

Kluwer Arbitration Blog

Interviews with Our Editors: In Conversation with Datuk Sundra Rajoo, Director of the Asian International Arbitration Centre (AIAC)

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Chartered Arbitrator Datuk Sundra Rajoo Nadarajah is a man of no little distinction. He is currently the Director of the Asian International Arbitration Centre (AIAC) and President of the Asian Institute of Alternative Dispute Resolution (AIADR), and he also previously served as President of the Chartered Institute of Arbitrators (2016). He has been the founding President of many institutions in Malaysia including the Society of Construction Law and Sports Law Association Malaysia, and – among many other accomplishments – has also authored and/or co-authored 14 books on Arbitration, Construction Law and Alternative Dispute Resolution (ADR).

Datuk Sundra, thanks for joining us today! We are excited to hear your insights on your career and AIAC.

1. Since your first appointment as Director of AIAC (then Kuala Lumpur Regional Centre for Arbitration) in 2010, the institution has grown to become one of the most influential arbitration institutions in Asia. What are some of the watershed moments from your time as director of AIAC and can you please share your thoughts on what it's like to be back at the helm as of March 2023?

Thank you so much for this interview. I am delighted to share my thoughts with you.

During my previous tenure as the Director of AIAC from 2010-2018, one of the pivotal moments was the rebranding of the Regional Centre of Arbitration Kuala Lumpur (RCAKL) to Kuala Lumpur Regional Centre for Arbitration (KLRCA) in May 2010 symbolising the Centre's regional forward-looking growth. Fast forward to 2018, in conjunction with its 40th anniversary, the KLRCA was officially renamed to the Asian International Arbitration Centre (AIAC). The renaming was aimed to be in line with the Centre's next phase of growth and expansion, and a timely reflection of the Centre's capabilities, heritage, and vision – to offer ADR services not only within Malaysia but beyond. Since its inception, the Centre has evolved into a global hub for ADR, being built from ground up especially after I took over in 2010, starting with only 22 cases in 2010 and recording 932 cases in 2017.

I am gratified to be back at the helm of AIAC five years after my previous tenure. As your readers may be aware, the past few years have been challenging for me. Amongst others, I faced several criminal charges in 2019 relating to certain acts allegedly committed during my earlier tenure as Director of AIAC. Even though I was resoundingly vindicated by the Malaysian High and Federal Courts in a process that ended in April 2021, AIAC and I now face the challenge of making up for AIAC'S loss of high value and international cases over the past few years. It is now important for the Centre to show that it is independent and efficient with a commitment to promote ADR services in Asia and beyond.

Looking forward, with the objective of progress in mind, I aspire to showcase the full spectrum of excellence and leadership that AIAC is capable of, domestically, regionally as well as internationally. One example is the recent modernisation of the Centre's institutional ADR rules in August 2023. This serves as a testament to our unwavering commitment to remain at the forefront of industry standards and best practices. It is also essential to recognise that AIAC holds the distinction of being one of Asia's oldest institutions, predating even the establishment of the arbitration centres in Hong Kong and Singapore.

I am committed to enhancing and upgrading our state-of-the-art facilities as well as attracting top-tier international professionals to revitalise the Centre. Our offices at Sulaiman Building are widely regarded as some of the best ADR venues in the world. In a survey conducted by the Global Arbitration Review (GAR) in 2022 on hearing centre preferences, AIAC was [ranked at the forefront](#) among other international institutions, having the highest number of hearing rooms and largest room capacity.

Ultimately, I am resolute in aiming to position AIAC in its rightful role as a premier institution in Asia and to build upon the legacy amassed by AIAC through its 45 years of existence, with the aspiration of achieving even greater heights.

2. What are the primary goals you aim to accomplish as director of AIAC over the next two years?

My primary objective is to strengthen AIAC's international reach and presence, position AIAC as one of the leading arbitral institutions in the Asia-Pacific region, and reaffirm AIAC's status as the ADR hub in Asia.

To achieve this goal, we are actively working on expanding our international reach by forging strategic partnerships with leading arbitration institutions, organisations and various stakeholders worldwide. This will enable us to collaborate on joint initiatives, share knowledge, and attract a diverse pool of ADR practitioners and users to AIAC.

I also recognise the significance and need of technology in modern ADR, and I aim to implement tools and platforms to streamline the arbitration process, internally and externally. By embracing innovation, we hope to enhance efficiency, reduce costs, and provide a seamless experience for all users, thereby streamlining processes, reducing administrative burdens, and enhancing the overall ADR experience.

However, as much as my aims and ambitions for the Centre are focused on its onward and upward progression, I believe that one must not forget its roots and one of my primary goals in the next

few years is to promote ADR in East Malaysia. AIAC is dedicated to this initiative through building a physical AIAC presence in terms of an AIAC Sarawak office in Kuching, and I look forward to continuing to work with our stakeholders to provide greater accessibility, training and practical opportunities for the development of ADR in the Eastern Malaysia region.

3. *Previously in our blog, there have been discussions concerning whether certain changes should be made to the Malaysian Arbitration Act. From your perspective, are there any particular amendments that should be made to facilitate a more pro-arbitration environment in Malaysia?*

The Malaysian Arbitration Act 2005 (“the Act”) was previously amended in 2018, aligning it with the revisions of the UNCITRAL Model Law and the evolving practices of leading arbitration jurisdictions. For example, Section 42 of the Act was deleted such that domestic parties may no longer challenge an arbitral award before the High Court on grounds of questions of law. The purpose of the deletion of this section was to enhance the finality of arbitral awards and Malaysia’s profile as a safe seat and pro-arbitration jurisdiction.

Looking forward, I believe that there is scope for Malaysia to authorise and embrace third-party funding within its legislative framework, just as other common law jurisdictions such as Singapore and Hong Kong have. Considering provisions that explicitly recognise and regulate third-party funding in the Act would provide clarity and certainty to parties seeking third-party funding.

4. *Let’s talk about the revised AIAC Arbitration Rules (2023). What are some of the new features of these rules and are there any unique advantages of arbitration under the AIAC rules compared to under other institutional rules?*

The AIAC Arbitration Rules 2023 (“the 2023 Rules”) are an enhancement to the AIAC Arbitration Rules 2021. The 2023 Rules are crafted to be in close alignment with the UNCITRAL Arbitration Rules. Our focus for this revision is on clarity, simplicity, and autonomy. This alignment ensures that the dispute resolution processes and decisions rendered by AIAC are recognised, enforceable, and in tune with global best practices. We have made enhancements to various provisions, including consolidation and joinder provisions, technical review provisions, third-party funding provisions, summary determination, and settlement negotiations.

The summary determination clause grants parties the authority to opt for summary determination when a case is manifestly without merit. By allowing parties to streamline the resolution process and manage their resources efficiently, AIAC’s framework aligns with the fast-paced demands of trade.

Another unique feature of the new 2023 Rules is the introduction of the provision relating to third-party funding.¹⁾ In this regard, the Parties have the obligation to disclose the existence of the funding as well as the identity of the funder, all while keeping in mind the possibility of publishing the award in the future.

Rule 24 of the 2023 Rules is also formulated to address previous concerns on the vacancy of the

Director's office, wherein the powers vested in the Director under the 2023 Rules are assumed by other officers of AIAC, namely the Deputy Director, the Assistant Director or the Head of Legal Services, in order of precedence.

5. In 2012, you oversaw the launch of the world's first i-Arbitration rules (i.e., arbitration rules guided by Shariah principles), and these rules were revised in 2023. Can you give us an introduction to these rules and when parties might want to make use of them? To what extent have these rules been utilized since they were initially launched and what are the future prospects for their use?

Our award winning i-Arbitration Rules²⁾ are modelled after AIAC's Arbitration Rules. They incorporate specific Islamic elements and principles to ensure consistency in interpretation, integrity of the arbitral proceedings, and enhanced party autonomy.

AIAC has recently upgraded its framework for Islamic Arbitration to offer a dedicated set of Rules that adhere to Islamic principles, allowing for reference to the Shariah Councils and experts to ensure a fair and just resolution process. The AIAC i-Arbitration Rules 2023 were officially launched during one of our annual flagship events, the ASIA ADR WEEK 2023, themed "*Prism: The Spectrum of ADR.*"

The Procedure for Reference to Shariah Council or Shariah Experts (Rule 13) is a key provision in the 2023 Rules. This is one of the most important features that will assist in the enforcement of the Islamic arbitration awards.

In practice, our i-Arbitration model clause is integrated into many domestic and international contracts. Whilst the model submission clause is primarily used in contracts of a commercial nature, it is noteworthy that we also find our model clause integrated into financial contracts with Islamic financial institutions. This demonstrates the continuous expansion of the Islamic arbitration market. With this in mind, our i-Arbitration Rules are tailor-made to encourage the Muslim community to utilise and adopt our Rules to resolve disputes.

6. Since its establishment in 2017, the AIAC Young Practitioners' Group (YPG) has been aiding in the career advancement of young practitioners and students in arbitration. What do you see as the role of YPG and what lies on the horizon in terms of upcoming events or initiatives?

The AIAC Young Practitioners Group (YPG) was launched on 17th March 2017, under the auspices of AIAC to bring together dispute resolution practitioners below the age of 40 and students interested in building their careers in this fast-growing and dynamic field.

The role of the YPG is to raise awareness about ADR among young talents as well as to encourage students to study ADR, fostering networking among like-minded peers. The group has achieved remarkable success from its inception. Within a year, the YPG grew to over 1,200 members hailing from more than 40 jurisdictions and 4 continents.

The YPG is active in organising events, with the latest being the [AIAC YPG Conference 2023](#),

held in conjunction with the 7th AIAC Pre-Moot, titled “*To Kingdom Come: Drawing the Line in Dispute Resolution*” on 9 March 2023.

Currently, AIAC is in the midst of re-electing the YPG Council for the term of 2023-2025 as well as revisiting the structure of the group, with some exciting plans on the horizon that you should keep an eye on.

7. Outside of AIAC, you have held numerous prominent leadership positions in other organizations. Can you please tell us about one particular position or experience that you held and how it influenced your career?

In the early years of my career, I established myself as a Professional Architect, Registered Town Planner and Fellow of the Royal Institution of Chartered Surveyors, before I delved into the legal profession. During this time, I actively served in various leadership positions in various institutions, both domestic and international, accumulating a wealth of knowledge and experience.

Rather than focusing on any one particular position that has influenced my career, I believe that my significant track record of founding pivotal organisations such as the Society of Construction Law in Malaysia, the Malaysia Society of Adjudicators, the Sports Law Association of Malaysia and the Asian Institute of Alternate Dispute Resolution (AIADR) has greatly influenced my career.

My professional journey has been marked by numerous challenges and obstacles, each providing valuable learning experiences. For example, I encountered challenges during the initial years of establishing SCL and AIADR, but despite that, I persevered, and ultimately ensured their continued operation.

8. Do you have any closing thoughts to share with our readers about your vision for the future of AIAC arbitration or the future of arbitration involving a Malaysian nexus?

I am hopeful that AIAC will realise its full potential as an international arbitration centre in the region and beyond. We are actively working to position Malaysia as the preferred ADR hub for arbitration proceedings, even when the chosen seat of arbitration is outside of Malaysia. We are committed to maintaining the highest standards of quality and services with the excellent state-of-the-art facilities located at the heart of Kuala Lumpur, offered at affordable rates.

Furthermore, our newly launched 2023 Rules incorporate time and cost-efficient elements into proceedings. We also offer multi-currency support and a fund-holding arrangement. Notably, withholding tax does not apply to payments (such as the release of funds deposited) made by AIAC as a stakeholder when held for foreign arbitrators and parties. Additionally, we provide a Fly-in/Fly-out exemption that allows both foreign practitioners and lawyers to enter Malaysia for arbitral proceedings without being subjected to the 60-day restriction.

Despite the evolving landscape of international arbitration, Malaysia has remained steadfast in embracing the ever-changing standards of international arbitration, positioning itself on the right path for a bright future in arbitration. The ascent of Malaysia as a hub for dispute resolution in this region is fast emerging, and AIAC aims to work closely with the Government of Malaysia and our

various stakeholders to be the catalyst for achieving even greater heights.

Thank you, Datuk Sundra, for your time and perspective.

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References

?1 Rule 12 of the 2023 Rules.

AIAC's i-Arbitration Rules was awarded the "***Innovation by An Individual or Organization***" Award at the 3rd Annual Global Arbitration Review Awards ceremony in Bogota, Colombia in 2012.

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