

THAC INTERNATIONAL ADR Webinar Series 2021

Managing Disputes in an Uncertain World:
Challenges and Opportunities

◦ **29 July - 7 October 2021** ◦



THAC INTERNATIONAL ADR Webinar Series 2021

Managing Disputes in an Uncertain World:
Challenges and Opportunities

THE WORLD IS ENTERING IN THE SECOND YEAR OF THE COVID-19 PANDEMIC, VARIOUS IRREVERSIBLE MODIFICATIONS HAVE BEEN MADE IN OUR LIVES.

THE LATEST ANALYSIS FROM THE WHO STATED, GLOBALLY, THE CUMULATIVE NUMBERS TO OVER 102.1 MILLION REPORTED CASES AND OVER 2.2 MILLION DEATHS GLOBALLY SINCE THE START OF THE PANDEMIC. AT THE BEGINNING OF 2020, CONCEPTS SUCH AS "TRAVEL BANS," "QUARANTINE," "SOCIAL DISTANCING," "LOCKDOWN" AND "MANDATORY MASK USAGE," WERE UNDEFINED TO US. TODAY, THEY ARE A SIGNIFICANT PART OF OUR EVERYDAY LIVES AS COVID-19 CONTINUES TO IMPACT ON EVERY ASPECT OF OUR LIVES. SINCE RECENTLY, VARIOUS VACCINATIONS HAVE BEEN DEVELOPED AND BEGINNING TO BE ADOPTED.

THE FIELD OF ALTERNATIVE DISPUTE RESOLUTION (ADR) WAS BY NO EXCEPTION BEEN AFFECTED BY THE PANDEMIC AND CHANGES HAVE OCCURRED. ADR PROCEEDINGS ARE MOVING ONLINE AND PROTOCOLS FOR VIRTUAL HEARINGS HAVE BEEN DRAFTED AND PROPOSED, AND NEW VIRTUAL PLATFORMS HAVE BEEN LAUNCHED. MOREOVER, ALL SOCIAL EVENTS, DUE TO SOCIAL DISTANCING, HAVE BEEN CONVERTED TO WEBINARS. THESE CHANGES CAN BE SUMMARIZED AS "NEW NORMAL" IN THE ADR FIELD.

THE THAC INTERNATIONAL ADR WEBINAR SERIES 2021 AIMS TO DISCUSS THESE CHANGES OCCURRED SINCE THE PANDEMIC STARTED, NEW DEVELOPMENTS INTRODUCED, THE RISE OF CONSEQUENCES OF THE "NEW NORMAL" AND THE FUTURE OPPORTUNITIES IN THE FIELD OF ADR.

Co-organizer



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Session	Date	Co-organizer	Topic
1	4 AUG 2021	ADR ODR	ADR goes online! Changes and Innovations demanded by the new global situation.
2	11 AUG 2021	HKIAC	Face-off: online hearing v. in-person hearing
3	17 AUG 2021	CEITAC HK	Asia-Pacific region: COVID-19 could be an opportunity for local talented or experience arbitration practitioners to emerge and find better exposure?
4	19 AUG 2021	CAA	Online Dispute Resolution (ODR): amending existing rules or brand-new platform, what are the options available?
6	26 AUG 2021	BAIAC	This house believes that it is difficult to get appointed as an arbitrator - a debate
7	2 SEP 2021	PDRCI	Hero and sidekicks: institutions, witnesses, and support staff in international arbitration
8	7 SEP 2021	CIArb	The interplay between Insolvency proceedings an International Arbitration?
10	14 SEP 2021	BIAC	Confidentiality: does arbitration need a protocol to regulate the "new normal"?
11	16 SEP 2021	ADR ODR	Mediation: Two years after the Singapore Convention on Mediation, a success?
12	22 SEP 2021	SIMI	Mediation: Multi-tier dispute resolution clauses, is this the key to mediation success?
16	7 OCT 2021	YTHAC	International arbitration in the digital age: Navigating the new norm.

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| SESSION 1 |

ADR GOES ONLINE! CHANGES AND INNOVATIONS DEMANDED BY THE NEW GLOBAL SITUATION

The current pandemic situation forced ADR to change and adapt itself to the “new normal”. One of the main changes concerns travel restrictions, therefore consequently requires improving online services such as virtual hearings.

In the upcoming session, we will be discussing innovations introduced for ADR proceedings, their effectiveness and further implementation methods. In addition, the discussion extends to new challenges that arose consequently to these changes and future developments.

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SESSION 2

FACE-OFF: ONLINE HEARING V. IN-PERSON HEARING

During the COVID-19 pandemic, the ADR Community had the opportunity to familiarize themselves with the online hearings, an instrument that has been available for many years but has never been used so extensively. After one year of online hearings, it is time to evaluate this new way of conducting ADR proceedings.

My concerns affect parties in this regard: is cross-examination by online hearing effective? Are online hearings suitable for all types of hearings? Conducting a proceeding entirely online cuts the costs? How is possible to improve the experience online? Will virtual hearing to stay even when normal life returns? The panel of this session will answer these and many other questions.

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| **SESSION 3** |

ASIA-PACIFIC REGION: COVID-19 COULD BE AN OPPORTUNITY FOR LOCAL TALENTED OR EXPERIENCE ARBITRATION PRACTITIONERS TO EMERGE AND FIND BETTER EXPOSURE?

One of the major impacts of COVID-19 on arbitration is travel restriction, coupled with compulsory quarantine and limited visas issuance, therefore, arbitrators, counsels and experts are affected by these restrictions.

Online hearings have partially solved this issue. However, in-person hearings would still appear to be more appealing to the disputing parties due to the opportunity to make a connection and the difficulty to accept changes. Therefore, they are more incline to be represented and arbitrated by lawyers located in the country of the seat of arbitration. Would this be a great opportunity to give a chance to local talented or experienced lawyers to shine in the field of arbitration? This session will explore how arbitral institutions and arbitration end-users could assist local arbitration practitioner, with a particular focus in the Asia-Pacific region, in finding a higher representation.

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| SESSION 4 |

ONLINE DISPUTE RESOLUTION (ODR): AMENDING EXISTING RULES OR BRAND-NEW PLATFORM, WHAT ARE THE OPTIONS AVAILABLE?

In order to adapt to the COVID-19 pandemic, arbitral institutions have adopted different approaches such as conducting hearings online. The first possible option is to amend the existing rules by including provision on online proceedings. The second possible option is to develop an entirely new platform only for online dispute resolution. Each option has pros and cons respectively.

The panel of this session will discuss which one is more suitable in the interest of the parties, how will ADR proceedings be structured according to them and any other new possibilities.

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| SESSION 7 |

HERO AND SIDEKICKS: INSTITUTIONS, WITNESSES, AND SUPPORT STAFF IN INTERNATIONAL ARBITRATION

Arbitrators and counsels are undoubtedly the actors that play leading roles in an arbitration proceeding. However, there are various other actors such as experts, witnesses, tribunal secretaries and arbitration centres that play integral roles in an arbitration proceeding as well.

In this session, we will discuss the unsung roles, what are the requirements and standards they should meet to participate in an arbitral proceeding. Moreover, the panel will address how they are considered when institutions change arbitration rules or governments draft amendments to laws.

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| **SESSION 10** |

CONFIDENTIALITY: DOES ARBITRATION NEED A PROTOCOL TO REGULATE THE “NEW NORMAL”?

New virtual hearing proceedings require frequent use of online platforms that involve participating parties and arbitrators around the world. For every hearing, a massive amount of confidential data is involved. Do the hearings preserve data confidentiality? Who is the deciding party, involving parties, arbitrator or the arbitral institution to take charge of the platform used? In the case of data leakage, who is liable and what are the parties' rights in this regard?

In this regard, the Hong Kong International Arbitration Centre produced the Guidelines for virtual hearings, the Chartered Institute of Arbitrators issued a Guidance Note on Remote Dispute Resolution Proceedings, another proposal is Seoul Protocol on Video Conferencing in International Arbitration. In this session, the panel will discuss these proposals, other alternatives and what can be the future developments.

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| **SESSION 11** |

**TWO YEARS AFTER THE SINGAPORE CONVENTION
ON MEDIATION, A SUCCESS?**

The United Nations Convention on International Settlement Agreements Resulting from Mediation, known as the Singapore Convention on Mediation, was opened for signature on August 2019. Since then, “only” 6 states ratified it.

Can it be called a failure or the pandemic slowed down the process for ratification? The panel will discuss the achievements of the Convention so far and the reasons for the failure of being ratified by many states despite its huge potential.

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| SESSION 12 |

MULTI-TIER DISPUTE RESOLUTION CLAUSES, IS THIS THE KEY TO MEDIATION SUCCESS?

Given the significant levels of growing international support for the Singapore Convention on Mediation and the growing popularity of international commercial mediation, focus has been how more disputes can be channelled appropriately, and at an early point, to mediation.

Multi-tiered dispute resolution clauses (MTDRC) have been around for a long while and has been a mainstay in many domestic and trans-border contracts. MTDRC provides a certainty of both dispute resolution venue and method, which is of significant importance in business efficacy. This is especially important in time-sensitive industries as well as long-term business relationships that require continuing, day-to-day cooperation.

The panel, including SIMI Mediators, will discuss the advantages of MTDRC, effectiveness and enforceability of MTDRC, and whether the increased use of MTDRC will facilitate parties' decision to adopt mediation as their first choice vis-à-vis the traditional arbitration clause.

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