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The Newsletter of The Malaysian Institute of Arbitrators

INSTITUT PENIMBANGTARA MALAYSIA

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Note From President

Dear Members,

Warm greetings to each and every one of you.

I hope that you enjoy reading this issue of the Institute's Newsletter, which covers the second half of an eventful 2017, the main highlights of which were the 4th MIArb Annual Law Review and Conference, the Conference on "Avoiding and Resolving Construction Disputes" in collaboration with CIDB Malaysia and the AIAC (then KLRCA), the Regional Arbitral Institutes Forum in Hong Kong, and the launch of a Debate Series in honour of the late Mr. Jonathan Yoon, who was a former Deputy President and committed supporter of the Institute as well as a wonderful friend and human being. The Council rounded off 2017 with an end of year party at the AIAC, which was graced by the presence of the Honourable Mr. Justice Dato' Lee Swee Seng, friends and partners from the AIAC, Chartered Institute of Arbitrators, Institute of Engineers Malaysia, Master Builders Association of Malaysia and Royal Institute of Surveyors Malaysia as well as former MIArb Presidents, Office Bearers and Council Members.

In this issue of the Newsletter, we are privileged to feature a Q&A session between our charming Editor, Ms. Dawn Wong, and distinguished lawyer and arbitrator, YBhg. Dato' Bill Davidson, which contains a first hand account of Dato' Davidson's experiences as an arbitrator. I hope that you will also find the articles and commentaries in the Newsletter useful in keeping abreast with the latest developments in the evolving ADR landscape in Malaysia.

Looking forward to 2018, the Council's main aim and priority for the year is to raise and enhance the status and value of the MIArb membership. To achieve this goal, the Council's focus and mission will, amongst others, be on providing new and existing members with the platform and tools to become successful or even more successful ADR practitioners by offering -

- a recognised and affordable gateway into the ADR profession.
- greater career opportunities, through qualifications that are credible and recognisable.
- effective and inexpensive opportunities for learning and education.
- regular social and networking opportunities.

And also by enhancing the standing and profile of the Institute within Malaysia (through partnerships and regular collaborative efforts with the Malaysian Judiciary, the AIAC, CIDB, industry bodies such as MBAM and professional bodies such as IEM, PAM and RISM, as well as institutions of higher learning such as UM and BAC) and internationally (through regional groupings and collaborations such as the Regional Arbitral Institutes Forum, in which the Institute plays a key and leading role).

At the same time, the Council will continue with its ongoing efforts to champion the use of ADR and raise the level and quality of the debate and discussion on ADR in Malaysia.

In closing, I am happy to report that interest in the Institute and its activities continues to be strong and vibrant both from within and outside of Malaysia, and the financial health of the Institute remains robust and sustainable. For this, I wish to acknowledge and thank my predecessors on the Council for their efforts in buiding a solid foundation for the growth and stability of the Institute which is now in its 27th year.

Last but certainly not least, I would like to thank my fellow Council Members and Pn. Raja Junaidah from the Secretariat for all their hard work and commitment in making 2017 a successful year for the Institute, and to all our members for their continued support.

I hope to meet many of you at our upcoming events.

In the meantime, happy reading!

With all good wishes,

Sudharsanan Thillainathan
President of MIArb

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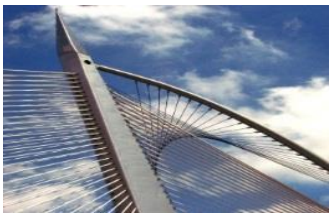


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Contributions
MIArb welcomes articles and other materials of interest for publication in future issues of this newsletter. By contributing an article or other material of interest to MIArb, the contributor(s) warrant(s) that the same is original and not already published elsewhere either electronically or in print. MIArb reserves the right to edit or decline any materials submitted. Enquiries may be addressed to The Editor at info@miarb.com.

This newsletter is also available on our website: www.miarb.com.

Past Events in 2017

23 February 2017
Evening talk: Keeping Financial Experts Objective in Arbitral Proceedings

25 and 26 February 2017
Membership Upgrade Course

27 and 28 March 2017
Joint Course on Alternative Dispute Resolution held jointly with IEM, PAM, and RISM

19 April 2017
Evening talk: Multi-Tiered Dispute Resolution Clauses

18 May 2017
4th MIArb Annual Law Review and Conference

23 May 2017
Conference on "Avoiding and Resolving Construction Disputes" in collaboration with CIDB Malaysia and the AIAC

26 May 2017
Seminar on "An Introduction to Arbitration" held jointly with the Kuala Lumpur Bar

14 June 2017
The MIArb 25th Annual General Meeting 2017

13-15 October 2017
RAIF Conference 2017, Hong Kong

25 October 2017
The Jonathan Yoon MIArb Debate Series

15 December 2017
The MIArb Christmas Party

2018 MIArb Council

Q&A with Dato' Bill Davidson

For the first installment of this exciting new series, the MIArb were privileged to interview the eminent lawyer and arbitrator, Dato' Bill Davidson, who in 2017 entered his sixtieth year of practice.

1. What was it all like when you began your career in London in 1957?

Needless to say, it was a very different world. I did a two year pupillage in London - one year in common law, six months in Chancery, and six months in the Old Bailey. Pupils who had been called to the Bar were free to do cases. I didn't do any during my first year and a half, but I did during my last six months at the Old Bailey. They had a system of dock briefs. For the price of two guineas, any accused who didn't have counsel would be brought up from the dungeon into open court while the judge was sitting. Senior barristers ducked for cover but the pupils would rush into the court, hoping desperately for a chance to do a dock brief. This was because the accused had a right to select as his defence counsel any fully robed barrister in the court. You had half an hour if you got the dock brief and were then expected to deal with the case. That's how I cut my first teeth.

In those days, written submissions were unheard of, even in civil cases. Generally speaking, counsel could take as long as he liked. The judge sat in court, and there were no fixed dates for the cases. There was no concept of case management. There was a 'Warned List' which

would give counsel a rough indication of when his case was likely to start. There was no such thing as a barrister saying he's not available; hence there was usually a second barrister as "cover", ready to take over the case in an emergency.

My first brief was while I was in the Old Bailey chambers. A brief had the usual pink ribbon round it, my name, and my fee of 2 guineas. I opened the brief and there was nothing inside! The clerk in chambers said this was a private prosecution brought by a big London store for shoplifting. When I demurred, the clerk said: "Young gentlemen should be thankful for what they get. And by the way, the case is starting in half an hour at Bow Street Magistrates' Court." I hurried down there. As I got in, my case was called. I said: "I'm for the prosecution", without knowing any of the details of the charge. An old lady with a shopping bag entered the witness box. She read out the story from her notebook. Mercifully, the accused pleaded guilty and that was the end of the case. We had to live on our wits. To earn some extra money, I lectured in the evening to aspiring London taxi drivers who needed to know their way around the city.

At that time, there was a proliferation of rent control claims in the County Courts. My master once sent me to a County Court somewhere in south London; the instructing solicitor was very upset because my master didn't turn up, and sent me along instead. The instructing solicitor sat behind me and kept prodding me and prompting me as the case proceeded.

2. What was the state of arbitration in Malaysia when you started practice?

There wasn't a great deal of arbitration about. There weren't any major construction arbitrations going on. Most arbitration cases arose out of insurance policies. There was no regional centre, and cases were few and far between. The first major one I did was Kuching Airport, with the late Raja Aziz Addruse sitting as arbitrator, and this went on for about 30 days. Once the regional centre came in, under the auspices of Ms P.G. Lim, arbitration grew slowly.

There was no such thing as a barrister saying he's not available; hence there was usually a second barrister as "cover", ready to take over the case in an emergency.

Arbitration is, in many ways, similar to litigation, but procedure-wise the arbitrator can have a more balanced and flexible approach.

3. What do you see as the biggest challenge to ADR in Malaysia?

At the moment, there seems to be a lot of controversy about the relationship between arbitration and the courts – particularly section 42, and there is incidentally going to be a debate about this on 25 October 2017. One side is of the view that there is adequate reference to the courts, while the other is saying more reference is needed. There is of course a third side which is not represented, saying that there should be no reference at all. Tun Zaki says that generally the courts in his time were very pro-arbitration, because arbitration took pressure off the courts. He felt that there should be less intervention because arbitration is a consensual process.

The only trouble with that argument is that contractors, for example, don't have much say about whether they go to arbitration or not, because it's all in the standard form contracts. I'm of the view that we have to have recourse to the courts, certainly for domestic arbitration, because there are lay arbitrators who are arbitrating on these standard form contracts, and the law needs to be developed in this area. In international arbitration, the position is different because parties to an arbitration are generally reluctant to get involved with the courts of the other party's country.

4. Which literary character do you most identify with and why?

I used to enjoy Rumpole of the Bailey. It's very funny and also very true to life as it then was!

5. Do you have any tips for those hoping to qualify as an arbitrator or an adjudicator?

I think there is a very different approach between arbitration and adjudication. In adjudication, timelines are very short so young lawyers should read their papers very carefully. It's excellent training to do adjudication. They say in England

when adjudication was first brought in, it was very successful in the sense that the great majority of awards stopped there and didn't go on to arbitration. One of the common complaints of adjudication is that the claimant prepares his case in great detail without any reference to the other side, submits it, and calls for adjudication. The respondent may then be caught totally by surprise and doesn't really have the time to prepare a comprehensive response. He can't do as he would in a court, and ask for time to prepare a defence.

Arbitration is, in many ways, similar to litigation, but procedure-wise the arbitrator can have a more balanced and flexible approach. There are many ways that you can depart from established procedures. For example, you are not bound by or tied to the Evidence Act. I had one arbitration with the late Raja Aziz sitting as arbitrator; when my opposing counsel started objecting: "Where is the maker of this document?", all Raja Aziz had to say in response was: "This is an arbitration, you know." That was the end of the matter.

Another example of the more flexible approach adopted relates to the witnesses on quantum; in many construction arbitrations, there are reams of disputed items. The arbitrator can invite the quantum witnesses on both sides to take a day off to work together to reduce the number of disputed items to a manageable number.

I personally strongly favour detailed opening statements by both parties before any witnesses are called. This gives the arbitrator a better understanding of the essential issues in the case from the outset. In fact, I am surprised that opening statements are often not made use of or encouraged in our courts. ■

Thai-Lao Lignite Co. Ltd. vs. Government of the Lao People's Democratic Republic: A Commentary

by **Gregory Vinesh Das**
Vice President of MIArb
Partner, Messrs Steven Thiru & Sudhar Partnership

On the 17th of August 2017, the Federal Court delivered a landmark decision in the law of arbitration in Malaysia. This was in the widely-known case of **Thai-Lao Lignite Co. Ltd. & Another** vs. **Government of the Lao People's Democratic Republic**. The apex court made significant pronouncements on the principles for the determination of the law of an arbitration agreement and the scope of review of an international arbitration award under the Arbitration Act 2005 ("**the Act**"). The following is a commentary on the decision.

The Material Facts.

The dispute arose from the termination of contracts between the Government of Laos and a Thai and a Laotian company. These contracts were for the mining of lignite and the production of electricity in Laos.

The first contract was between the Government of Laos ("**GOL**") and a company named Thai-Lao Lignite Co. Ltd. ("**THL**") ("**the First Contract**"). This contract required THL to incorporate a Laotian company named Hongsa Lignite Co. Ltd. ("**HLL**") to survey and mine lignite in Laos. A supplementary agreement was then executed between GOL and TLL to increase the area of land for the mining of lignite under the First Contract ("**the Second Contract**"). This contract also provided for the construction of a lignite power plant in Hongsa, Laos.

Subsequently, by way of a project development agreement, GOL granted TLL the exclusive right to develop and implement a power plant to produce electricity in Hongsa ("**the Third Contract**"). Under this contract, TLL was obliged to incorporate a company called Thai-Lao Power Co. Ltd. ("**TLP**") to "implement the project". This contract also provided that the electricity generated pursuant to the agreement would be sold to the Electricity Generating Authority of Thailand.

However, the performance of the obligations under the three contracts were severely affected by the Asian Financial Crisis in 1997. In this regard, it was observed by the arbitral tribunal that heard the dispute that "*No mines have been dug and no power plant construction has begun*".

This resulted in the termination of the three contracts by GOL. THL and HLL challenged the termination and invoked the arbitration clauses under the agreements.

The Arbitral Proceedings.

In the arbitration, THL and HLL only challenged the termination of the Third Contract. It was argued that THL and HLL were beneficiaries under the Third Contract and that the contract had been wrongfully terminated by GOL. THL and HLL sought the restoration of their rights under the Third Contract and claimed damages in the sum of USD447 million due to the termination of the contract.

The tribunal agreed that THL was a party to the Third Contract and that HLL was an intended beneficiary to the same. The tribunal rejected GOL's contention that the conduct of THL and HLL in failing to perform their contractual obligations within a reasonable time amounted to

a repudiation of the Third Contract. Ultimately, the tribunal upheld the claim of wrongful termination of the Third Contract by GOL and delivered an award of approximately USD56 million in favour of THL and HLL. This included an award of a premium of 10% of USD40 million of investment costs to THL and HLL.

The Court Proceedings.

GOL applied to the High Court to set aside the arbitral award under section 37 of the Act. GOL's case was premised on two central grounds, namely:

(1) that the arbitral tribunal had exceeded its jurisdiction in deciding upon the rights of THL and HLL under the Third Contract, to which they were not parties; and

(2) that the tribunal had breached the rules of natural justice in granting the 10% premium of investment costs to THL and HLL and, therefore, the award was liable to be set aside under section 37(1)(b)(ii) as being in conflict with public policy.

The High Court repelled the second ground of challenge and found that "*It is not every breach of the rules of natural justice that would offend the public policy principle*". It was held that the award of the 10% premium did not amount to a violation of the rules of natural justice, as contemplated under section 37(1)(b)(ii).

However, the High Court agreed with GOL on the first ground of challenge, which it held to pose "*a greater and graver question*" of excess of jurisdiction. In so doing, Justice Lee Swee Seng upheld GOL's arguments as follows:-

(1) the arbitral tribunal had decided upon HLL's claims under the First and Second Contracts despite the claims being premised on the Third Contract;

(2) the governing law under the First and Second Contracts was Laotian law. The governing law under the Third Contract was a mixture of the law of Laos and that of New York. The tribunal had decided upon the claims under the First and Second Contracts based on New York law, which amounted to a "*breach of the spirit as well as the manifest understanding of the parties*";

(3) the tribunal had ventured beyond the scope of submission to arbitration by assuming jurisdiction over disputes arising from the First and Second Contracts;

(4) the doctrine of "intended beneficiary" is not an exception to the rule of privity of contract in Malaysian law. Therefore, it was contrary to the Act that an entity that is not a party to the arbitration agreement be permitted to participate in the arbitration proceedings; and

(5) the claims under the First and Second Contracts had been inextricably co-mingled with the claims under the Third Contract. This rendered it impossible for the court to excise the portion of the arbitral award that dealt with the claims under the First and Second Contracts. Therefore, the entire award had to be set aside.

The High Court allowed GOL's application and ordered that the dispute between the parties that related exclusively to the Third Contract be re-arbitrated before a newly constituted panel.

THL and HLL appealed against the High Court's decision and the Court of Appeal dismissed the appeal. The Federal Court granted THL and HLL leave to challenge the Court of Appeal's decision in a full appeal at the apex court.

The Decision of the Federal Court.

The Federal Court's decision was divided into three broad issues, namely; the determination of the choice of law of an arbitration agreement, the appropriate stage to raise a jurisdictional objection in arbitral proceedings and the scope to set aside an arbitration award under the Act.

The determination of the governing law of an arbitration agreement was a pertinent matter. This was in view of the potential application of the Malaysian contract law principle of privity of contract in the case. The application of this principle would render as unlawful the arbitral tribunal's determination of the rights of THL and HLL under the First and Second Contracts, as the dispute that was referred to the tribunal only concerned the Third Contract.

The law that governed the First Contract was expressly stated to be Laotian law. The Second Contract was silent as to its governing law. However, Jeffrey Tan FCJ held that as the Second Contract was a "*supplementary contract … it should follow the parties must have intended Laotian law to govern both mining contracts*".

The Third Contract provided that its terms were governed by a mixture of the laws of Laos and New York. However, the arbitration agreement under the contract was silent as to its governing law.

In these circumstances, the Federal Court affirmed the principle that "*where there is no express choice of the governing law of the arbitration agreement, the choice then is usually between the law of the seat and the governing law of the contract*".

Pertinently, the arbitration agreement under the Third Contract provided that "*either party may submit the dispute to arbitration conducted in Malaysia at the Kuala Lumpur Regional Centre for Arbitration in accordance with the UNCITRAL Rules*". Article 33(1) of the UNCITRAL Rules provides as follows as to the governing law of an arbitration for which the parties have failed to designate the applicable law:-

> *"The arbitral tribunal shall apply the law designated by the parties as applicable to the substance of the dispute. Failing such designation by the parties, the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable".*

Accordingly, the Federal Court observed that the conflict of laws rules recognise that "*the law that has the closest and most real connection to the arbitration agreement is the law applicable to the arbitration agreement*". It was decided that since the seat of the arbitration was Kuala Lumpur, the Act was "*the curial law*" and, therefore, the laws of Malaysia must be held to govern the arbitration proceedings.

Next, the Federal Court addressed the contention of THL and HLL that GOL's objections as to the tribunal's jurisdiction were raised belatedly. THL and HLL argued that GOL had waived its rights to raise such an objection as the same could not be raised later than the submission of the defence or as soon as the matter alleged to be beyond the scope of the tribunal's authority arises in the proceedings.

It was observed that the appropriate time to object to the tribunal's jurisdiction depended on whether the objection was premised on sections 18(3) or 18(5) of the Act, which read as follows:-

> *"(3) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence.*
>
> *...*
>
> *(5) A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings."*

However, the Federal Court stated that irrespective of the nature of the objection, the tribunal could decide upon it as a preliminary point or in the award on the merits. It was not open to the parties to insist on an immediate ruling on the objection.

The Court went on to observe that GOL had indeed raised its objections as to the tribunal's jurisdiction to adjudicate upon the First and Second Contracts in its pleadings. However, it was held that THL and HLL had failed to plead in their Reply that the said objections were made out of time. This resulted in the rejection of THL's and HLL's arguments on the purported belated objections of GOL.

Lastly, the Federal Court made significant remarks on the extent to which the courts may interfere with an arbitral award in a challenge against the same. The Court observed as follows on this point:-

> *"**239** … 'Support for arbitration' is not 'no disturbance'. There are always two sides to the same coin. The loser will call for 'disturbance'. If an arbitral award is a sacred cow and cannot be disturbed, that will not engender confidence in arbitration. 'No disturbance' may appear, at least superficially, to support arbitrators. But in truth, 'no disturbance' is anathema to arbitration. 'Do not disturb' will kill confidence in arbitration. Once confidence is lost, both arbitration and arbitrators will be the worst for it. For arbitration to continue to be relevant, it must be accepted that arbitral awards are not sacrosanct. Arbitral awards will be reviewed by the supervisory court of the seat. Arbitration will be dead, in Malaysia and elsewhere, if a supervisory court was to rubber stamp arbitral awards.*
>
> ***240**. But that is not to say that the court has a free hand to intervene. Section 8 of AA 2005 provides that "No court shall intervene in matters governed by this Act, except where so provided in this Act". Unless so provided by AA 2005, the court shall not intervene in the arbitral process or in arbitral awards. Whether the UNCITRAL Model law promotes more or less curial interference does not arise."*

The Federal Court's statements on the possibility of judicial intervention in an arbitral award is welcome in the present climate that appears notably inclined toward non-interference. It would be beneficial to the arbitral system if there existed a complementary judicial regime to keep in check material errors committed at the arbitral stage. The prospect of supervisory correction may enhance the standards of decision-making in the arbitral process. Only time will tell if the Federal Court's remarks produce its desired effect. ■

The Effect of CIPAA 2012 on the Condition Precedent Provisions of Arbitration in Construction Contracts: A Commentary

by **Maya Gayathri Devaruban**
Associate
Messrs Mah-Kamariyah & Philip Koh

Nearly all construction contracts contain a condition precedent provision requiring parties to refer any dispute arising from the contract to arbitration before commencing litigation. Contracts executed prior to the coming into force of the Construction Industry Payment and Adjudication Act 2012 ("**CIPAA 2012**") on 10 April 2014 do not provide for adjudication as an alternative dispute resolution mechanism; in Malaysia, construction disputes were traditionally resolved by arbitration or by litigation. These modes attracted much criticism; the courts were overburdened and unfamiliar with the technicalities of complex construction law issues, and aggrieved contractors were deprived, often for lengthy periods, of the lifeblood of their industry, i.e. cash flow.

Interim and provisional in nature, adjudication is a statutory right which allows either the unpaid party or the non-paying party to refer a dispute to adjudication, even if the contract is silent as to the governing provision. A common grievance raised by the non-paying party in defending a Payment Claim is that the unpaid party has failed to satisfy the condition precedent stipulated under the contract that requires parties to refer any dispute arising from the contract to arbitration before it is referred to any alternative form of dispute resolution, including adjudication. The courts, however, take a different view.

It is well established that CIPAA is a statutorily provided mechanism aimed to promote cash flow and facilitate timely payment within the construction industry.

The unpaid party should not be deprived of its entitlement to payment simply on the basis that the condition precedent of arbitration has not been satisfied.

The Court of Appeal in the case of Martego Sdn Bhd v Arkitek Meor & Chew Sdn Bhd [2017] MLJU 1382 upheld Lee Swee Seng J's decision in the High Court in respect of the matter in question:

> *[13] On the first issue, the learned trial judge had spent substantial time in justifying that CIPAA 2012 is applicable, notwithstanding the provision in the Architect Act read with the Rules, by statutory formula has to go for arbitration. What I wish to say here is CIPAA 2012 is not against arbitration or litigation. It only gives a statutory formula for compulsory adjudication to be able to decide the issue summarily. If the Architect Act and Rules says it should be sent for arbitration does not necessarily mean that CIPAA 2012 is excluded when CIPAA 2012 itself does not say so. I find merit in the reasoning and decision of the learned trial judge limited for the purpose of the instant case only and in consequence I will not labour on this issue further, as CIPAA 2012 also gives the option for arbitration.*

Lee Swee Seng J had this to say:

> *[76] I agree that the dispute resolution mechanism under CIPAA is by way of Adjudication and the statutory requirement for dispute resolution under the Architects Act is by way of Arbitration. I must also state that there is nothing strange in this difference as statutory Adjudication came into being only with the coming into force of CIPAA on 10 April 2014 and that there is no need to see Adjudication and Arbitration to be mutually exclusive of each other as Adjudication would only yield a decision of temporary finality and it is only with Arbitration or Litigation that one gets a final and binding decision. The whole scheme of statutory Adjudication was never intended to be set in opposition to Arbitration or Litigation. Adjudication operates independently on a separate track and indeed a fast track and it will not run into collision with Arbitration or Litigation simply because its track is different. Before there was Adjudication, there were*

already Arbitration and Litigation. After the introduction of Adjudication, both Arbitration and Litigation will still continue except that now there is an additional dispute resolution mechanism of temporary finality that can be embarked upon before or concurrently with Arbitration or Litigation as the case may be. Thus one need not have to choose in an "either or" approach between Adjudication and Arbitration but one can proceed in a "both and" approach in resolving a dispute on an architect's claim against his client for his professional fees. Adjudication under CIPAA was never designed to be in conflict with Arbitration and Litigation and so its process may be activated at any time when there is a valid payment claim under a construction contract. Premised on that proper perspective, the question of which would prevail over the other does not arise at all.

[88] To accede to Martego's argument would mean that where there is an arbitration clause in a construction contract which is no different from an arbitration clause provided for in the Architects Act, then there can be no adjudication of a payment claim under CIPAA. That can only lead to a disastrous situation for almost all standard form construction contract would have an arbitration clause and surely that cannot mean that as Arbitration is the agreed mode of dispute resolution then Adjudication cannot apply at all.

It is well established that adjudication pursuant to CIPAA 2012 is a summary mechanism aimed at promoting cash flow and facilitating regular and timely payment within the construction industry, with the purpose of resolving cash flow problems relating to delay in payment, non-payment, and under-certification, amongst others. Statutory adjudication under CIPAA 2012 remains the quickest mode of dispute resolution available. It must not be forgotten that the intention of the enactment of CIPAA 2012 is that it first and foremost provides a mechanism for rough-and-ready remedies of temporary finality. In this regard, the unpaid party should not be deprived of its entitlement to payment simply on the basis that the condition precedent of referring the dispute to arbitration has not been satisfied.

The case of Inovatif Engineering (M) Sdn Bhd v Nomad Engineering Sdn Bhd [2016] MLJU 1351 held as follows:

Finally, it must be mentioned that in paragraph 9 of the affidavit in support, the plaintiff raised the issue that the dispute should have been referred to arbitration as it is provided in the main contract. There is no merit in this suggestion as the arbitration mechanism and the adjudication mechanism address different issues. Arbitration is a contractually provided dispute settlement process. It is meant to provide for the final settlement of a dispute. On the other hand, adjudication under CIPAA is a statutorily provided mechanism to ensure cash flow in the construction industry. It is independent of contractual provisions between the parties and the decision procured under the Adjudication regime is not final but is only provisional. Therefore, even if there is a valid arbitration clause, parties can still avail the adjudication process to obtain interim relief pending final accounts. This is clearly provided for in section 37 (a) of CIPAA which states that a party may concurrently refer the dispute to adjudication, arbitration and to the courts.

A further consideration is that arbitration clauses are incorporated within construction contracts merely as an agreement between the parties as to the use of alternative dispute resolution and the avoidance of the commencement of litigation. Therefore, the effect of disallowing an unpaid party's claim under CIPAA 2012 for reason that the condition precedent of arbitration has not yet been fulfilled will only mean that the object of CIPAA 2012 in providing rapid, interim determination for the recovery of payment to ensure that the construction process is carried out smoothly and swiftly will be thwarted. ■

KLRCA Rules 2017: Pushing Limits/ Identifying Gaps

by **Sudharsanan Thillainathan**
President of MIArb
Senior Partner, Messrs Steven Thiru & Sudhar Partnership

KLRCA Rules 2017

With arbitration gaining popularity on the international stage as an alternative dispute resolution option, there is a corresponding increase in the demand for arbitral institutions to improve their rules so that parties have a better chance of obtaining better services for the least expenditure.[1] In response to this demand, international arbitral institutions are competing with each other to supply the best rules to reflect international best practices in arbitration. Clearly, the more efficient and cost-effective the rules governing the arbitration administration and procedure, the more appealing the institution appears to parties to a dispute.

On this note, the KLRCA published the second revision of the KLRCA Rules 2017 on 1 June 2017. The new rules, emulating ideal international practices, were designed to increase transparency, optimise cost and efficiency, and improve the quality of arbitral awards. The key changes include amendments made to **Rule 5 Challenge to Arbitrators**, the introduction of the following provisions: **Rule 9 Joinder of additional parties**, **Rule 10 Consolidation of proceedings**, and **Rule 12 Technical Review of Awards**, the simplification of fee schedules, and the proposal of a model arbitration clause and submission agreement.

In light of the above, this article intends to analyse: (i) how the revised rules stack up against other institutional rules; and (ii) whether the revised rules strike a healthy balance between bringing about reforms, maintaining or increasing efficiency and cost-effectiveness, and protecting party autonomy.

Challenge to Arbitrators

The only key addition to this provision is that the Director of the KLRCA is now required to state reasons for his decision on challenges to arbitrators (**Rule 5(7)**). Other institutions that necessitate reasons for its decision on a challenge of an arbitrator to be communicated to parties are the SIAC Rules 2016 (**Rule 16.4**), the LCIA Rules 2014 (**Article 10**), and the ICC Rules 2017 (**Article 14**). At the other end of the spectrum, the HKIAC holds that it need not give reasons for its decision (Practice Note on the Challenge of an Arbitrator; effective 31 October 2014).

Whilst the confidentiality of arbitral proceedings remains a significant reason as to why parties favour arbitration, providing reasons for a decision made on a challenge of an arbitrator promotes accountability and transparency in the arbitral process. Indeed, parties to international arbitration welcome and will increasingly expect greater transparency from arbitral institutions. This is because greater insight into the manner in which institutions approach their decision-making will inevitably enhance awareness over what is, and what is not, likely to be a successful application. Furthermore, such insight would

1 The Current State and Future of International Arbitration: Regional Perspectives by IBA Arb 40 Subcommittee

reduce non-meritorious or frivolous applications, thus saving time and money for all concerned.[2]

Joinder of Parties

The KLRCA Rules 2017 now include a provision for the joinder of parties. As per **Rule 9**:

> *"1. Any party to an arbitration or any third party (hereinafter the "Additional Party") may request one or more Additional Parties to be joined as a party to the arbitration (hereinafter referred to as the "Request for Joinder"), provided that all parties to the arbitration and the Additional Party give their consent in writing to the joinder, or provided that such Additional Party is prima facie bound by the arbitration agreement. The Request for Joinder will be determined by the arbitral tribunal or, prior to the constitution of the arbitral tribunal, by the Director.*
>
> *…*
>
> *5. In deciding whether to grant, in whole or in part, the Request for Joinder, the arbitral tribunal shall consult all parties and any Additional Party, and shall have regard to any relevant circumstances.*
>
> *6. If the Director receives the Request for Joinder prior to the constitution of the arbitral*

2 *https://www.financierworldwide.com/increased-transparency-in-international-commercial-arbitration/#.WcxzfWiCyyI*

tribunal, the Director shall decide whether to grant, in whole or in part, the Request for Joinder. In deciding whether to grant the Request for Joinder, the Director shall consult all parties and any Additional Party, and shall have regard to any relevant circumstances.

7. Notwithstanding a decision of the Director pursuant to Rule 9(6), the arbitral tribunal may decide on a Request for Joinder, either on its own initiative or upon the application of any party or Additional Party pursuant to Rule 9(1)."

The KLRCA Rules 2013 did not include a provision for the joinder of parties. However, under the new rules, the KLRCA is now on par with other institutions that provide for the joinder of parties, i.e. SIAC (Rule 7), HKIAC (Article 27, HKIAC Administered Arbitration Rules 2013), AAA (Article 7, International Arbitration Rules, ICDR Rules 2014), LCIA (Article 22.1(viii)), SCC (Article 13), and ICC (Article 7). The underlying rationale for the new provision is that it functions as a mechanism designed to promote procedural efficiency and to reduce unnecessary costs in complex arbitrations.

Consolidation of Proceedings and Concurrent Hearings

The KLRCA Rules 2017 now contain more sophisticated provisions for the consolidation of a new arbitration with existing arbitration proceedings. As per Rule 10 of the KLRCA Rules 2017:

"1. Upon the request of any party to an arbitration or, if the Director deems it appropriate, the Director may consolidate two or more arbitrations into one arbitration, if:

a. the parties have agreed to consolidation;

b. all claims in the arbitrations are made under the same arbitration agreement; or

c. the claims are made under more than one arbitration agreement, the dispute arises in connection with the same legal relationships, and the Director deems the arbitration agreements to be compatible.

2. In deciding whether to consolidate, the Director shall consult all parties and any appointed arbitrators, and shall have regard to any relevant circumstances including, but not limited to:

a. the stage of the pending arbitrations and whether any arbitrators have been nominated or appointed;

b. any prejudice that may be caused to any of the parties; and

c. the efficiency and expeditiousness of the proceedings.

…

4. Within 15 days of being notified of a decision by the Director to consolidate two or more arbitrations, all parties may agree on the arbitrators to be appointed, if any, to the consolidated arbitration and/or the process of such appointment. Failing such agreement, any party may request the Director to appoint the arbitral tribunal, in which case, the Director may release any arbitrators appointed prior to the consolidation decision. In these circumstances, all parties shall be deemed to have waived their right to nominate an arbitrator."

Other arbitral institutions also provide for the consolidation of proceedings: SIAC (Rule 8), HKIAC (Article 28 of the HKIAC Administered Arbitration Rules 2013), AAA (Article 8, International Arbitration Rules, ICDR Rules 2014), LCIA (Article 22.1(ix) and (x) and Article 22.6), SCC (Article 15), and ICC (Article 10).

Similar to the rationale underpinning joinder of parties, consolidation is crucial predominantly in a multi-contract setting, such as in complex commercial transactions, where parties enter into a number of different but interrelated contracts as part of one unified transaction. With the option of consolidation made available, parties have the

chance to reduce time and expense in resolving their disputes. Furthermore, consolidation could prevent competing arbitral tribunals from reaching different decisions on related or identical claims and factual issues. Needless to say, the KLRCA's new consolidation provision not only avoids multiplicity of proceedings, but also encourages greater efficiency and saves time.

Technical review of awards

With the aim of improving the quality of awards, the KLRCA Rules 2017 now set out detailed provisions for the technical review of awards. As per **Rule 12**:

> *"2. The arbitral tribunal shall, before signing the award, submit its draft of the final award (hereinafter referred to as the "Draft Final Award"), to the Director within three months for a technical review. The time limit shall start to run from the date when the arbitral tribunal declares the proceedings closed pursuant to Rule 12(1).*
>
> *3. The time limit may be extended by the arbitral tribunal with the consent of the parties and upon consultation with the Director. The Director may further extend the time limit in the absence of consent between the parties if deemed necessary.*
>
> *4. The Director may, as soon as practicable and without affecting the arbitral tribunal's liberty of decision, draw the arbitral tribunal's attention to any perceived irregularity as to the form of the award and any errors in the calculation of interest and costs.*
>
> *5. If there are no perceived irregularities pursuant to Rule 12(4), the Director shall notify the arbitral tribunal in writing that the technical review has been completed.*
>
> *6. If there are perceived irregularities pursuant to Rule 12(4), the arbitral tribunal shall resubmit the Draft Final Award to the Director within 10 days from the date on which the arbitral tribunal is notified of such irregularities. The time limit for the arbitral tribunal to consider any irregularities under Rule 12(4) may be extended by the Director. Upon completion of the technical review, the Director shall notify the arbitral tribunal in writing of the completion of the technical review."*

Other institutions that provide for the review or correction of awards include: SIAC (**Rule 31**), HKIAC (**Article 37**, HKIAC Administered Arbitration Rules 2013), AAA (**Article 33**, International Arbitration Rules, ICDR Rules 2014), LCIA (**Article 27**), SCC (**Article 47**), and ICC (**Article 34**).

The main purpose for reviewing awards is that an objective review of the draft award by the arbitral institution (which consists of experienced counsel and arbitrators) can rectify errors and identify gaps or a lack of clarity in the arbitral tribunal's reasoning, leading to more cogent and well-reasoned awards. This may reduce the risk of challenge or non-enforcement. It must be

With the option of consolidation made available, parties have the chance to reduce time and expense in resolving their disputes.

noted that the scrutiny process does not operate to curtail the arbitral tribunal's liberty of decision-making or otherwise usurp the arbitral tribunal's substantive decision-making power.

The disadvantage of the scrutiny of awards, however, is that it may cause delay. As a counter-measure, on 13.07.2016, the ICC issued its revised Practice Note allowing for a reduction in ICC administrative fees of up to 20% for unjustified delays in the ICC's award scrutiny process.

Simplified Fee Schedule

The KLRCA's new simplified fee schedule sets out both the arbitrator's fees and the KLRCA's administrative fees by the value of the amount in dispute using a unified banding structure. This makes it easier to calculate the arbitrator's fees, as well as those of the KLRCA. The 2017 revision of fees sees only a marginal increase in domestic arbitration fees, and no changes in international arbitration fees. By maintaining its low fee structure, the KLRCA is adhering to its objective of being cost-efficient and effective.

Model Arbitration Clause and Submission Agreement

Similar to those of SIAC, HKIAC, ICDR, LCIA, SCC, and ICC, the KLRCA Rules 2017 now contain a model arbitration clause and a submission agreement for disputes to be administered under the rules. The KLRCA's Model Clause is as follows:

> *"Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof shall be settled by arbitration in accordance with the KLRCA Arbitration Rules.*
>
> *Recommended additions:*
>
> • *The seat of arbitration shall be […].*
>
> • *The language to be used in the arbitral proceedings shall be […].*
>
> • *This contract shall be governed by the substantive law of […].*
>
> • *Before referring the dispute to arbitration, the parties shall seek an amicable settlement of that dispute by mediation in accordance with the KLRCA Mediation Rules as in force on the date of the commencement of mediation."*

Parties wishing to substitute an existing arbitration clause for one referring the dispute to arbitration under the KLRCA Arbitration Rules may adopt the following form of agreement:

> *"The parties hereby agree that the dispute arising out of the contract dated _____ shall be settled by arbitration under the KLRCA Arbitration Rules."*

This form may also be used where a contract does not contain an arbitration clause.

Conclusion

The KLRCA Rules 2017 are a welcome attempt to bring the rules of the KLRCA into line with international best practices, and they do strike a healthy balance between bringing about reforms, maintaining or increasing efficiency and cost-effectiveness, and protecting party autonomy. Perhaps, however, there remains room for new inclusions, such as third party funding.

Third party funding is essentially where a non-party to the dispute provides funds to a party to the dispute in exchange for an agreed return. Typically, the funding will cover the funded party's legal fees and expenses incurred in the arbitration. The funder may also agree to pay the opponent's costs if the funded party is so ordered, and provide security for the opponent's costs.

Singapore, for one, has provided parties the option of third party funding under the SIAC's Practice Note: "On Arbitrator Conduct in Cases Involving External Funding", which came into force on 31.03.2017. Whilst there are no express statutory prohibitions on third party funding in arbitration and litigation in Malaysia, such a fee arrangement may nonetheless be the subject of judicial scrutiny under the common law rules of champerty and maintenance. ■

PAST EVENTS

Evening talk

Keeping Financial Experts Objective in Arbitral Proceedings

23 February 2017

14 participants attended an informative evening talk presented by Mr Iain Cameron Potter, a forensic accountant and independent expert. Mr Potter addressed topical issues surrounding the objectivity of forensic evidence on quantum and, taking into account the closed nature of many arbitral proceedings which may encourage some experts to stretch their objectivity, recommended steps that may be taken to mitigate the possibility of biased experts misleading a tribunal in arbitral proceedings. This talk was jointly organised by the MIArb and the AIAC.

Membership Upgrade Course

25 and 26 February 2017

The Membership Upgrade Course was conducted by a group of highly experienced arbitral practitioners. A total of 9 participants attended the course.

Joint Course on Alternative Dispute Resolution held jointly with IEM, PAM, and RISM

27 and 28 March 2017

The MIArb, together with The Institution of Engineers, Malaysia (IEM) (DRP Subcommittee), Pertubuhan Akitek Malaysia (PAM), and The Royal Institution of Surveyors, Malaysia (RISM), organised the annual Joint Course on Alternative Dispute Resolution for Practitioners on 27 and 28 March 2017. The Course featured sessions on arbitration, adjudication, and a discussion on common issues in construction contract management and on the avoidance of disputes arising therefrom.

The MIArb managed the session on "**Arbitration**" and delivered instructive lectures on "**Introduction to Arbitration. Why Arbitrate?**", "**The Hearing Process: Procedure and Practice. Managing the Expert Witness**", and "**Enforcing the Arbitral Award**". Speaking for the MIArb were the outgoing Vice President, Ms Hor Shirley, and the Deputy President, Ms Karen Ng Gek Suan.

Evening talk

Multi-Tiered Dispute Resolution Clauses

19 April 2017

72 participants attended an insightful evening seminar presented by Mr Ben Olbourne of 39 Essex Chambers, who called upon his extensive experience in international commercial dispute resolution. Mr Olbourne addressed the implications of multi-tiered dispute resolution clauses, also known as escalation clauses, in international commercial contracts in various jurisdictions, highlighting the advantages and disadvantages of such clauses and the approaches of courts and other institutions to their interpretation and enforcement, as well as the law to be applied to issues arising in respect of such clauses. This talk was jointly organised by the MIArb and the AIAC.

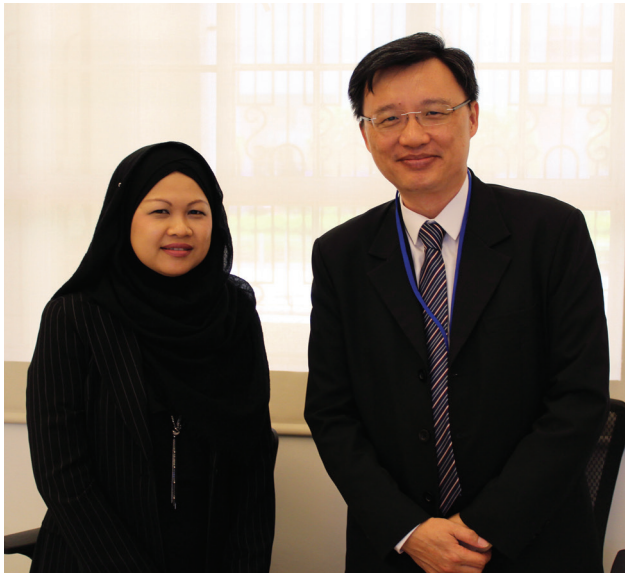
4th MIArb Annual Law Review and Conference

18 May 2017

On 18 May 2017, the MIArb hosted its 4th Annual Law Review and Conference, a half-day event which featured leading practitioners who led in-depth discussions on recent cases in arbitration and adjudication in 2016.

The MIArb's Immediate Past Present, Mr Kevin Prakash, opened the event. The MIArb had the great privilege of Yang Amat Berbahagia Tun Arifin bin Zakaria, Former Chief Justice of Malaysia, delivering the keynote address.

This year's Review featured three distinct sessions, which included two sessions of interactive discussion on salient developments and recent Court decisions relating to arbitration and adjudication respectively. The



discussion on arbitration was led by the MIArb's President, Mr Sudharsanan Thillainathan and Dato' Mohd Arief Emran bin Arifin, while Mr Sanjay Mohanasundaram and Mr Raymond Mah spearheaded a particularly lively adjudication discussion.

The MIArb's President, Mr Sudharsanan Thillainathan, delivered the closing address. The evening concluded with a cocktail reception at the Pavilion of the AIAC, a convivial end to another successful Review. The MIArb's Vice President, Mr Gregory Das, was the master of ceremonies.

Conference on "Avoiding and Resolving Construction Disputes" in collaboration with CIDB Malaysia and the AIAC

23 May 2017

In collaboration with CIDB Malaysia and the AIAC, the MIArb hosted a full-day conference on "**Avoiding and Resolving Construction Disputes**". This was the first such collaboration between the MIArb and both CIDB and the AIAC, and it is hoped this event heralds the start of many successful collaborations.

Welcome addresses were given by Datuk Professor Sundra Rajoo, the Director of the AIAC, Encik Megat Kamil Azmi Megat Rus Kamarani, Senior General Manager of the Operational Sector, CIDB Malaysia, and the MIArb's Immediate Past President, Mr Kevin Prakash.

The Judge of the Kuala Lumpur Construction High Court, the Honourable Justice Dato' Lee Swee Seng, delivered a keynote address titled "**Disposal of Cases in the Kuala Lumpur Construction Court with particular reference to Adjudication and Arbitration**".

The introductory session featured a talk on "**Common Claims and Disputes in the Construction Industry**", presented by Ir. Harbans Singh K.S.

The second session, a discussion on "**Resolving Construction Disputes through CIPAA adjudication**", was led by Encik Muhammad Faisal Moideen, Ir. Oon Chee Kheng, the MIArb's President, Mr Sudharsanan Thillainathan, and

was moderated by the MIArb's outgoing Honourary Secretary, Ms Victoria Loi Tien Fen.

The third session, entitled "**Resolution of Construction Disputes through Arbitration: Where Does Arbitration Stand Now?**" was conducted by Dato' Nitin Nadkarni, Mr Rajendra Navaratnam, and Mr Kevin Prakash. This session was moderated by the MIArb's outgoing Vice President, Ms Hor Shirley.

Mr Lam Wai Loon and Sr. Dr. Noushad Ali Naseem Ameer Ali, in the final session on "**Avoidance of Disputes through Front-end Modern Legal Drafting**", spoke on "**Key Considerations When Negotiating Construction Contracts**" and "**Drafting in Modern Plain Legal Language**".

Ms Karen Ng Gek Suan, the MIArb's Deputy President who delivered the closing address, was instrumental in ensuring the event was so well attended that extra seating was hastily arranged at the eleventh hour. The MIArb's Vice President, Mr Gregory Das, was the master of ceremonies.

Seminar on "An Introduction to Arbitration" held jointly with the Kuala Lumpur Bar

26 May 2017

The MIArb, in collaboration with the Kuala Lumpur Bar, organised a seminar on "**An Introduction to Arbitration**", held at the Kuala Lumpur Bar Auditorium. This seminar was divided into three sessions – "**Introduction to Arbitration**", "**Arbitration Hearing Process and Procedure**", and "**Arbitral Awards – Enforcement and Challenge**", ably presented by the MIArb's Immediate Past President, Mr Kevin Prakash, outgoing Honourary Secretary, Ms Victoria Loi Tien Fen, and Deputy President, Ms Karen Ng Gek Suan. The seminar was well received with 62 attendees, and marks the first of a series of seminars and workshops implemented by the outgoing Council.

The MIArb 25th Annual General Meeting 2017

14 June 2017

RAIF Conference 2017, Hong Kong

13-15 October 2017

This year's RAIF Conference was attended by the MIArb's President, Mr Sudharsanan Thillainathan and the MIArb's Deputy President, Ms Karen Ng Gek Suan. Mr Sudharsanan Thillainathan spoke in a regional arbitration update series about the enforcement of arbitral awards in Malaysia.

The Jonathan Yoon MIArb Debate Series: Inaugural Debate

25 October 2017

On 25 October 2017, the MIArb held the inaugural debate of an exciting new series spearheaded by the MIArb's Vice President, Mr Gregory Das. This series is being held in honour of one of the MIArb's past Deputy Presidents, the late Mr Jonathan Yoon, who passed away in 2017.

The Jonathan Yoon MIArb Debate Series will feature leading practitioners and members of the judiciary debating topical issues and recent developments in the alternative dispute resolution sphere. The motion for the inaugural debate was "This House believes that the scope to challenge a domestic arbitration award under the Arbitration Act 2005 is too narrow at present", featuring Mr Mohanadass Kanagasabai, Managing Partner of Mohanadass Partnership speaking for the motion and Dato' Varghese George Varughese, retired Judge of the Court of Appeal speaking against the motion. After an intense hour, the votes were cast and counted, with Dato' Varghese George Varughese prevailing. The Winner's Trophy was kindly sponsored by Dato' Dr Cyrus Das.

The MIArb were especially honoured by the presence of Mr Jonathan Yoon's family and friends, and looks forward to hosting around three to four debates a year as a lasting tribute to a much missed colleague and friend.


INSTITUT PEMIMBANGTARA
MALAYSIA
THE JONATHAN YOON MIArb DEBATE SERIES
DEBATE MOTION:
This House believes that the scope to challenge a
domestic arbi tion award under the
Arbitration Act 20 is too na v at pre nt.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The MIArb Christmas Party

15 December 2017

New Members/Upgrades for Session December 2016 to July 2017

The Malaysian Institute of Arbitrators extends a warm welcome to our new Fellows, Members, Associates, and Affiliates.

Upgraded from Member to Fellow	M/No.	Date Joined
1.Kanagaeswaran Gunasegaran	Af/193	20 July 2017

Member	M/No.	Date Joined
1.Wai Chan Ming	A/245	14 December 2016
2.Sivabalan Sankaran	A/246	23 January 2017
3.Pristeen Sonia Thevadason James	A/247	23 January 2017
4.Tan Chee Ming	A/248	27 February 2017
5.Mohamad Akram Mohamed Karim, Sr	A/249	27 February 2017
6.Lim Sze Yue, Fabian	A/250	20 July 2017

Upgraded from Associate to Member	M/No.	Date Approved
1.Ahmad Fahmi Bin Hanapiah	M/469	27 April 2017
2.Chew Wee Ban	M/470	27 April 2017
3.Khoo Sin Lay	M/471	27 April 2017
4.Norhafizah Ahmad Powzi	M/472	27 April 2017
5.Ong Siew Mun, Kelly	M/473	27 April 2017
6.Tin Peng Ann	M/474	27 April 2017
7.Wai Chan Ming	M/475	27 April 2017
8.Wong Jian Bei	M/476	27 April 2017
9.Dawn Wong Keng Jade	M/480	14 June 2017
10.Nereen Kaur Veriah	M/482	20 July 2017

Associate	M/No.	Date Approved
1.Captain Sashidaran Gopala	M/466	23 January 2017
2.Ang Kok Keng, Ir	M/467	27 February 2017
3.Lim Fan Chong	M/468	27 February 2017
4.Mutaza Bin Md Noh	M/477	27 February 2017
5.Shamni A/P Sathasivam	M/478	27 April 2017
6.Tan Boon Hua	M/479	27 April 2017
7.Edward Vinodh Kuruvilla	M/481	22 June 2017
8.Chow Ruen Xin, Esther	M/483	20 July 2017
9.Sr Ivanhoe Lai Chee Seng	M/484	20 July 2017

Upgraded from Member to Fellow	M/No.	Date Approved
1.Isacc Sunder Rajan Packiananthan	F/120	14 December 2016
2.Shaun Tan Cheng Hong	F/121	2 August 2017

Upcoming Events

7 June 2018
The MIArb and the AIAC CPD Seminar Series: The Advantages of Alternative Dispute Resolution in the Resolution of Disputes

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26 June 2018
The MIArb 26th Annual General Meeting

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28 June 2018
The Jonathan Yoon MIArb Debate Series

For more information about the events on this page and other upcoming events organised by or participated in by the MIArb, visit our website: www.miarb.com.

INSTITUT PENIMBANGTARA MALAYSIA

Supported by:

AIAC ASIAN INTERNATIONAL ARBITRATION CENTRE

THE JONATHAN YOON MIArb DEBATE SERIES

Thursday, 28 June 2018
6.00 PM
Seminar Room, AIAC

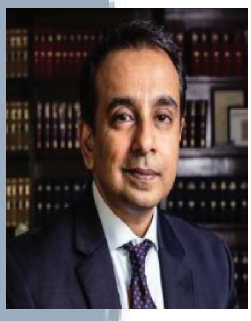
Debate Motion:

"This House believes that the continuing duty of disclosure of an arbitrator under section 14(2) of the Arbitration Act 2005 (as interpreted in MMC Engineering Group Bhd. v. Wayss & Freytag (M) Sdn. Bhd. [2015] MLJU 477) is too limited."

Mr Ranjit Singh
&
Mr Nahendran Navaratnam
(For the Motion)

vs.

Mr Yatiswara Ramachandran
&
Dato' Malik Imtiaz Sarwar
(Against the Motion)



*Cocktail Reception from 7.30 pm following the Debate

THE MALAYSIAN INSTITUTE OF ARBITRATORS
Room 11, Level 2, Bangunan Sulaiman, Jalan Sultan Hishamuddin, 50000 Kuala Lumpur
Tel:603-2271 1063 Fax:603-2271 1064 Email: info@miarb.com

THE JONATHAN YOON MIArb DEBATE SERIES

THURSDAY, 28 JUNE 2018
6.00 PM
SEMINAR ROOM, AIAC

CPD POINTS
Bar Council Malaysia
Board of Quantity Surveyors Malaysia
Board of Architects Malaysia
Board of Engineers Malaysia

Event Registration Fees

Member	-	**RM40**
Affiliated organisations	-	**RM50**
Non-members	-	**RM60**

5.30 pm – 6.00 pm	Registration
6.00 pm – 6.10 pm	Opening Remarks by Gregory Das Vice President of the Malaysian Institute of Arbitrators
6.10 pm – 7.00 pm	Debate *"This House believes that the continuing duty of disclosure of an arbitrator under section 14(2) of the Arbitration Act 2005 (as interpreted in MMC Engineering Group Bhd. v. Wayss & Freytag (M) Sdn. Bhd. [2015] MLJU 477) is too limited."*
7.00 pm – 7.05 pm	Closing Remarks
7.30 pm onwards	Evening Cocktails

Full Name: _____ **Profession:** _____

MIArb Membership No: _____ **Other Professional Bodies (Membership No):** _____ **E-mail:** _____

Company & Address: _____

_____ **Postcode:** _____

Tel. No (O): _____ **Tel. No (M):** _____ **Fax No:** _____

☐ *Please tick (√). I have read and understand the MIArb's Personal Data Protection Notice published on MIArb's website at http://www.miarb.com and I agree to MIArb's use and processing of my personal data as set out in the said notice.*

Payment by Cheque No. _____ RM_____, made payable to **"*The Malaysian Institute of Arbitrators*"**.

Bank In/Online Transfer (please email or fax copy of bank-in slip upon payment indicating name(s) of person(s) attending). Bank: **United Overseas Bank (Malaysia) Bhd** | Account No. **202-301-995-9** | Account Name: **The Malaysian Institute of Arbitrators.**

Registration is confirmed upon receipt of full payment on a first-come-first-served basis. MIArb reserves the right to: (i) change the programme / venue at any time; (ii) cancel or postpone the event at any time and under such circumstances, will refund registration fees in full, otherwise no refunds will be made for cancellations but substitution is allowed. Receipts will be issued at the venue. Photocopies of registration forms are acceptable.