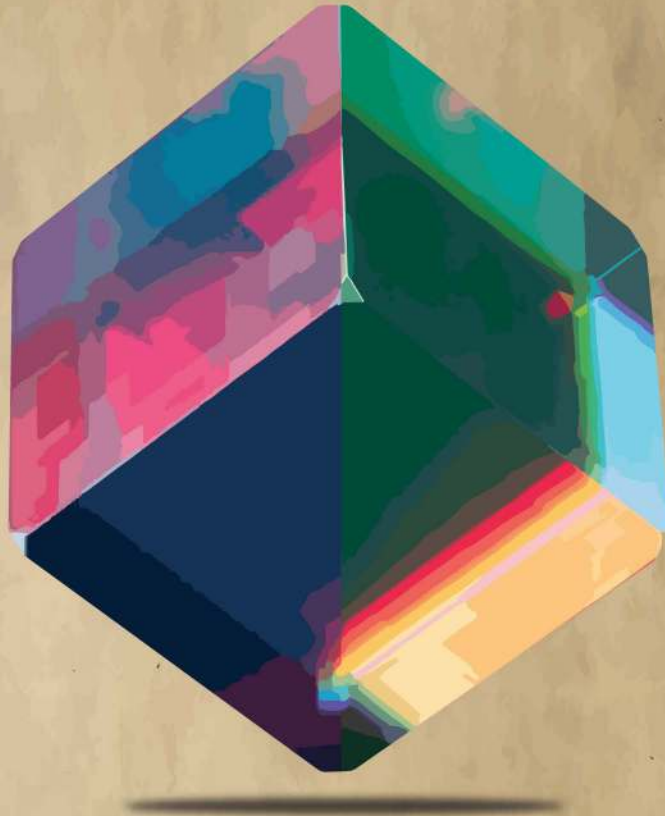




COMPASSUS
THE ODYSSEAN COURSE
TO MODERN ADR



RULES DAY

MONDAY, 3RD OCTOBER 2022

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

PROGRAMME

16:00 – 16:30 Registration

16:30 – 18:00 **Session 1 - The Tale of 1001 lights: Islamic Arbitration a Beacon of Inclusivity**

Arbitration as an alternative mode of dispute resolution can be traced to diverse sources, chief among which is divine law. Whether it is known as “Mohamedan law” or Shariah law, the Islamic legal system has always been a proponent of ADR mechanisms. These mechanisms are different, yet, not incompatible with modern concepts, such as arbitration. *Prima facie*, a similitude exists between the concept of *tahkim* and arbitration. Yet, this likeness has led to a considerable amount of misapprehensions with the possible compatibility of both concepts. The idea of Islamic Arbitration is deeply rooted in the Islamic tradition yet reinvigorated with modern concepts that draw inspiration from positive law. In spite of the weight of misconceptions, the AIAC has invested considerable time and energy in guaranteeing the practicality of Islamic Arbitration by amending its suite of i-Arbitration Rules with its recent publication of the AIAC i-Arbitration Rules 2021 on 1st November 2021.

In this session, our esteemed panel of speakers will address the particularity of Islamic Arbitration and the manner in which the AIAC i-Arbitration Rules 2021 have sought to guarantee a cohabitation between tradition and modernity. Through this discussion, clarity and understanding will dispel any misconception that might surround Islamic Arbitration.

Tune in to the in-depth discussions by Shariah Experts from differing schools of thought and jurisdictions, litigators from international arbitration practice groups, and not to mention academicians in Islamic Finance.



**Sharifah Shafika Alsagoff
Skrine**

Moderator



**Prof. Datin Dr. Rusni
Hassan**
International Islamic
University Malaysia



**Prof. Madya Dr. Mohd
Zakhiri bin Md Nor**
Universiti Utara Malaysia



Prof. Dr. Younes Soualhi
International Shari'ah
Research Academy for
Islamic Finance



Dr. Maria Bhatti
Western Sydney
University
(School of Law)

18:00 – 18:30 **Networking Session**



18:30 – 20:00

Session 2 - The AIAC 2021 Rules in the Face of Controversies and Cultural Nuances

In the last couple of years, we have witnessed a wave of reforms on the arbitration rules and practices by the leading arbitral institutions to respond to the various evolutionary needs of the arbitration community worldwide. On 1st August 2021, the AIAC amended its suite of Arbitration Rules and published the AIAC Arbitration Rules 2021 ("2021 Rules"), reflecting the latest innovations and developments in arbitration practice. The set of revised rules forming such "Winds of Reforms" not only respond to the needs of the current pandemic, but also aims to strike an ideal balance between cost-effectiveness and efficiency of the arbitral proceedings, whilst deviating from being a mere "postbox" and appointing authority.

In this session, the international External Advisory Committee responsible for the revision of the AIAC Arbitration Rules (AIAC's Rules Revision Committee) and practitioners from civil law and common law jurisdictions, will provide participants with insight into the unwritten aspects of arbitration at the AIAC through its 2021 Rules, as well as highlighting the challenge of international arbitration, litigating the crossroads of the common law and civil law traditions and the aptness of the Rules between two legal systems.



Prof. Chin Leng Lim
Chinese University of Hong
Kong
Moderator



Sun Wei
Zhong Lun Law Firm



Ulrich Kopetzki
ICC's Regional Director for
Europe



Asya Jamaludin
CMS Singapore



Vyapak Desai
Nishith Desai Associates



**Dr. Crina Mihaela
Baltag**
Stockholm University

20:00

Networking Session





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TO MODERN ADR



CONTRACTS DAY

TUESDAY, 4TH OCTOBER 2022

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

PROGRAMME

16:00 – 16:30 Registration

16:30 – 18:00 **Balancing Business and Budgets in the Technology Industry: The Role of Standard Forms in Technology Dispute Avoidance**

The debate over the minutiae in the job of contracts drafting, negotiating, and execution may cause legal advisors of tech industry players to overlook the demands of the technology industry. Often time, executing successful technology projects require flexibility and the ability to pivot quickly and smoothly to meet the demand of end users, and also involve intricacies like outsourcing to affiliate companies. This is very different from working on the production of products such as cars, houses, or planes, which from the very inception, can be visualised in its close-to-finish form. As Malaysia's digital landscape continues to rapidly expand and feature global entities, it is increasingly important for all project players in the technology industry to reach a level of sophistication and specialisation when tailoring new contractual terms and conditions for their projects in the world of software products and services. In this panel discussion, the AIAC Technology Expert Committee (AIAC TEC) will discuss the key issues considered by various corporations, software products and solutions providers, clients and end users when balancing the needs of their businesses against the constraint of budgets. The session will also provide attendees with actionable tactics and deeply insightful takeaways on the way forward in order to mitigate risks and manage technology contracts.



Adeline Chin
Law Asia 365

Moderator



Christine Ng
Adastra IP



Izwan Zakaria
Izwan & Partner



Mauricio Duarte
A2J Tech

18:00 – 18:30 Networking Session



18:30 – 20:00

Calming the Doldrums of the Construction Industry: The Role of SFC in Construction Dispute Avoidance

The existence of various standard-form construction contracts, such as those published by the International Federation of Consulting Engineers (FIDIC), Pertubuhan Akitek Malaysia (PAM) and the Public Works Department (PWD) have not freed the construction industry from experiencing challenges in construction projects, as we've seen over the years. Few examples of the challenges faced include cost and time overrun, fragmentation between project stages, financial constraints and labour unproductivity. These challenges are not unique to the Malaysian construction landscape, which is indeed a global phenomenon that causes adverse effects to the detriment of project players and stakeholders of the construction industry. In this session, the AIAC Standard Form of Building Contracts Expert Advisory Committee (AIAC SFC EAC) will discuss the balance of responsibilities to be borne by the employer, consultant, project administrator, contractors and subcontractors in a construction project. The panel will also delve into the AIAC Standard Form Contract and how the AIAC Standard Form Contract can be tailored to meet specific needs for the construction project, thus improving the construction quality standard.



Cindy Wong Xien Yee
Messrs. Wong Xien Yee

Moderator



Lam Wai Loon
Harold & Lam
Partnership



Suriana Abdul Hamid
UEM Edgenta Berhad



Ir. Lai Sze Ching
Lai Teh Adjudication &
Arbitration Chamber Plt



**Assoc. Prof. Sr. Dr.
Naseem Ameer Ali**
Massey University,
New Zealand

20:00

Networking Session





COMPASSUS
THE ODYSSEAN COURSE
TO MODERN ADR



INTERNATIONAL DAY

WEDNESDAY, 5TH OCTOBER 2022

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

PROGRAMME

08:00 – 08:30

Registration

08:30 – 10:00
(USA Session)

10:00 – 11:30
(Asia Session)

14:00 – 15:30
(Middle East Session)

15:30 – 17:00
(Africa Session)

17:00 – 18:30
(Europe Session)

Arbitration in the Age of Globalisation

Diversity in arbitration allows disputants and the tribunal to consider the different perspective to the proceedings within a wider socio-economic and cultural backdrop. This in turn, improves how arbitration is viewed in the eyes of its users and stakeholders. Procedurally, arbitrations have been observed to be practiced around the world pursuant to its respective jurisdictions. As such, it is imperative to identify the distinctive features in the execution and administration of arbitration internationally. This is to call for better diversity and inclusivity in global arbitral practice.

In these knowledge sharing sessions, distinguished speakers representing arbitral institutions as well as dispute resolution practices in selected continents will gather for a roundtable discussion on the varying jurisdictional experiences and exchange views on the institutional perspectives in international arbitration.

These sessions will also highlight the key distinctive features and commonalities of each region's arbitration procedure in hopes to discover sustainable futuristic outcomes in the ADR landscape.

18:30

Networking Session



SPEAKERS

08:30 – 10:00

USA Session



Daniel Chua
Mayer Brown

Moderator



Eva Y. Chan
Skadden, Arps, Slate,
Meagher & Flom LLP



Hiroko Yamamoto
Debevoise & Plimpton
LLP



Kirsten Teo
Dechert LLP



Nawi Ukabiala
Debevoise & Plimpton
LLP



**Berglind Halldorsdottir
Birkland**
Debevoise & Plimpton
LLP

10:00 – 11:30

Asia Session



Kwong Chiew Ee
Rahmat Lim & Partners

Moderator



Tejus Chauhan
ICC South Asia



Neeti Sachdeva
Mumbai Centre for
International Arbitration



Robert Wachter
Lee & Ko (Korea)



Kelvin Poon
Rajah & Tann Singapore
LLP

14:00 – 15:30 Middle East Session



Lilien Wong
Shearn Delamore & Co.

Moderator



Sarah Malik
SOL International



Faisal Attia
Pinsent Masons



Thembela Ndwandwe
Freshfields Bruckhaus
Deringer



Sarah-Jane Fick
Freshfields Bruckhaus
Deringer (Dubai)

15:30 – 17:00 Africa Session



Nereen Kaur Veriah
Christopher & Lee Ong

Moderator



Dorothy Ufot
Dorothy Ufot & Co.



**Chief Felix
Okereke-Onyeri**
Jasmine Advocates



Emmanuel Dike
Jasmine Advocates



David Edet
Dorothy Ufot & Co.

17:00 – 18:30 Europe Session



Ashique Rahman
Fietta LLP

Moderator



Ashwita Ambast
Permanent Court of
Arbitration



Judith Knieper
UNCITRAL



Rocio Digon
White & Case



Tope Adeyemi
Debevoise & Plimpton
LLP



Elinor Thomas
DLA Piper



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 unwavering in its commitment to the industry in fielding itself unto unfamiliar terrain and in mapping a new course, fit for the modern ADR world.



**ASIA ADR WEEK
KEYNOTE SPEAKER**

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



**ASIA ADR WEEK
SPECIAL ADDRESS**

THE RIGHT
HONOURABLE TUN
TENGGU MAIMUN
BINTI TUAN MAT



**CIPAA CONFERENCE
KEYNOTE SPEAKER**

THE HONOURABLE
DATO' LEE SWEE
SENG

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 registration,
please contact events@aiac.world/ +603 2271 1000



Hybrid Event
(Virtual and In-person)

PROGRAMME



DAY 1 (THURSDAY, 6TH OCTOBER 2022)

08:00 – 09:00	Registration
09:00 – 09:15	ASIA ADR WEEK 2022 Opening Remarks
09:15 – 09:30	ASIA ADR WEEK 2022 Special Address
09:30 – 10:45	ASIA ADR WEEK 2022 Keynote Address
10:45 – 11:00	Launch of ASIA ADR WEEK 2022: “Compassus – The Odyssean Course to Modern ADR”
11:00 – 11:30	Networking Break

Session 1 – *Here Comes Sparta: The Impact of Armed Conflicts on International Arbitrations*

With the recent escalation of armed conflicts in the world today, the imposition of political and economic sanctions by states across the world further grips international arbitrations in a precarious position when parties and stakeholders are made recipient of restrictive sanctions imposed by state parties. In this session, the speakers will discuss the dichotomy of International Humanitarian Law and International Investment Law, following the legal repercussions of armed conflicts towards ongoing international arbitrations and its subsequent arbitrability under inconducive/uncertain circumstances.



Ana Maria Daza-Clark
University of Edinburgh

Moderator



Tan Sri Dato' Cecil Abraham
Cecil Abraham & Partners



Dr. Kabir Duggal
Arnold & Porter



Amanda J. Lee
Independent Arbitrator
and Founder of Careers
in Arbitration



Aisya Abdul Rahman
International Committee of
The Red Cross (ICRC)



Paul Comrie-Thomson
Meredith Connell

13:00 – 14:00	Lunch
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14:00 – 15:00

Session 2 – The Wrath of the Token: The Arbitrability of Blockchain Related Disputes and the Role of Arbitral Institutions

As the use of cryptocurrency and the digital asset industry continues to expand at a rapid pace, creating the infrastructure necessary to enable crypto's safe and healthy growth is key. New cryptoassets are issued on a daily basis and other applications utilizing distributed ledger technology (DLT) are receiving substantial investment from established players and disruptive start-ups. However, with growth comes a rise in potential and actual disputes. Questions as to whether international commercial arbitration is the best mechanism to adjudicate cross-border disputes relating to cryptocurrency, and if an arbitral award in such disputes can be, and should be, enforceable are often raised when referring blockchain disputes to arbitration. This esteemed panel of speakers in this session will discuss the arbitrability of blockchain related disputes and how arbitral institutions could amplify its entelechy in extending its administrative capabilities into the cryptosphere.



Sarah Chojecki
Hanessian ADR
Moderator



Dan Perera
HFW



Javier Ortiz de Artiñano
The Blockchain Arbitration Society



Shaun Leong
Withers KhattarWong LLP



Shaun Paulian
D&P Law Group



Peter Smith
Charles Russell Speechlys LLP



Chua Vi Cher
Funding Societies (Singapore)

15:00 – 16:30

Session 3, Breakout 1 – The Battle of .com: Primer on Domain Name Disputes

As domain name disputes continue to gain prevalence due to widespread practice of cybersquatting and the convenient shift in conducting commerce online resulted by the Covid-19 pandemic, trademark owners across the world are becoming increasingly vigilant in reinforcing their online presence in offering authentic content and sales to their clients through the internet. This session will explore the latest regulatory and practical trends in domain name dispute and its resolution mechanisms through the lens of ADR. This session will also consider the AIAC's role as the administrative body of domain name disputes under MYNIC and ADNDRC.



Tilbe Birengel
Erdem & Erdem
Moderator



Kuek Pei Yee
Skrine



Janet Toh
Shearn Delamore & Co.



Kelly Yu
Hong Kong International Arbitration Centre



Bahari Yeow Tien Hong
Gan Partnership



Harini Narayanswamy
Narayanswamy Associates



Patricia Chung
IIPCC Malaysia

Session 3, Breakout 2 – Hermes Beyond Helios: The Rise of Space Disputes and Fast Fashion

The notion of integrating mediation in resolving space disputes has fostered many forums as of late. Compounded with the robust growth of space manufacturing and exploration, commercial spacefarers may face challenges in resolving disputes arising from space commerce. However, its practicality and feasibility remain elusive as considerations on jurisdiction, enforcement, and administration remains arduous to concretise. Similar contention can be echoed in the field of fast fashion. As fashion houses big or small are shifting their marketing strategies to the internet due to its outreaching potential, fast fashion brands tend to exploit designs and intellectual property of smaller scale houses in order to meet the ever-increasing demand. This two-pronged session will provide an overview on the intricacies of fast fashion and space commerce as well as how its stakeholders may utilise ADR as an efficient and cost saving means to safeguard their businesses whilst retaining their vision and goodwill.



Shanti Abraham
Shanti Abraham &
Associates

Moderator



Daniela Della Rosa
Curtis, Mallet-Prevost,
Colt & Mosle LLP



**Dr. Vince See Eng
Teong**
Eng Teong & Co.



Laura Yvonne Zielinski
Holland & Knight



Shaun Lee
Bird & Bird



Dong Qiyao
WIPO Arbitration and
Mediation Center

Session 3, Breakout 3 – Lex Machina: The Call for A.I. Regulation and Data Security in ADR

The integration of artificial intelligence (A.I) is reshaping the way legal services are administered, which includes ADR proceedings. Similarly, the forum on data security is gaining traction as confidential or sensitive commercial data are often shared between parties, tribunals and arbitral institutions. With the integration of A.I into the administration and delivery of arbitral practice, concerns over breach of data security arising from the use or misuse of A.I continues to hamper what might be an innovative approach in propelling the ADR industry into a greater, digitalised height. This session will explore how the integration of A.I into arbitral practice may amplify the efficiency of ADR proceedings and points of reconciliation in safeguarding ADR proceedings from data breaches



Ganesan Nethi
Tommy Thomas

Moderator



Prof. Tania Sourdin
University of Newcastle
(Newcastle Law School)



Prof. John Zeleznikow
La Trobe University



Dr. Bin Li
University of Newcastle
(Newcastle Law School)



Ankita Dhawan
Ikigai Law



Jon Khong
Virdos Lima



Ben Sigler
Stephenson Harwood LLP

16:30 - 17:00

Networking Break

17:00 - 18:30

Session 4 - Sailing Southeast: Malaysia as the Agora of International Arbitration

Over the past few years, Malaysia has seen several internationally renowned law firms setting up their practices in Malaysia. Such regional shifts are evident of Malaysia's positioning as a conducive environment for international commerce and dispute resolution. Like the "bowline" - referred to as the "king of knots" with multiple purposes aboard a ship - this session will consider Malaysia's strengths as a safe and competent commercial ecosystem, and what effect, if any, does the sailing of "new ships" to Malaysia have on the ADR landscape and practice of international arbitration in Malaysia.



Jocelyn Lim Yean Tse
Skrine

Moderator



Nagarajah Muttiah
Rosli Dahlan Saravana
Partnership



Peter Godwin
Herbert Smith Freehills
LLP



Shanti Mogan
Shearn Delamore & Co.



David Grief
David Grief International
Consultancy



Daniel Boon
Stephenson Harwood
LLP



Avinash Pradhan
Christopher & Lee Ong

18:30 onwards

Networking Event

DAY 2 (FRIDAY, 7TH OCTOBER 2022)

08:30 – 09:30 Registration

09:30 – 11:00

Session 1 – *Rechartering a Modern Legislative Framework*

Malaysia has, for the last two decades, taken pride in joining the ranks of “pro-arbitration” jurisdictions. Malaysian arbitration law is underpinned by the Malaysian Arbitration Act 2005 (“AA 2005”). The AA 2005 repealed the Arbitration Act 1952 and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards Act 1985. The latest amendment to the AA 2005 came into force on 8th May 2018, bringing the AA 2005 in line with the latest revision of the UNCITRAL Model Law on International Commercial Arbitration 1985. Four years have passed since the last amendment and Malaysia has witnessed a number of changes in the arbitration industry. Do we need another reform to further modernize the statutory framework in order to provide fertile ground for the development of domestic and international arbitration? This session will discuss the deficiencies in the AA 2005 that have been identified in various case laws and what changes could be proposed in keeping with the development with the world today.



Abang Iwawan
Abang & Co
Moderator



Dato' Nitin Nadkarni
Lee Hishammuddin Allen
& Gledhill



Asya Jamaludin
CMS Singapore



Rajendra Navaratnam
Azman Davidson & Co



Kamilah Kasim
Rahmat Lim & Partners



Foo Joon Liang
Gan Partnership



Karen Ng Gek Suàn
Karen, Mak & Partners

11:00 – 11:30 Networking Break

11:30 – 13:00

Session 2 – *The Guided Way: Future Fee Arrangements in Arbitration*

Much has been said about the viability of third-party funding in Malaysia. And whilst we have yet to see a progressive shift domestically, the international market for third-party funding has expanded, evolved and become more competitive. The rules governing financial arrangements between lawyers and clients have also changed. Recently, Singapore passed a bill to permit Conditional Funding Agreements (CFAs). CFAs provide parties with an alternative to traditional fee arrangements and third-party funding (TPF) by enabling part or all of their lawyers' fees and costs, as well as an uplift fee, to be conditioned on the outcome of the dispute. This session will discuss the framework of CFAs from a Hong Kong, Singapore, UK and Australia perspective, and what Malaysia can take away from this in looking to implement both CFAs and TPF domestically.



Shaun Tan Cheng Hong
Rosli Dahlan Saravana
Partnership
Moderator



Shamila Neelakandan
HKA Malaysia & Singapore



Nick Longley
HFW



Katie Chung
Norton Rose Fulbright
(Asia) LLP



Lim Tuck Sun
Chooi & Company +
Cheang & Ariff



Gitanjali Bajaj
DLA Piper



Edward Taylor
Shearman & Sterling

13:00 – 14:30

Lunch

14:30 – 16:00

Session 3, Breakout 1 – Tackling Parallel Proceedings: A Never Ending Journey

Parallel proceedings are prone to arise in arbitrations dealing with investor-state disputes. Typically, in instances where several international investors of different nationalities are impacted by the same measure from a State and subsequently commence an Investor-State arbitration pursuant to their respective bilateral treaties with the State. This issue may be further exacerbated when parallel proceedings give rise to two inconsistent outcomes, resulting in significant uncertainty in the enforceability of the award. This session will explore the possible measures to anticipate and mitigate the risks of parallel proceedings, including the incorporation of the Fork-in-the-road provision in the contract, consolidation, stay of proceedings and application of *res judicata*.



Datuk D.P. Naban
Rosli Dahlan Saravana
Partnership
Moderator



Anil Changaroth
ChangAroth Chambers
LLC



Chiann Bao
Arbitration Chambers
(New York, Hong Kong
and London)



Richard Little
Eversheds Sutherland



Sheila Ahuja
Allen & Overy's Global
International Arbitration
Group (Singapore)



Phillip Richardson
Eversheds Sutherland



Sherly Gunawan
Singapore International
Arbitration Centre

Session 3, Breakout 2 – Summary Determination vs Summary Judgment: A Big Duel?

Traditionally, arbitration has been hailed by some as a faster and cheaper alternative to court proceedings, and it is therefore a preferred method of dispute resolution as opposed to court litigation. However, in matters where less is at stake, costs can often become disproportionate. Recognising this, some arbitration institutions, including the AIAC, have recently introduced summary determination procedures in arbitration proceedings as a means of carving out unmeritorious claims to pursue more cost and time effective arbitrations. This session will explore the nature, function and differences between summary determination procedure in arbitration proceedings and the application for summary judgment in court litigation.



Daniel Chua
Mayer Brown
Moderator



**The Honourable Tuan
Leong Wai Hong**
Kuala Lumpur High
Court



Lim Chee Yong
Lee Hishammuddin Allen
& Gledhill



Belden Premaraj
Messrs. Belden



Jeremie Witt
CMS UK



**Raja Eileen Soraya binti
Raja Aman**
Raja, Darryl & Loh



Han Li Meng
Christopher & Lee Ong

Session 3, Breakout 3 – Playing Solomon: A Temptation to be Resisted?

There is a perception that arbitrators engage in a practice of compromise when rendering decisions, instead of making hard decisions, a process commonly referred to as “baby splitting”. This session will discuss if baby splitting is a positive thing, noting that, in choosing arbitration, some are in fact seeking to compromise in the interest of maintaining relationships and trying to “put the train back on the track”. Alternatively, should “baby splitting” be exercised equitably when circumstances allow?



Lim Tse Wei
Herbert Smith Freehills
LLP

Moderator



Adrian Hughes KC
39 Essex Chambers



Wilfred Abraham
Zul Rafique & Partners



SC Andre Yeap
Rajah & Tann Singapore
LLP



Kim M. Rooney
Gilt Chambers



Dr. Mohamed Raffa
RLAWYERS Group



Anne K. Hoffmann
Hoffmann Arbitration

16:00 – 16:30

Networking Break

16:30 – 18:00

Session 4 Arbitration in Human Rights, ESG and Employment Disputes: Bridge to Terabithia?

Arbitration is slowly gaining popularity as a forum for business and human rights (“BHR”) disputes. Recently, the Government of Malaysia passed an employee centric amendment in the Employment Act 1955. Similarly, any potential adverse human rights impacts and associated legal risks in dealing with issues on environmental, social and corporate governance (“ESG”) is now a priority for many corporations due to regulatory change. Despite the recent development and emphasis on BHR, the arbitrability of employment and ESG disputes remain aspirational (almost fantasy-like), if not, dubious. This session will focus on the role, features, rationality, suitability and capability of arbitration in bridging the gap between BHR, ESG and employment disputes.



Ilene Chua
Oon & Bazul LLP

Moderator



Siva Kumar Kanagasabai
Skrine



**Dato' Thavalingam C.
Thavarajah**
T. Thavalingam & Co.



Joaquin P. Terceño
Freshfields Bruckhaus
Deringer



Donovan Cheah
Donovan & Ho



Mark Mangan
Dechert LLP



M. Ravi
M. Ravi Law

18:00 onwards

AIAC ADR Week 2022 Evening Reception

DAY 3 (SATURDAY, 8TH OCTOBER 2022)

08:30 – 09:30	Registration
09:30 – 09:45	CIPAA Conference Opening Remarks
09:45 – 10:30	CIPAA Conference Keynote Address
10:30 – 11:00	Showcase of the CIPAA 2012 Statistics
11:00 – 11:30	Networking Break
11:30 – 13:00	Session 1 – Rapid Fire Debate

Debate 1: Bounding without Boundaries

The CIPAA 2012 came into force in 2014 to provide a temporary resolution for payment disputes arising out of construction contracts. Though arguably having fulfilled its goal in the early years, payment disputes have now become more complex with claims increasingly accompanied by voluminous documents following the evolution of adjudication practice and procedure, leaving the black letter of the law trailing behind and practitioners discovering more and more lacunae in the CIPAA 2012 framework. This brings about the question as to whether CIPAA 2012 still has potential to serve its purpose at a day and age where final claims are now permitted, and with parties increasingly adopting creative approaches to adjudication processes – ultimately, veering away from the Legislature’s intention of CIPAA 2012?

House A: *This House believes that the CIPAA 2012 framework remains a viable alternative dispute resolution method and should continue to be the first and primary avenue for construction disputes as a statutory mechanism.*

House B: *This House believes that the present CIPAA 2012 has veered away from its intended purpose and no longer sustains contemporary dispute resolution given the likes of expedited arbitration processes that provide a final and binding resolution at an equally quick-paced duration.*

Debate 2: Who’s Who – The Race for First Dibs

The right to refer a dispute to adjudication has typically been that of the unpaid party’s given that the aim of the CIPAA 2012 is to facilitate and progress payment disputes and avoid short-term cash-flow problems during project delivery and resultant delays. However, with the draftsmen of CIPAA 2012 permitting either party, under section 7, to refer a dispute arising from a payment claim to adjudication, what the industry has witnessed increasingly taking place is the “race to file the Notice of Adjudication” – reflecting the statute’s recognition of a non-paying party’s ability to step into the shoes of the Claimant, whilst the unpaid party (although being the party that served the Payment Claim) steps into the shoes of the Respondent. This practice has seemingly depicted the perceived importance and significance associated to one occupying the status of Claimant – specifically, over that of the Respondent. This may hold true given that the right to withdraw adjudication proceedings per section 17(1) and the right to a final say in the form of the Adjudication Reply, lies with the Claimant. Whilst the characterisation of the parties may not affect the outcome of the proceedings since the amount in dispute is limited to what has been claimed by the unpaid party in the Payment Claim, the question still remains as to whether this race to be identified as the Claimant signifies a much larger problematic play at hand, that is, dominance in adjudication proceedings and the effect (strategic or otherwise) it could potentially have to the legitimate practice and procedure of adjudication.

House A: *This House believes that the race to become the Claimant is an effective play in strategy, by feeding further into a perceived bias of Claimants being treated more favourably in adjudication proceedings.*

House B: *This House believes that the race to become the Claimant has no effect on the practice and procedure of adjudication and is, on the contrary, a useful means of ensuring that disputes are promptly referred to adjudication.*

Debate 3: Quality, Speed and Natural Justice – Balancing the Three Legged Stool

Under the CIPAA 2012 framework today, adjudication proceedings are estimated to be completed within five months from the issuance of the payment claim up until the delivery of the adjudication decision. This is pertinent as it provides a whirlwind remedy for subcontractors who are financially constrained and minimizes prolonged suspensions in construction works. However, in practice, parties as well as the adjudicator often seek for extensions of time for various reasons citing the necessity to strengthen their claims and determination respectively. These include requests by parties for the filing of submissions and responses further to and in addition to the Adjudication Reply. This consideration is complicated further when the non-paying party/Respondent advances defences and/or set offs in the Adjudication Response not previously raised in the Payment Response – causing a ripple effect as the unpaid party/Claimant is given insufficient time to respond and the adjudicator is now required to review more documents within the same timeframe of forty-five days, potentially jeopardising the quality of the decision. This brings about the question as to whether the current timelines and the scope of document submissions in CIPAA 2012 are adequate to provide a just resolution without compromising the quality of the proceedings.

House A: This House believes that the current timeline is sufficient given the goal of quick and speedy justice, and therefore should be strictly adhered to.

House B: This House believes that the essence of CIPAA 2012 will be not defeated despite the widening of timelines in the interest of upholding quality and pursuit of natural justice in adjudication proceedings.



**The Honourable Dato'
Mary Lim Thiam Suan**
Federal Court

Moderator



**Ahmad Fadzly bin
Abdul Gani**
Azmi Fadzly Maha &
Sim



Kalaiarasan Rasadurai
Skrine



Loshini Ramarmuty
'Skrine



Leong HongKit
MAC Consultant



Janet Chai
Chooi & Company +
Cheang & Ariff



Balan Nair Thamodaran
Lavania & Balan Chambers

13:00 – 14:00

Lunch

14:00 – 16:00

Session 2 – Guide to the Classics: Revisiting the Need for Amendments to the Construction Industry Payment and Adjudication Act 2012

The CIPAA 2012 augured well for the healthy evolution of the construction industry in Malaysia when it was first implemented in 2014. However as considered in the preceding debate session on the issues that have been faced in recent years, it is apparent that although Malaysia recognises the importance of resolving payment disputes in a fair, just and expeditious manner with CIPAA 2012, the legislation, as it stands, does not provide a comprehensive interpretation to a myriad of issues that have since cropped up. This includes, amongst others, a proper interpretation of construction work, accepted methods of service, clarification on preconditions for a stay of adjudication proceeding, non-paying party's right to refer a dispute to adjudication, the inclusion of final account claims and the direct payment from principal remedy. With the construction adjudication community in Malaysia recognising an urgent need for reform, this session will attempt to serve as a platform to discuss these necessary amendments as well as its prospective (or retrospective) effect on the industry.



**Kuhendran
Thanapalasingam**
Zul Rafique & Partners
Moderator



Deepak Mahadevan
Azmi Fadzly Maha &
Sim



Shannon Rajan
Skrine



Chan Kheng Hoe
Chong + Kheng Hoe
Advocates



Ir. Harbans Singh KS
HSKS Dispute Resolution
Chambers



**Celine Jeevamalar
Chelladurai**
Celine & Oommen



**Rammit Kaur Charan
Singh**
Victorious Vie Plt

16:00 – 16:30

Networking Break

16:30 – 18:00

Session 3 *Thumb Compass: The Effect, Survival and Prospect of the 2022 Inflation on Construction and Adjudication*

The rate of inflation in the construction industry are predominantly determined by the costs of various construction materials, labour as well as the machinery needed to complete a particular project. Apart from that, the rate of construction activity also plays a vital role in the construction inflation. This is because, when the rate of a construction activity is high, there is a greater opportunity to submit bids on more work and the bid margins may be higher. This session will explore on the current inflation affecting the construction industry as a whole and whether it will leave a permanent impact on construction industry, which would then, in turn give rise to more construction disputes or alternatively leave adjudication at an all-time low for cost managing purposes.



Sr. Chan Kar Leng
Northwood Consulting
Sdn Bhd
Moderator



**Thayanathan
Baskaran**
Baskaran



Rohan Arasoo
Harold & Lam Partnership



**Vatsala
Ratnasabapathy**
Zain and Co.



James P. Monteiro
James Monteiro
Advocates & Solicitors



Serene Hiew
Harold & Lam Partnership



Victoria Loi Tien Fen
Shook Lin & Bok

18:00 onwards

Networking Event