving field.

Rekha Rangachari

Anish Patel

[1] Rekha Rangachari has served as the Executive Director of the New York International Arbitration Center (NYIAC) since 2017. In her role at NYIAC, Rekha collaborates with stakeholders and thought leaders in the space to advance global scholarship and best practices; offers educational programming, events, and trainings; and operates world-class hearing facilities in Manhattan.

Rekha is actively engaged with the arbitration community. Rekha serves as Member of the New York City Bar's Inter-American Affairs Committee and Chair of its Arbitration Subcommittee, Member of the New York State Bar Association (NYSBA) International Section's Executive Committee and Co-Chair of its International Contracts and Commercial Law Committee, Member of the American Bar Association (ABA) Section of Dispute Resolution and interlocuter for its Podcast Series, and Fellow of the American Bar Foundation (ABF). In addition, Rekha is Board Member of ArbitralWomen (AW) and leads its Cooperation and Global Events Committees, Co-Chair of Racial Equality for Arbitration Lawyers (REAL), Member of the Equal Representation in Arbitration (ERA) Pledge Young Professionals Subcommittee, and Member of the Campaign for Greener Arbitrations. In parallel, Rekha maintains an active connection to academics as Associate Editor of the Juris Investment Arbitration Conference Volumes, Adjunct Professor at Seton Hall Law School, and Peer Review Board Member of the American Review of International Arbitration (ARIA) at Columbia Law School.

[2] Anish is the Practice Manager of Three Crowns, based in London. In addition to being responsible for a number of business services functions, he has assisted teams on multiple cases under all major arbitration rules. He has supported teams at final hearings, including in London, Geneva, Paris, Singapore, Stockholm, Toronto, and Washington, DC. Anish is a steering committee member for the Campaign for Greener Arbitrations and is chair of the Community Building, Networking and Scholarship Committee of the Racial Equality for Arbitration Lawyers organisation.

AP: I am the Three Crowns Practice Manager, based in London. Three Crowns is a law firm dedicated to international arbitration with offices in London, Paris, Washington DC, and Singapore. My first exposure to arbitration came by chance through my former role as a paralegal at Freshfields. A few filings, and one hearing later, I haven't looked anywhere else. It helped that I benefitted from the mentorship of several leading arbitration practitioners who have guided my career since I was first allocated to that first case.

2. How do you feel your respective positions and experiences have benefited you as part of the Working Group?

RR: Similar to arbitral institutions, NYIAC sits as the intersection of all stakeholders in our practice, as a specialized venue for hearings and thought leadership. Serving as Member of the Working Group, I was particularly interested in helping draft the Protocols for Arbitral Hearing Venues, Arbitral Proceedings, and Arbitration Conferences – areas where I have a lead role in overseeing operations.

AP: My experience as a paralegal was the real spark for getting involved in the Working Group. Having been involved in countless paper-focused filings and a number of global hearings I have always felt strongly that arbitration users could have a positive environmental impact by making simple changes in the way they work and the procedures they adopt. After moving into the Practice Management role, and working more closely with the business services groups, I have the opportunity to approach it from a different perspective and am more able to consider wider issues that impact individual offices and the firm as a whole.

3. Can you share with us, in brief, the various Green Protocols and its objectives?

HLT: I have mentioned before the excitement that I felt when I was appointed as arbitrator for space-related disputes. It was an amazing day as the Republic of Paraguay received satellite communication. The Paraguayan Space Agency and I were taken into account in determining the matters we encountered on that day. I felt proud that my country was consulted by its arbitrator and also its expert scientists. Then, when I was formally appointed by the Paraguayan Space Agency, I considered it to be a great honour to be in servitude and I shall continue to carry it high, and will continue to specialise more so I could give the best of me.

4. This may come off a little controversial but, in your opinion, how much of what the Protocol details is actually feasible, and how much of it is borne out of a sense of optimism or being aspirational?

RR: I'll add to my previous answer by giving deference to the celebrated American talk show host, Oprah Winfrey, who said, "The greatest discovery of all time is that a person can change his future by merely changing his attitude." You must simply begin consciously implementing change, day after day, month after month, in any way you can, until it becomes consistent and enduring. Imagine, Aspire, Change.

5. The recent rise in the use of virtual hearing facilities can largely be attributed to the constraints arising out of the Covid-19 global pandemic. I note that one of the pledges under the Green Pledge is to encourage the use of videoconferencing facilities as an alternative to travel. As borders have recently opened up, how do you foresee these green practices being sustained?

AP: Having attended a two-week hearing in Geneva, in late 2021, where participants came from at least 5 different countries I can predictably say this will depend on the circumstances. I anticipate we will continue to see the use of remote hearings for shorter hearings and where time zone challenges do not cause any party or a tribunal to be inconvenienced. Parties and institutions are now better equipped to introduce hybrid models, especially in situations where we see witnesses being asked to travel internationally for 30 minutes of examination. Ultimately, many practitioners and end-clients now have the experience of remote hearings and have seen the potential cost and environmental benefits, so there would appear to be no reason why a remote hearing, even if hybrid, should not be part of the procedural discussion.

6. Beyond a general reluctance to adopt new practices, one of the main reasons that certain stakeholders are less inclined to adopt greener practices may be the barrier to entry with regards to cost and technology. In your opinion, how accessible is the push for greener arbitration? What are some of the more accessible avenues in adopting greener arbitration?

AP: It is very accessible. Returning to my second answer above, simple changes can create a more environmentally friendly procedure. Taking one example: practitioners can consider adopting language from the Green Protocol on Arbitral Proceedings and its Model Procedural Order, and subsequently reduces the need for paper-based filings. Technology can also be accessible. Many of us already use the basic tools that facilitate green practices, e.g., working in PDFs over printed paper, whilst others can be cost-friendly. Another example would be swapping USBs with some of the best cloud storage services such as Google Drive, Dropbox, or parties could also consider hyperlinking solutions. For both, there might be costs incurred, but comparing that against producing paper copies together with potential courier costs – it might just surprise you!

7. Rekha, your career in arbitral institutions has been incredibly diverse. How, do you believe, can arbitral institutions play a more effective role in the campaign towards greener arbitration? Do you think this role is more significant/impactful than that of law firms and arbitrators?

RR: By serving at the crossroads of all stakeholders within our practice, arbitral institutions and organizations like NYIAC can lead the dialogue and resulting change. Similar to how these groups facilitate engagement and conversation on diversity (e.g., the ArbitralWomen Toolkit Training Workshops and metrics for the ERA Pledge), there is a pathway again here to better understand each of our roles as it pertains to Greener Arbitrations – to implement what we can, where we can, ever thoughtful of the Protocols and our carbon impact. Regardless of stakeholder class, let's embrace here Nike's motto, "Just do it."

8. Anish, in the same vein, what do you see already being instituted in current practice, that is in line with the campaign towards greener arbitration? What do you think can be done to further encourage firms to adopt the Green Protocols?

AP: Many of the technology tools have been available for a number of years. For example, videoconferencing or electronic case management databases. The pandemic has accelerated their development and adoption. The next step is to continue the education journey and help individuals, firms and organisations understand what more they can be doing. The Campaign, through the steering committee, and its regional committees, is doing fantastic work in organising webinars to assist with this and is listening to individuals and organisations on what guidance they need in order to implement the Protocols.

9. Overall, how have you both found this experience? Does it make you more optimistic in the direction that international arbitration is taking?

RR: It has been a fabulous experience to meet colleagues and friends across jurisdictions, not only in drafting the Protocols, but thereafter to continue the hard work aligning our interests, workstreams, and implementation. I'm optimistic about where we're headed because we continue to evolve, to adapt, to be resilient, and to acknowledge the need for change.

AP: I can only echo Rekha on how rewarding the experience has been. The fact there is even a global conversation, is a step in the right direction.

10. As a final question, I think it's very timely that the arbitral community has spearheaded such an incredible initiative. It's also likely that every institution, in some small way, has started their own journeys. In your opinion, what should be our marker for success?

RR: As this goes to press, we're developing in real time the reporting mechanisms to best map how the Protocols are being implemented. For example, at the arbitral institutions subcommittee level, we're sitting down individually with leaders across each institution to best understand what is possible now, what may be possible in the future, and what are the pain points – often distinct by jurisdiction, appreciating the cultural norms that underlie green campaigns and carbon neutral goals. This is a great question to revisit in the next few years, as build the data pool. Stay tuned!

AP: Perhaps two points relating to the arbitration procedure would be a good marker of success:

1) 1995 receives its procedural order back, confining it to the history books and; and
2) Every tribunal and party when considering case management issues, asks the questions: are we being green and can we do better?

LAUNCH OF THE

Commentary to the Arbitration Rules 2021 and the Commentary to the i-Arbitration Rules 2021

On the 25th of May 2022, the Asian International Arbitration Centre ("AIAC") launched the Commentary to the AIAC Arbitration Rules 2021 (the "2021 Rules Commentary") and the Commentary to the AIAC i-Arbitration Rules 2021 (the "2021 i-Rules Commentary). With attendance from the four corners of the globe, this event became a highlight in the AIAC calendar. This international participation, of new and old friends of the AIAC has weaved a tapestry of diverse backgrounds, with attendance coming from such places as Germany, India, China, Nigeria, Netherlands, United Kingdom, Lebanon, United States, Kuwait, South Korea, Morocco, and Palestine. The AIAC was privileged by a major event that witnessed the highest level of attendance since the breakout of the recent pandemic. As expected, this event was a true reflection of the endorsement, support, and interest from our local and global stakeholders in both the legal fraternity as well as Islamic finance and banking sectors.

This event was inaugurated by the Director of the AIAC, Yang Berbahagia Tan Sri Datuk Suriyadi bin Halim Omar, and officiated by VIP guest and Chairman of the AIAC Advisory Council, Yang Amat Berbahagia Tun Arifin bin Zakaria. These illustrious speakers took turns to highlight the aim, importance, and process behind the Commentaries.

"Due to the re-burgeoning of trade and with commerce easing back into normalcy", as the Director of the AIAC puts it, an understanding of arbitral processes as a means of dispute resolution is more important now than ever. The launch of the Commentaries is only one of several efforts the AIAC have planned as means to improve and streamline its services for the ADR community. The timing of this launch aptly follows the recent publication of the newly amended AIAC Arbitration Rules 2021 ("2021 Rules") and the AIAC i-Arbitration Rules 2021 ("2021 i-Rules").

The crucial importance the Commentaries bring to the process of arbitration is unequalled, namely because of the experience amassed through the AIAC's daily exposure to the needs of the arbitral community as a whole. As part of the drafting process for the Commentaries, the AIAC spent months meticulously detailing the procedural function of each provision and further engaged with industry experts and professionals from different jurisdictions as part of the review process. For the Commentary to the AIAC Arbitration Rules 2021, the AIAC engaged Professor Doug Jones and Tan Sri Dato' Cecil Abraham for their expertise in international arbitration. With respect to the Commentary to the AIAC i-Arbitration Rules, the AIAC had engaged Professor Andrew White, Dr Hassan Arab and Dr Maria Bhatti for their experience in not only international arbitration but also specifically the areas of Islamic banking and finance.

The 2021 Rules and the 2021 i-Rules characteristics are examined in depth throughout the Commentaries, which hopes to assist and enable its users in utilising the procedures and provisions under the 2021 Rules and 2021 i-Rules to the fullest. Beyond that, the Commentaries also provide an idea of the intentions behind the drafting of each provision under the 2021 Rules and 2021 i-Rules.

For instance, the 2021 Rules Commentary, in particular, comes with the full arsenal of adjacent legal documents needed to grasp its applicability, such as: Checklists, Circulars, Code of Conduct for Arbitrators, and Recommended Good Practices. In addition to all of the above-mentioned features of the 2021 Rule Commentary, itis further accompanied by detailed explanations of newly introduced and improved provisions under 2021 Rules, such as the provision for Fast-Track Procedure, Summary Determination, Third-Party Funding, Scope of Awards, Technical Review, Emergency Arbitration, and Interim Measures.

On the other hand, the 2021 i-Rules Commentary goes into great detail about the applicability of international arbitration and more specifically the 2021 i-Rules in the area of Shariah guided transactions, including Islamic banking and finance. The 2021 i-Rules Commentary act as a supplementary document to the 2021 i-Rules Commentary. The 2021 i-Rules Commentary also focuses on provisions particular to the Islamic Arbitration framework. Hence the introduction of a complete and all-inclusive commentary of the framework regulating the interactions of an arbitral tribunal with Shariah Councils and Shariah Experts.

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These aforementioned key features in the 2021 Rules Commentary and the 2021 i-Rules Commentary, undoubtebly, will have an everlasting impact on the understanding we have of arbitration as a discipline. By bridging the gap between one of its two main finalities, promoting ADR edification and providing legal services, the AIAC is set to deconstruct and reappreciate the contribution that an arbitration institution can provide. On the practical side, the 2021 Rules Commentary and the 2021 i-Rules Commentary helps the AIAC to highlight and increase awareness on the feasibility and applicability of the 2021 Rules and the 2021 i-Rules in commercial and financial transactions in the world today.

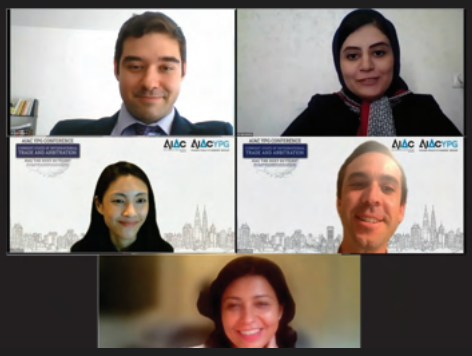
Together, the 2021 Rules and 2021 i-Rules alongside 2021 Rules Commentary and the 2021 i-Rules Commentary provide practitioners and academicians in the larger arbitration community, with the highest quality of provisions, interpretations and guidance on how best to navigate the procedural mechanisms in an arbitral proceeding.

AIAC YPG CONFERENCE 2022

The AIAC YPG Conference 2022 concluded on 17th March 2022. The annual event was held virtually this year and was titled, *"Current State of International Trade and Arbitration: Has the Dust Settled?"*. Prof. Dr. Iur. Ulrich G. Schroeter graciously accepted our invite to attend as the event's keynote speaker and he delivered a speech on, *"The Interplay of International Trade and Arbitration: One Step Forward or One Step Backward?"*.

Session 1 was titled *"Threading the Needle: Contracts and International Commercial Arbitration"*. The panel comprising Ms. Kelly Ong Ree Jen (Raja, Darryl, & Loh), Ms. Khushboo Shahdadpuri (Al Tamimi & Company), and Ms. Anna Lintner (39 Essex Chambers) was moderated by Ms. Thethe Mokele (Pinsent Masons) and discussed the complex issue of pitfalls and tactics relating to contractual claims that arise in commercial arbitrations.

In *Session 2 – Appointment of Arbitrators in Multi-Party Arbitration: To Appoint or Not to Appoint?* the panel considered in-depth the Siemens – Dutco case and the issue of party autonomy, and commented on the appointment of neutrals in multi-party arbitrations. Mr. Cameron Sim (Debevoise & Plimpton) moderated the panel discussion between Ms. Sima Ghaffari (Iran Central Bar Association), Ms. Cheryl Teo (Allen & Overy), Ms. Ila Kapoor (Shardul Amarchand Mangaldas), and Mr. Ivaylo Dimitrov (Omnia Strategy LLP).



The AIAC YPG Conference came to a close with *Session 3 – Hot Debate* which was a rapid, fiery debate on how best to protect the integrity of arbitral proceedings, in the face of procedural challenges. Ms. Victoria Kigen (Nairobi Centre for International Arbitration) argued that arbitral institutions should adopt a hands-off approach when determining procedural challenges, as these are matters best decided by the arbitral tribunal. On the other hand, Mr. Wesley Pang (Eversheds Sutherland) believed that arbitral institutions do in fact guard the integrity of proceedings, and therefore should play an active role in the event that procedural challenges are raised. Mr. Abinash Barik (AIAC) moderated the debate.

6TH AIAC PRE-MOOT 2022

The 6th AIAC Pre-Moot 2022 was concluded with great success, between 18th to 20th March 2022. Coincidentally, the Pre-Moot was held on the same dates as the very first AIAC Pre-Moot back in 2017. Hosting this year's Pre-Moot was also of special significance to the Centre; as the 2022 VisMoot problem featured the use of Centre's very own arbitral rules, the AIAC Arbitration Rules 2021.

A total of 146 teams from about 44 countries together with 269 volunteer arbitrators participated in the 6th AIAC Pre-Moot 2022. Our utmost appreciation goes to the mooting community and volunteers from local colleges and universities for helping us to pull off this achievement. We also wish to convey our gratitude to the following:

Sponsors:

Platinum Sponsor: Mohanadass Partnership

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ODRasia @ ChangAroth InterNational Consultancy; and
Ricky Tan & Co

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1. UNCITRAL Regional Centre for Asia and the Pacific (UNCITRAL RCAP)
2. Asia-Pacific Forum for International Arbitration (AFIA)
3. Asian Law Students' Association (ALSA)
4. Arbitrator Intelligence
5. Careers in Arbitration
6. Chartered Institute of Arbitrators (Malaysian Branch)
7. China-ASEAN Legal Cooperation Centre (Malaysia) (CALCC)
8. Digital Coffee Break in Arbitration
9. Equal Representation in Arbitration (ERA)
10. Greener Arbitration
11. Hong Kong Institute of Construction Adjudicator (HKICAdj)
12. United Kingdom & Eire Malaysian Law Students' Union (KPUM)
13. The Malaysian Institute of Arbitrators (MIArb)
14. Moot Alumni Association (MAA)
15. Transnational Dispute Management (TDM)
16. Tales of Tribunal
17. Women Way in Arbitration (WWA)

The ceremony to present the awards to all winners is the culmination of the 6th AIAC Pre-Moot 2022. Notably, the awards go to:

Teams:

1. Champion of the 6th AIAC Pre-Moot 2022: University of Hamburg
2. Runner-up Award by Mohanadass Partnership: University of New South Wales
3. 3rd Place Award by Lee Hishamuddin Allen & Gledhill: Erasmus University
4. 4th Place Award by Shearn Delamore & Co: Federal University of Rio De Janeiro
5. Winner of the Malaysian Final Award: UOW (M) KDU College
6. Runner-up of the Malaysian Final Award by James Monteiro: Multimedia University

Individual Oralists:

1. Best Oralist of the Final Award by ChangAroth Chambers LLC: Sonali Yardi, University of New South Wales
2. Best Oralist of the Malaysian Final Award: Nurzulaikha Mohamad Zaidi, UOW (M) KDU College
3. Best Oralist of the Elimination Round Award by Chong + Kheng Hoe: Kirby Pearson, University of New South Wales
4. Best Oralist of the General Rounds Award by Shook Lin & Bok: Vedant Avadhoot Sumant, Gujarat National Law University
5. Runner-up for the Best Oralist of the General Rounds Award by VarghArb Chambers: Yap Jian Shern, Erasmus University
6. 3rd Best Oralist of the General Rounds Award by Hanscomb Intercontinental Ltd: Shradha Sriram, Gujarat National Law University
7. 4th Best Oralist of the General Rounds Award by SOL International Ltd: Sukrut Khandekar, NALSAR University of Law Hyderabad
8. 5th Best Oralist of the General Rounds Award by Harold & Lam Partnership: Stephani Gabriella Wijayawati, Universitas Gajah Mada
9. 6th Best Oralist of the General Rounds Award: Aishwarya Julinka Anand, Symbiosis Law School Hyderabad

Best Memorandum and Outlines:

1. Best Memorandum on Behalf of the Claimant Award by ODRasia @ ChangAroth InterNational Consultancy: National Law University Delhi
2. Honourable Mention for the Best Memorandum on Behalf of the Claimant Award by 39 Essex Chambers: University of International Business and Economics
3. Best Memorandum on Behalf of the Respondent Award by Aziz Tayabali & Associates: Wuhan University
4. Honourable Mention for the Best Memorandum on Behalf of the Respondent Award by Ricky Tan & Co: Christian-Albrechts-Universität zu Kiel

Non-Academic Awards:

1. Early Bird Team Award: University of Texas School of Law, USA.
2. Social Media Diva Award: Adriana Maisarah binti Mohd Farid, University Sultan Zainal Abidin
3. Spirit of the 6th Award: Kyiv National Taras Shevchenko University and University of Prishtina "Hasan Prishtina".

World Gathering at Malaysia's First International Hybrid Intellectual Property Conference and IP-Innopreneurship Course

MyIPComm22 Hybrid Conference saw participants from all over the world gathering together to learn about the importance of intellectual property commercialisation.

There were over 1,000 participants from 23 territories around the globe from Australia, Canada, China, Finland, Hong Kong, Japan, Korea, Singapore and the USA who attended the inaugural MyIPComm22 hybrid conference. 42 experts shared the platform and extended their knowledge on intellectual property, especially on the know-how of intellectual property commercialisation.

The MyIPComm22 Conference was organised in response to the growing need for businesses to secure their trade secrets and their intellectual property in an increasingly digital, post-Covid world. It was held at the Asian International Arbitration Centre (Malaysia), Kuala Lumpur on 27th May 2022.

The key focus of this conference is to raise awareness of IP as a key asset class for business growth and economic development, and connect IP-rich companies with the financial support they need to expand their businesses.

The conference saw key figures and experts in the IP field including Judge Ou Xiu Ping, the Deputy Chief Judge of the Intellectual Property of the Guangdong High People's Court and the Vice President of the Shantou Intermediate People's Court, Jari Vaario, Head of Asia Patent Transactions & External Alliances, of Nokia as well as Deborah Biber, Certified Advisory Board Chair in the Board of the Pacific Basin Economic Council (PBEC) and Chairman of the UN ESCAP Sustainable Business Network's Digital Economy Task Force, discussing topics such as Traditional and Non-Traditional IP Disputes, Fintech, Non-Fungible Token, Metaverse, Artificial Intelligence, IP In IR4.0, current trends and many more.

"We will move up the value chain with the strengthening of the IP ecosystem to attract high-quality foreign direct investment as well as advanced technology transfer. With IIPCC Malaysia being the key player within this aspect, I'm sure the IP ecosystem will thrive and in return boost confidence and attract investments to enhance domestic trade in Malaysia," shares Dato' Seri Alexander Nanta Linggi, Minister of Domestic Trade and Consumer Affairs. "With the right balance between interests of innovators and the broader public interest, the IP ecosystem can foster an environment in which creativity and innovation can flourish, the idea of transforming intangibles into economic tradable assets is becoming a true reality and accessible to everyone," he added during his opening address.

This initiative is also supported by other Malaysian Government bodies such as the Ministry of Domestic Trade and Consumer Affairs, Halal Development Corporation (HDC), Malaysia External Trade Development Corporation (MATRADE), Penang State Government, Sarawak Digital Economy Corporation (SDEC) and Technology Depository Agency (TDA). Supporting bodies like Pacific Basin Economic Council also supported this initiative.

There were also ten international brand representatives that attended the conference including FoxCann, Marks and Clark, Nokia, P&G as well as Veritas.

The conference is followed by a 4-day **IP- Innopreneurship™** course which enables the attendees to learn about the fundamentals of intellectual property and IP commercialisation. The course also gave insights on the differences between licensing and franchising, branding and IP. Attendees of the course were given assignments based on the topics and were rewarded with a certificate after sitting for an online examination conducted by IIPCC headquarters.

A virtual course of similar nature is scheduled to be held soon.

Special contribution by IIPCC

CIPAA CONFERENCE 2022

On 8th July 2022 at AIAC, Legal Plus and L2 i-CON jointly organised the CIPAA Conference 2022, a national conference on construction adjudication endorsed by CIDB Malaysia and the Asian International Arbitration Centre (Malaysia) ("AIAC"). The Conference was participated by LexisNexis as the Exclusive Conference Partner. The Conference was a huge success where it attracted a full house attendance of over 180 attendees at the auditorium hall and over 500 virtual attendees on virtual platform. The Director of AIAC, Tan Sri Datuk Suriyadi was on hand to kick off the Conference. Tan Sri Datuk Suriyadi highlighted the importance of continuous development of adjudicators and shared to the audience the effort of AIAC academy in conducting the AIAC Adjudicator Continuing Competency Development (CCD) Workshop Series.

The Keynote Speaker was Justice Dato' Mary Lim, Federal Court judge. Justice Dato' Mary Lim emphasised that while the adjudication under CIPAA 2012 may incorporated the concept of rough justice to render an adjudication decision of interim finality but that does not mean that adjudication is rough. Her ladyship then called upon a closer collaboration between adjudicators and the AIAC, to leverage on the availability of expertise from each profession and the adoption of technology in adjudication.

President of Pertubuhan Arkitek Malaysia (PAM), Associate Professor Ar Sarly Adre Bin Sarkum delivered the closing remarks. Ar Sarly noted the positive impact CIPAA 2012 has brought to the construction industry and hoped that with the reform CIPAA 2012 could be more efficient and economical.

The Conference brought together adjudication experts to exchange views in 4 panel discussion sessions moderated by Justice Dato' Lee Swee Seng (Court of Appeal Judge), Justice Dato' Lim Chong Fong, (High Court Judge), Justice Datuk Wong Kian Kheong (High Court Judge), and Justice Dato' Hajah Aliza (High Court Judge) on the topics of development of adjudication case law, enforcement of adjudication decisions, setting aside and stay of adjudication decisions and the possible of reforms to CIPAA 2012.

In addition to national level discussions on CIPAA 2012, this Conference featured the inaugural launch of the International Statutory Adjudication Expert Committee by Tan Sri James Foong. The purpose of Expert Committee is for the harmonisation of statutory adjudication law. The Expert Committee is initiated by Legal Plus and L2 i-CON and chaired by Mr Chow Kok Fong. Its membership consists of experts from Singapore, United Kingdom, Australia, New Zealand, Hong Kong and Malaysia and will continue to expand.

The CIPAA Conference 2022 managed to connect the industry where it was one of the most supported statutory adjudication events in Malaysia. It received support from Government Agency and construction and legal related professional institutions and organisations. They include CIDB Malaysia, AIAC, Real Estate and Housing Developers' Association Malaysia (REHDA), Master Builders Association Malaysia (MBAM), Society of Construction Law (SCL), The Malaysian Institute of Arbitrators (MIArb), Chartered Institute of Arbitrators (CIArb), Malaysian Society of Adjudicators (MSA), Asian Institute of Alternative Dispute Resolution (AIAdr), Royal Institution of Surveyors Malaysia (RISM), Chartered Association of Building Engineers (CABE), Pertubuhan Arkitek Malaysia (PAM), Lighthouse Club KL, Society of Lincoln's Inn Alumni Malaysia, Malaysia Inner Temple Alumni Association, The Malaysia Middle Temple Alumni Association, The Malaysia Chapter of the Honourable Society of Gray's Inn, Sarawak Advocates Association, Sabah Law Society, and Inns of Court Malaysia.

The CIPAA Conference 2012 also the perfect platform to showcase some of the best claim consultants and legal firms that provide services to the construction industry. They are Contract Solutions-i, Steven Thiru & Sudhar Partnership, CCi, Belden Advocates & Solicitors, Raja, Darryl & Loh, Turner International Malaysia, WCW Consulting, FTI Consulting, HHQ x HLP, MAC Consultant, Thomas Philip, Skrine, Lavania & Balan Chambers, Alconsult, 2C Consulting, Customized Construction Management Services, Speedbrick, ProSales, and Louise Azmi. TRX City Sdn Bhd, the master developer of Tun Razak Exchange (TRX) also participated in the Conference as a sponsor.

Special contribution by Legal Plus and L2 ICON

CASE SUMMARIES

ADNDRC

***GuoLine Intellectual Assets Limited v Super Privacy Limited* [ADNDRC-1504-2022]**

In this case, the Panel directed the Disputed Domain Name be transferred to the Complainant based on the following reasons. The Panel accepts that the Complainant has successfully established world-wide goodwill and an international reputation in the "GuoLine" mark. The Panel also accepts that the "GuoLine" mark has become a distinctive identifier as the Complainant has filed trademark registrations for the "GuoLine" mark for Financial Services, Investments and Internet Applications in Classes 36 and 42 in Malaysia and Singapore respectively. Further, the "GuoLine" term is a uniquely coined term and is not a common term in the ordinary English language and accordingly, the panel finds that the Respondent does not have any legitimate interests or rights in the Disputed Domain Name. Besides that, the Panel finds cogent evidence of bad faith from the Claimant's evidence that establishes that the Disputed Domain Name is being utilized for illegal purposes. The Respondent's use of the Dispute Domain Name for illegal activities could potentially tarnish the reputation and goodwill of the Claimant and disrupt the business and services of the Complainant and related companies.

ADJUDICATION

***Zeta Letrik Sdn Bhd v Jaks Island Circle Sdn Bhd* [2022] MLJU 392**

The Plaintiff in this case filed an application pursuant to Section 30 of the CIPAA 2012 against the Defendant. The Defendant is the employer / developer for a project. The Defendant appointed JAKS Sdn Bhd ("**JAKS**") as the main contractor for the project. JAKS then appointed the Plaintiff as subcontractor for the project. Payment disputes arose between the Plaintiff and JAKS. The Plaintiff then initiated an adjudication proceeding against JAKS. The Plaintiff successfully obtained an adjudication decision ("**AD**") in favour of the Plaintiff. The AD was subsequently enforced. However, JAKS failed to settle the adjudicated sum within the time stipulated. Pursuant to section 30 of the CIPAA 2012, the Plaintiff issued a request to the Defendant, as principal of JAKS, for direct payment of the adjudicated sum ("**the said Request**"). The Defendant did not respond to the said Request and hence, the Plaintiff filed this application in the High Court. The High Court held that the Defendant's failure to comply with the mandatory requirement under Section 30(2) of the CIPAA 2012, i.e serving a notice in writing to JAKS upon receiving the said Request from the Plaintiff, is fatal to the Defendant's defence that there is no money due or payable by the Defendant to JAKS at the time of the receipt of the said request. The High Court further held that the words "*adjudicated amount*" in Sub-sections 30(1) and (3) of CIPAA 2012 do not include interest on the adjudicated amount and the adjudication costs. Thus, the High Court ordered the Defendant shall pay the Plaintiff the adjudicated sum only, excluding the interest and adjudication costs as prayed by the Plaintiff.

***Grandstep Development Sdn Bhd v Tan Chong Heng Construction Sdn Bhd* [2022] MLJU 202**

In this matter, the High Court was required to consider the following questions: (i) whether the Court can hear and decide on the issue of jurisdiction of the Adjudicator and the applicability of the CIPAA to the dispute between the parties; and (ii) whether the Defendant's 2nd Payment Claim and 2nd Notice of Adjudication can supersede the Defendant's 1st Payment Claim and 1st Notice of Adjudication, respectively and whether, by not withdrawing the 1st Notice of Adjudication, the 2nd Adjudication Proceedings before the Adjudicator is invalid and a nullity. With respect to the first question, the High Court held that the Plaintiff's complaint falls within the category of core jurisdiction of the adjudicator, it is therefore open to the Plaintiff to assert the lack of jurisdiction at any stage. In relation to the second question, the High Court concluded that the express words of section 17(1) of the CIPAA 2012 clearly provide for the withdrawal of an "*adjudication claim*". The Defendant did not serve any adjudication claim on the Plaintiff in respect of the 1st Payment Claim and 1st Notice of Adjudication. Thus, the High Court held that the 1st Payment Claim did not crystallise into an adjudication claim for Section 17 of the CIPAA 2012 to be triggered.

***MRCB Engineering Sdn Bhd v Triumphant Gallery Sdn Bhd and another case* [2022] MLJU 770**

For ease of reference, the parties will be described as MRCBE and TG respectively. TG obtained an adjudication decision decided in its favour ("**the said AD**"). MRCBE filed an originating summons to set aside the said AD whilst TG filed an originating summons to enforce the said AD. MRCBE advanced several grounds to justify setting aside the said AD pursuant to Section 15 of the CIPAA 2012, the main ground being the adjudicator decided to dismiss MRCBE's back charges claim on the basis that it was not pleaded in MRCBE's payment response. The High Court found that, by virtue of the doctrine of stare decisis, it was bound by the decision of *View Esteem Sdn Bhd v Bina Puri Holdings Sdn Bhd* [2019] 5 CLJ 479 and therefore held that the adjudicator committed a breach of natural justice by refusing to entertain MRCBE's back charges claim. The High Court also delved into other grounds advanced by MRCBE to set aside the said AD. The High Court held that the grant or refusal of extending time to file adjudication claim is the exercise of discretion of the adjudicator which would be rarely questioned by the court unless the exercise of discretion is perverse. It further held that other contentions by MRCBE in setting aside the said AD are in nature an appeal on the merit of the said AD which is impermissible. In this case, TG has not prayed for setting aside the said AD in part, therefore the High Court set aside the whole of the said AD.

***Shapadu Boulevard Sdn Bhd v IJM-LFE JV* [2022] MLJU 775**

The Plaintiff filed an application to adduce further documentary evidence for the purpose of the substantive application to set aside an adjudication decision delivered in favour of the Defendant. The High Court found that there is no provision in the CIPAA 2012 on the abduction of further or new evidence in a setting aside application and it is questionable whether the Court can properly invoke and exercises its limited inherent jurisdiction to entertain this application as a setting aside application is not an appeal. Be that as it may, the High Court proceeded to decide that the further evidence sought to be adduced by the Plaintiff are not new which cannot be discovered with reasonable diligence. Further, it is the Plaintiff's but not the Defendant's onus to adduce the further evidence at the material time during the adjudication proceedings. There is no equitable fraud committed by the Defendant for not adducing them. The High Court also found that the further evidence sought by the Plaintiff would not be cogent or relevant for purpose of demonstrating that the Adjudicator had denied the Plaintiff natural justice which is the principal ground of the Plaintiff's challenge in its substantive setting aside application. Based on the above, the High Court dismissed the Plaintiff's application.

***Strata Geotechnics Sdn Bhd v C & S Engineering Management Sdn Bhd* [2022] MLJU 469**

This is the Plaintiff's application to enforce the adjudication decision that was delivered in the Plaintiff's favour ("**the said AD**"). The High Court concluded that the Plaintiff has satisfied the Court that (i) there is an adjudication decision that has been rendered in the Plaintiff's favour; (ii) there has been non-payment of the Adjudicated Amount forthwith; and (iii) there is no prohibition to the grant of the order as sought by the Plaintiff. The High Court also determined that as the Defendant chose not to participate in the adjudication proceedings, it is too late for the Defendant to put its case before the Court now to defend the Plaintiff's application to enforce the said AD. Further, the High Court held that the fact that the Adjudicator did not determine the manner in which the Adjudicated Amount is to be paid is not sufficient ground to disallow the said AD from being enforced.

***Sunshine Construction Sdn Bhd v Marvelane Sdn Bhd and other cases* [2022] MLJU 428**

In this matter, the High Court took the opportunity to consider what are the options available before the adjudicator in a scenario where a respondent in adjudication proceedings alleges in a payment response or adjudication reply that the payment claim does not disclose a cause of action for the claimant to claim from the respondent for construction work done under a construction contract ("**contractual cause of action**") pursuant to Section 5(2)(b) of the CIPAA 2012. The High court found that in such scenario, the adjudicator may dismiss the adjudication claim on the sole ground that the adjudicator has no jurisdiction under the CIPAA 2012 to adjudicate the payment claim; or the adjudicator may complete the adjudication and deliver the adjudication decision under Section 27(3) of the CIPAA 2012. The third option is the adjudicator may exercise his or her powers under Section 12(1) of the CIPAA 2012, read with Sections 25(b), (c), (f), (g) and (j) of the CIPAA 2012 to inquire from the claimant on whether the Claimant wishes to amend the payment claim so as to disclose a contractual cause of action. The High Court further discussed the scenario where the claimant in the adjudication proceedings breached Sections 5(2)(a) to (d) of the CIPAA 2012, whether such breach oust the adjudicator's jurisdiction? The High Court is in the opinion that except for a breach of Section 5(2)(b) of the CIPAA 2012 (when a payment claim does not disclose a contractual cause of action), breaches of Sections 5(2)(a), (c) and/or (d) of the CIPAA 2012 may be technical and if the respondent has filed a payment response and adjudication response, the respondent is not prejudiced in any manner by any breach of Sections 5(2)(a), (c) and/or (d) of the CIPAA 2012 by the claimant's payment claim. In such a case, any breach of Sections 5(2)(a), (c) and/or (d) of the CIPAA 2012 by the claimant in the adjudication proceedings should be cured pursuant to Section 26(1) CIPAA. Such an approach attains the objective of CIPAA 2012 and ensures that adjudication proceedings should be simple, expeditious and economical.

ARBITRATION

***Lysaght Corrugated Pipe Sdn Bhd & Anor v Popeye Resources Sdn Bhd & Anor* [2022] MLJU 165**

This case concerns three applications, two of which were by the Plaintiffs for an injunction to restrain arbitration proceedings in Hong Kong ("**anti-arbitration injunctions**") and one application was by the 2nd Defendant to stay all proceedings in this action pending the disposal of the Hong Kong Arbitration pursuant to Section 10 of the Arbitration Act 2005 ("**AA 2005**"). The Plaintiff's main contention in this case is that they do not have a contract or agreement with the 2nd Defendant. The High Court first dealt with the 2nd Defendant's application and held that where the existence of the arbitration agreement itself is being challenged, the correct test to be applied in such a stay application is the Full Merits Test found in the English case of *Nigel Peter Albon v. Naza Motor Trading Sdn Bhd* [2007] 2 All ER 1075, i.e the Court is to decide whether the arbitration agreement was concluded on the available evidence on the application. The High Court further held that whilst it is trite that the Court should be slow to interfere with the jurisdiction of an arbitral tribunal, this does not mean that the Court should readily grant a Section 10(1) AA 2005 stay application when the existence of the arbitration agreement itself is in question, without evaluating the facts and evidence for itself based on the Full Merits Test. By doing so would tantamount to removing the Court's own jurisdiction to determine this issue. With respect to the Plaintiffs' applications for anti-arbitration injunctions, the High Court held that it is trite that the Court has the jurisdiction to grant the anti-arbitration injunctions and identified two sets of tests for anti-arbitration injunction, which are as laid down in the cases of *American Cyanamid Co. v. Ethicon Ltd* [1975] 1 All ER 504 and *J Jarvis & Sons Ltd v. Blue Circle Dartford Estates Ltd* [2007] EWHC 1262.

***Padda Gurtaj Singh v Tune Talk Sdn Bhd & Ors and another appeal* [2022] MLJU 398**

This decision concerned an appeal against the decision of the High Court in allowing of the 1st Respondent's application for a stay pursuant to Section 10 of the Arbitration Act 2005 ("**AA 2005**"), whereby the Court of Appeal dealt with the issues of no written notice to refer to arbitration, Section 4 of the AA 2005 and arbitrability of the subject matter in this case. The Court of Appeal held that when there is an agreement to arbitrate, the invocation of an arbitration agreement cannot depend on the absence of a written notice. The Court of Appeal further held that Section 4(2) of the AA 2005 is applicable for a situation where statute confers jurisdiction in respect of a matter on a court but does not refer to the determination of that matter by arbitration. The Court of Appeal also followed cases from various jurisdiction that have allowed stay application on disputes that come within the scope of an arbitration agreement despite the existence of distinct statutory provisions and held that stay can be allowed in the fact of statutory provisions conferring jurisdiction in courts. Further, the Court of Appeal held that where there is exception to arbitrability, it would be the case if interest of wider parties, such as creditors, are involved; or where Parliament intended to exclude arbitration or an inherent conflict between arbitration and public policy considerations. In the context of this appeal, the Court of Appeal held that the Appellant's claim, dispute or controversy is indisputably connected to the pre-emption provisions contained in the articles of association read together with the shareholders agreement. The language employed in the statutory provisions referred to by the Appellant do not expressly exclude arbitration and there has been no evidence put forth that it was the legislative intent to so exclude. There are no wider interests of third parties involved, such as creditors, as this only involve parties within the shareholders agreement. The Court of Appeal, therefore, found that the statutory provisions referred to by the Appellant are not an exception to arbitrability. There can therefore, also be no issue of a statutory right being taken away by a private agreement to arbitrate or such statutory right rendering the matter incapable of arbitration.

***Hindustan Oil Exploration Company Limited v Hardy Exploration & Production (India) Inc* [2022] MLJU 617**

The Plaintiff in this case filed an originating summons against the Defendant to set aside a majority arbitral award. The main issue concerned in this case is the Plaintiff's ground of challenge on the Applicable Limitation Laws Decision. The High Court held that whether Malaysian laws of limitation or Indian laws of limitation apply is a matter for the tribunal to rule. Thus, when the Plaintiff, in the Arbitration proceedings, did not object to the Malaysian Limitation Act 1953 being the limitation law applicable to the Defendant's claims, the Plaintiff is "beyond the point of no-return'' on the majority of the Tribunal's decision that Malaysian limitation laws apply. The High Court also held that the construction of a document is a question of law to be determined by the Tribunal. Even if the majority of the tribunal had wrongly interpreted the document, it does not bring the matter within Section 37 of the Arbitration Act 2005 ("**AA 2005**") as the High Court is not entitled to substitute the tribunal's decision with its own interpretation. The High Court further emphasised that attacking the merits of the awards has no nexus with Section 37 of the AA 2005 and is only permissible under Section 42 of AA 2005 which was repealed in 2018. The High Court followed the Singapore Court of Appeal case of *BBA v BAZ* [2020] SGCA 5 and held that the majority of the Tribunal's decision on the applicable limitation laws goes to the admissibility of the claim, and is not a jurisdictional error.

***Panzana Enterprise Sdn Bhd v Turnpike Synergy Sdn Bhd* [2022] MLJU 01000**

The Defendant appointed the Plaintiff as the main contractor for a project. The Plaintiff has eventually furnished two bank guarantees in favour of the Defendant. A Default Notice and subsequently a Termination Notice was issued to the Plaintiff. In the Termination Notice, the Defendant notified the Plaintiff that the Defendant issued a letter to demand the Plaintiff's bank to pay forthwith the sum as per the bank guarantees. The Plaintiff thereafter filed this originating summons, seeking for declarations and injunctions to injunct the Defendant from receiving the proceeds from the bank guarantees pending disposal of arbitration proceedings between parties. The questions posed by the High Court is whether the Court can grant declarations and perpetual injunctions before and during arbitral proceedings. The High Court held its answer in negative, stating that when parties have agreed to an arbitration agreement, an award made by an arbitral tribunal in the arbitration shall be final and binding on parties pursuant to Section 36(1) of the Arbitration Act 2005 ("**AA 2005**"). In the event the Court grants any declarations and/or perpetual injunctions, it will usurp the Arbitral Tribunal's role, function and duty to decide the dispute in a final manner. The High Court further held that in view of the express provisions in Sections 8 and 11(1) of the AA 2005, there is no room to apply Order 92 rule 4 of the Rules of Court, i.e the court's inherent jurisdiction and/or the court's inherent power to grant the declaration and/or injunctions seek by the Plaintiff.

COURT OF ARBITRATION FOR SPORTS

CAS OG 22/08 -CAS OG 22/09 -CAS OG 22/10 In the arbitration between International Olympic Committee & 2 Ors v. Russian

Valieva, a 15-year-old figure skater competing for the Russian Olympic Committee ("**ROC**"), was handed down a provisional suspension by the Russian Anti-Doping Agency ("**RUSADA**"), after a sample collected during the 2022 Russian national figure skating competition triggered an adverse analytical finding ("**AAF**") by the World Anti-Doping Agency ("**WADA**") accredited laboratory. This AAF was triggered by the presence of one substance of concern, but the conducting lab indicated that "neither lomeride or its metabolites were present in the sample". Ultimately, the CAS Ad Hoc Panel decided that no suspension should be imposed on Valieva with the reason of the athlete's status as a minor and protected person and a lack of clear guidelines from RUSADA and WADC with respect to provisional suspensions of protected persons. The panel also considered proportionality, fairness and irrevocable harm and determined preventing the athlete from competing in the 2022 winter Olympics would ultimately cause irrevocable harm to the athlete. The panel also determined that given the untimely notification of the AAF, the athlete did not have sufficient time to establish legal requirements to her own benefit. In conclusion, the panel determined that allowing the provisional suspension to remain lifted was the appropriate course of action.

CAS OG 22/11 In the Arbitration between Evan Bates, Karen Chen, Nathan Chen, Madison Chock, Zachary Donohue, Brandon Frazier, Madison Hubbell, Alexa Knierim, and Vincent Zhou (the "Applicants") and International Olympic Committee (IOC)

The Applicants competed and won in a Figure Skating Team Event at OWG 2022. Based on the Adverse Analytical Finding in a sample of one of the athletes who was competing, the athlete was provisionally suspended, causing the medal ceremony to be suspended too. Following the athletes request, the provisional suspension imposed by the Russian Anti-Doping Agency ("**RUSADA**") was lifted by the RUSADA Disciplinary Anti-Doping Committee ("**DADC**"). The International Olympic Committee ("**IOC**"), the World Anti-Doping Agency ("**WADA**") and the International Skating Union ("**ISU**") filed applications with the Court of Arbitration for Sports ("**CAS**") to set aside the decision of the DADC. The CAS decision is that it is not appropriate to hold a medal ceremony for the Figure Skating Team event during the Olympic Winter Games Beijing 2022 as it would include an athlete who was potentially violating the anti-doping rules. Neither the Olympic Charter nor Host City Contract guarantees a public medal ceremony and Rule 56 of the Olympic Charter states the awarding of any medal "falls within the sole authority of the IOC". Additionally, the Host City Contract is governed by Swiss law and only gives rights and obligations to contracting parties. As such, the decision to not hold a medal ceremony was neither abusive nor arbitrary and the panel found no legal basis that the such decision breached any legal rights of the Applicants.

INVESTMENT ARBITRATION

ICSID Case No. ARB/18/21 In the arbitration proceeding between Bay View Group Llc and The Spalena Company LLC and Republic of Rwanda

The Claimants commenced arbitration by alleging that they invested in the mining industry in Rwanda by acquiring a controlling interest in the Rwandan mining company, Natural Resources Development (Rwanda) Ltd ("**NRD**"). At the outset, Rwanda was intent on accelerating a policy of privatizing mining. Subsequently in 2007, the Claimants proceeded to invest in the Rwandan Mining industry pursuant to an alleged guarantee of a long-term mining license that will be issued to the Claimants. The dispute arose due to the occurrence of a series of incidents that interfered with NRD's enjoyment of its licences. The Claimants wished to impose liability upon Rwanda due to Rwanda's conduct of repeatedly infringing the duty imposed under Article 5 of the BIT to afford the Claimants' investments "fair and equitable treatment". However, the ICSID Tribunal found that when Rwanda set about privatizing its mining industry, it offered short-term, four-year contracts to investors to enable them to demonstrate not only their aspirations but their abilities to revolutionize Rwanda's mining industry. Thus, no acts of omissions on the part of Rwanda can found a claim for breach of the BIT.

ICSID Case No. ARB/15/20 In the arbitration proceeding between Cube Infrastructure Fund SICAV and others v Kingdom of Spain

The ICSID committee (the "Committee") upheld the largest award issued against the Respondent over its renewable energy reforms, rejecting arguments that the investor had "unclean hands" or that the tribunal should not have agreed to hear an intra-EU dispute. The Respondent's application was for the annulment of an ICSID award made under the Energy Charter Treaty ("**ECT**") in favour of Luxembourg and French renewable energy investors. The Committee holds that the existence of inconsistencies in an ICSID award is not enough to justify overturning it. Further, EU law does not have primacy. The Respondent's reference to the European Commission's 2018 Communication in relation to Achmea and the 2019 Declaration by EU member states committing to terminate intra-EU BITs were not part of the record before the tribunal, and therefore could not be entertained by the Committee.

ICSID Case No. ARB/02/17 In the arbitration proceeding between AES Corporation and The Argentine Republic

This case pertains the Argentine Republic's proposal to disqualify all the members of the Tribunal in accordance to Article 57 of the ICSID Convention and Rule 9 of the ICSID Arbitration. The Respondent's position is that under Article 14(1) of the ICSID Convention, arbitrators must inspire full confidence in their impartiality and independence. The Respondent submitted that under Article 57 of the ICSID Convention, parties can challenge the tribunal if they indicate manifesting lack of qualities in Article 14(1). The Respondent also asserted that an establishment of an appearance of bias of the challenged Tribunal members must be made from a reasonable third person's point of view on objective evaluation of all facts. The Claimant's position is that the Proposal to Disqualify is merely a tactic to postpone the finding of liability, does not meet the test of manifest lack of impartiality required by the ICSID Convention; and is solely based on Argentina's disagreement with the Tribunal's procedural decisions. It was held that the Tribunal's Rulings do not evidence unreliability to exercise independent and impartial judgment as required by the Convention. Article 57 ensures that arbitrators have the qualities required by Article 14(1) and is not the mechanism to address failures in Tribunal's reasoning. The ICSID Committee rejected the Argentine Republic's Proposal to Disqualify all the members of the Tribunal.

INTERNATIONAL ARBITRATION

***Instagram Inc v Dialogue Consulting Pty Ltd* [2022] FCAFC 7**

The primary judge dismissed the Appellant's applications ("**Meta Parties**") to stay the principal proceeding pending arbitration under Section 7(2) of the International Arbitration Act 1974 ("**IAA**") pursuant to an arbitration agreement. Meta Parties filed a leave to appeal before the Federal Court of Australia. The Federal Court granted the leave to appeal and proceeded to hear the appeal of the decision of the primary case. The Federal Court dismissed Meta Parties appeal as they failed to rely on the arbitration agreement in defences they filed and there is a delay of almost one year in moving to compel arbitration forms part of the conduct. The conduct of the Meta Parties was inconsistent with the reliance on the right to arbitrate. The Federal Court therefore upheld that there was no miscarriage of the primary judge's exercise of discretion when His Honour held that Meta Parties waived their right to arbitrate under Section 7(5) of the IAA and a stay was not required.

***CIP v CIQ* [2022] 3 SLR 39**

This case pertains an application to set aside the termination of the Joint Venture Agreement between the Applicant and Respondent. The arbitral tribunal found that only the Applicant breached the Agreements and the Respondent had validly rescinded the Memorandum of Agreement ("**MOA**") and terminated the Joint Venture Agreement. The arbitral tribunal found that the applicant was in breach of the MOA for failing to remit US$200,000 to the Joint Venture fund. Dissatisfied with the arbitral award, the Applicant filed a setting aside application pursuant to Section 3 of the International Arbitration Act 1974 ("**IAA**") and Article 34(2) of the Model Law. In determining the scope of the parties' submission to arbitration, the court had looked into five factors which are pleadings, agreed list of issues, opening statements, evidence adduced in the arbitration and closing submissions, and found that the court must resist engaging on the legal merits of the arbitral award. An arbitral tribunal has wide discretion to make case management decisions and the court will not revisit such decisions in setting aside applications unless breach of rules of natural justice have occurred.

***Mountain View Productions LLC v Keri Lee Charters Pty Ltd* [2022] FCA 161**

The parties to the arbitration agreement in this case did not have their places of business in Australia at the time of concluding the agreement and thus, the arbitration is not a domestic arbitration to which the Queensland Act applies. By Article 1(1) of the Model Law and Section 16(1) of the International Arbitration Act 1974 ("**IAA**"), the Model Law applies to the arbitration proceeding between parties. The IAA applies to any arbitration to which the Model Law applies by Section 22(1). Upon Mountain View Productions LLC ("**MVP**")'s application, the Arbitral Tribunal granted permission for MVP to apply to this Court for the issuance of a subpoena to produce documents under Section 23(3) of the IAA on two parties not part of the arbitral proceedings ("Blackpond and AMC"). The Federal Court held that under Section 23(2) of the IAA, one of the requirements for the issuance of a subpoena is that the arbitrator has granted permission. This is consistent with Article 27 of the Model Law which provides that with the approval of the arbitrator, a party may apply to a competent court for assistance in taking evidence. Generally, the court whose authority is sought for the issue of the subpoena will not second guess the arbitrator's assessment of relevance; the court would not contradict the arbitrator with regard to relevance save in a clear case. The Federal Court further took into consideration what led to the refusal of the issuance of subpoenas for production of documents, i.e. the person to be subpoenaed was in a foreign country and had not submitted to the local proceeding; and that the seat of the arbitration was in a foreign country. The Federal Court concluded that such situation did not arise as both Blackpond and AMC carry on business in Australia and are addressed to them at their places of business in Queensland, with the seat of the arbitration being in Australia. This Court therefore decided that the subpoenas be issued.

***Sanum Investments Ltd v Government of the Lao People's Democratic Republic* [2022] SGHC(I) 9**

This case pertains an Arbitral Tribunal's invocation of the doctrine of collateral estoppel under New York Law, which precluded the reopening of estopped issues in a Singapore seated arbitration ("**the Arbitral Award**"). Sanum Investment Ltd ("**Sanum**") filed an originating summons to set aside the Arbitral Award, one of the grounds being that there was a breach of natural justice by the Arbitral Tribunal as Sanum was not given reasonable opportunity to be heard due to the Arbitral Tribunal's finding on collateral estoppel. The Singapore International Commercial Court ("**SICC**") detailed the test for breach of the rules of natural justice and held that the Arbitral Tribunal considered the requirements for the application of the doctrine of collateral estoppel and concluded that they were all satisfied. It was these determinations from the Arbitral Tribunal that precluded Sanum from arguing the merits of the estopped issues. This is very different from a tribunal mistaking its procedural powers or scope of issues in play before it and proceeding to award without hearing one party or excluding evidence. SICC further held that whether the Arbitral Tribunal made an error of law or fact in its decision that the doctrine of collateral estoppel applied goes only to the merits, and cannot found a challenge to the Award. Sanum's application was therefore dismissed.

SAVE THE DATE

6th - Aug	**Arbitration-in-Practice Workshop** - Interim Measures and Emergency Arbitrators
13th - Aug	**Adjudicators CCD Workshop** - Drafting Proper Notices, Claims and Written Submissions for Adjudication
20th - 27th Aug	**AIAC Certificate in Adjudication** (Sabah Edition)
3rd - Sep	**Arbitration-in-Practice Workshops** - Conduct of Hearings & Witness Examination
5th - Sep	**AIAC September Sports Week** - Opening Ceremony
5th - Sep	**AIAC September Sports Week**: Meet the Athlete: Panel Interview and Meet & Greet Session
6th - Sep	**AIAC September Sports Week**: A 'Metaverse' of Madness: A virtual Parallel World That Will Changes the Future of Sports
6th - Sep	**AIAC September Sports Week**: Brazilian Jiu Jitsu
7th - Sep	**AIAC September Sports Week**: Olympic Recap : XXIV Beijing Winter Olympics 2022
7th - Sep	**AIAC September Sports Week**: Total Body Workout
8th - Sep	**AIAC September Sports Week**: An Ecosystem of Sports: An Organising an International Sporting Event
9th - Sep	**AIAC September Sports Week**: In conversation with Pro Bono Sports Counsels
9th - Sep	**AIAC September Sports Week**: AIAC Sports Trivia Night
10th - Sep	**AIAC Mediation Workshop** - Drafting the Various Documents in the Mediation Process
21st - Sep	**AIAC Evening Talk Series**
22th - Sep	**AIAC Roadshow 2022 Perak**
24th - Sep	**Adjudicators CCD Workshop** - Writing an Effective and Enforceable Adjudication Decision
3rd - 8th Oct	**Asia ADR Week 2022** - Compassus: The Odyssean Course to Modern ADR
29th - Oct	**Adjudicators CCD Workshop** - Understanding the AIAC's Administrative Procedures, Circulars, Rules and Regulations
5th - Nov	**Arbitration-in-Practice Workshop** - Arbitration Case Law Update
12th - Nov	**Adjudicators CCD Workshop** - Recent Case Law Updates on Adjudication Part 2 (CIPAA Adjudicators Open Forum)
19th - 26th Nov	**AIAC Certificate in Adjudication** (KL Edition)
3rd - Dec	**Miscellaneous ADR Workshop Series** : Workshop on Non-Statutory Adjudications
10th - Dec	**Miscellaneous ADR Workshop Series** : Workshop on Miscellaneous ADR Methods

2022

AUGUST

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DECEMBER

S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

AIAC SEPTEMBER

SPORTS WEEK 2022

5TH - 9TH SEPTEMBER 2022

AIAC
ASIAN INTERNATIONAL ARBITRATION CENTRE (MALAYSIA)

FEEL THE FREEDOM

The AIAC invites everyone to join us in this celebration of sports and sports law. As nations re-open its borders and sports events recommence, we take this opportunity to highlight the best and the curious undertakings over the course of the past year. The year 2022 saw the Winter Olympic Games, Paralympic and SEA Games take place in a, now renowned, sports bubble. This saw with it developments in the areas of sports law that brought the global audience to the edge of their seats. Not one to be left behind, join us as the AIAC opens its doors in this ode to in person sporting events.

Monday, 5th September 2022

- AIAC September Sports Week 2022 Opening Ceremony
- Meet the Athletes: Panel Interview and Meet & Greet Session

Tuesday, 6th September 2022

- A 'Metaverse' Of Madness: A Virtual Parallel World That Will Change the Future of Sports
- Brazilian Jiu Jitsu

Wednesday, 7th September 2022

- Olympic Recap: XXIV Beijing Winter Olympics 2022
- Total Body Workout

Thursday, 8th September 2022

- An Ecosystem of Sports: Organising an International Sporting Event

Friday, 9th September 2022

- In Conversation with Pro Bono Sports Counsels
- AIAC Sports Trivia Night

Key:
- Hybrid
- Online
- Physical

For more information, please contact events@aiac.world / +603 2271 1000

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