



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
(In-person at Bangunan Sulaiman
and virtually via Brella)

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

11:30 – 13:00 **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.

13:00 – 14:00 Lunch

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.

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.

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.

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.

16:30 – 17:00 Networking Break

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.

18:30 onwards Networking Event

DAY 2 (FRIDAY, 7TH OCTOBER 2022)

08:30 – 09:30 Registration

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.

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.

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*.

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.

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?

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.

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 2012 Opening Remarks
09:45 – 10:30	CIPAA 2012 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.*

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.

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.

18:00 onwards

Networking Event

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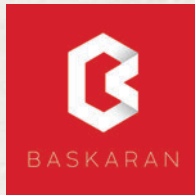


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