MEDIATION AND ARBITRATION IN

ASIA - PACIFIC

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IIUM Press

MEDIATION & ARBITRATION IN ASIA PACIFIC

Conference Proceedings

Edited by
Syed Khalid Rashid
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IIUM Press

Published by:
IIUM Press
International Islamic University Malaysia

First Edition, 2009
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Perpustakaan Negara Malaysia Cataloguing-in-Publication Data

Mediation and Arbitration in Asia-Pacific/edited by, Syed Khalid Rashid,
Syed Ahmad Idid
ISBN 978-983-3855-77-3

ISBN: 978-983-3855-77-3

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Welcome Speech

Dato' Prof. Dr. Syed Arabi Idid
Rector, International Islamic University Malaysia

I am pleased that the KLRCA Kuala Lumpur Regional Centre for Arbitration accepted the IIUM's recommendation to hold this conference despite the academic nature of the topics. We were of the view that more universities and institutes/colleges of higher education could benefit and would be keen to join in and learn to participate. I understand that the level of participation is very high which includes Tan Sris, Datos, those with doctorates and senior persons as well as the young and aspiring mediators and arbitrators.

I speak for the IIUM but I am requested to also speak for the Director of the KLRCA Kuala Lumpur Regional Centre for Arbitration who will address you at the closing ceremony tomorrow. The IIUM is grateful to the KLRCA and all their Legal Counsels, Officers and staff who have put in long hours to disseminate the information and handle the welcoming of local and foreign guests.

It gives me pleasure to thank YB Datuk Kayveas, Deputy Minister in the Prime Minister's Department, for his ever-ready response to attend and declare the opening of the Conference. On behalf of the KLRCA, we thank the Right Honorable Chief Justice of Malaysia for his consent to give the key-note address. As the Chief Justice himself is not be able to be here as he is attending a Federal Court matter, he has asked Yang Arif Dato' Abdul Wahab Ahmad Said to speak on his behalf. We thank the Judge for this.

I speak for both the IIUM and the KLRCA. I must share with you that our speakers for the 2-day conference are (a) a Judge of the Penang High Court, a Sarawak senior lawyer and former Senator (b) Malaysian mediation organizations (including Legal Aid Bureau, Financial Mediation Bureau and Industrial Court), (c) Director of the Singapore Mediation Centre and (d) delegates speakers from ASEAN countries, including Vietnam Ministry of Justice, Cambodia Arbitration Council, The Philippine Dispute Resolution Centre and the Indonesian Mediation Centre, (d) other ASIAN countries like India and Japan, (e) a lady speaker from the Russian Federation to convince us that we can promote mediation even though steeped in Arbitration Culture, (f) and to add spice to the Conference we have Shearman & Sterling talking on "Perspective of Investor-State Arbitration" while Mr. Mohandass Kanagasabai & Lam Ko luen will give an over-all picture of the recently enacted Malaysian Arbitration Act 2005. They are experts in their own fields and honored in their jurisdictions. Hence it is our pleasure to welcome them all to Kuala Lumpur.

Nature has indeed imbued in every human being a sublime love for amicable settlement of disputes. Probably, this is why in every religion, be it Hinduism, Judaism, Christianity or Islam, there is always an emphasis placed on the conciliatory and arbitral justice. A Muslim, for example, is reminded of this fact in several of the Quranic injunctions and *ahadith* (tradition). For instance, in *Surah Al Hujurat* (49) *ayat* 9 & 10 of the Quran, it is ordained:

> "The believers are but a single brotherhood, so make peace and reconciliation (*sulh*) between two (contending) brothers; and fear Allah, that ye may receive mercy."
>
> "If two parties among the believers fall into a quarrel, make ye peace between them....With justice, and be fair: for ALLAH love those who are fair (and Just)."

Referring to a matrimonial dispute, ALLAH says in *Surah al Nisa*, *ayat* 35:

> "If ye fear a breach
> Between them (i.e. husband and wife),
> Appoint (two) arbiters,
> One from his family
> And the other from hers;
> If they wish for peace,
> Allah will cause
> Their reconciliation..."

In volume 3 of *Sahih Al Bukhari*, the famous compilation of *ahadith*, a whole book – *Kitab Al-Sulh* (Book of Reconciliation) – is devoted to various aspects of reconciliation. It has 14 chapters, each with a title of its own. For example, the title of Chapter 11 is – "The superiority of making peace and establishing justice," while Chapter 10 is titled: "Should the Imam suggest reconciliation"? and answers to this question is affirmative.

Unlike the position in the West, litigation as a means of dispute settlement is treated only as a matter of last resort in the Eastern traditions. How litigation which is so maligned has become the most oftenly used mode of adjudication, particularly in U.K., is not very clear. We have the testimony of Shakespeare, who in **King Henry VI**, openly says:

> "The first thing we do, let's kill all the lawyers."

To Lord Halifax is attributed the dictum:

> "If laws could speak for themselves, they would complain of lawyers in the first place..

The unleashing of litigation on the un-suspecting has done much harm to the society. Everything has been made litigable. Junk litigation has come to be justified with the curious excuse: what's merit got to do with it? Concerns about meritless litigation are dismissed as a mere professional "folklore." Costliness, cumbersomeness, excessive delays and winner-takes-all nature of litigation are tolerated as something "un-avoidable." The cost of litigation is becoming astronomical. And the lawyers are running a contingency fee industry that consists of claiming a lion's share in the final legal award to those who cannot pay the high fees to the lawyers. Erosion in professional ethical standards, a decline in civility and honesty are now becoming parts of legal profession and administration. Everyone seems to have had enough of litigation and the hoard of problems accompanying it. Thus in situations where some alternative mode of dispute resolution is legally permissible, as in case of civil disputes, parties are going in big numbers towards mediation, arbitration or other processes.

On June 15 last year, our Chief Justice Tun Ahmad Fairuz Sheikh Abdul Halim suggested that feuding parties should first consider mediation to solve their disputes instead of resorting to litigation. He pointed out that trained mediators in Penang successfully obtained consent orders for 80% of the cases referred for mediation. He urged the Bar Committees of other states to be more active in changing the mindset of litigants in favor of mediation. This will also help in clearing the backlog of cases.

It is becoming clear that going to the court is no more popular wherever an alternative route to access justice is avaible. It is reported last week in the press that the Consumer Claims Tribunal decided more than 16000 cases over the past four years. The Home Buyer Claims Tribunal registered 15,689 cases up to December, 2005. And between January, 2005 and April, 2006, the Financial Mediation Bureau has registered 3,748 cases. In the High Courts, only 59,456 civil cases were filed during 2005 as compared to 96, 314 cases filed in 1999. Fewer cases are filed because parties cannot afford to wait for the long period of time taken by the litigations process. Increasing popularity of mediation and arbitration are attracting parties who love alternative, inexpensive, quicker and non-technical processes of dispute resolution.

Ladies and Gentlemen,

The availability of institutionalized mediation under the Rules of various professional bodies like PAM (Pertubuhan Arkitek Malaysia), FMB (Financial Mediation Bureau) and KLRCA (Kuala Lumpur Regional Centre for Arbitration) and mandatory mediation under certain enactments like the Law Reform (Marriage & Divorce) Act 1976 and Rules of the Shari'ah Court, give a reason to understand that out of court settlement of disputes is becoming more and more prevalent in our society. The country has a new Arbitration Act, 2005 which deals with domestic and International arbitration of commercial disputes and enforcement of foreign arbitral awards.

These developments are helping to mitigate the hardship of litigation, which the older law makers, judges and jurists have always branded as a wasteful exercise, grossly invasive of privacy, destructive of reputation and acrimonious. It tends to paralyze productive enterprise, corrupts its participants by tempting them to harass each other and to twist, stretch and hide facts. It has become a play ground for bullies, and an uneven battlefield where the trusting, scrupulous and plainspoken are no match for the brassy, ruthless and glib.

It is indeed a very welcome step to bring in focus the positive attributes of mediation and arbitration. I am sure it may help the government in framing its future policies toward mediation and arbitration, and in answering such questions as: whether mediation should remain voluntary or court-annexed? Whether mediation an arbitration be combined? Whether the provisions of the current Arbitration Act, 2005 fulfill our expectations? What future holds for mediation and arbitration in Malaysia? What could we learn from the experiences of countries in the Asia-Pacific region?

I strongly believe that the deliberations in this two-day conference may be able to provide answers to some of these questions.

The object shared by all should be to evolve a method or methods which may not necessarily follow traditional thinking but may reflect some revolutionary new concept.

Ladies and Gentlemen,

I invite the speakers and listeners in this conference to be true visionaries and to give shape to some futuristic modes of dispute settlement.

To all speakers and participants from outside Malaysia, we wish SELAMAT DATANG and a warm welcome and we hope they will take advantage of their time here to see and visit as many places as they can.

Once again to KLRCA, we all in IIUM thank you for undertaking the bulk of the heavy tasks in organizing such an international conference at a short notice.