



THE MALAYSIAN INSTITUTE OF ARBITRATORS ANNUAL REPORT 2018/2019

1.0 COUNCIL MEMBERS FOR SESSION 2018-2019

President	: Mr Sudharsanan Thillainathan
Deputy President	: Ms Karen Ng Gek Suan
Vice President	: Mr Gregory Vinesh Das
Honorary Secretary	: Ms Syariah Razman
Honorary Treasurer	: Mr Verghese Aaron Mathews
Imm. Past President	: Mr Kevin Prakash
Council Member	: Ms Dawn Wong Keng Jade
	: Ms Nereen Kaur Veriah
	: Mr Anish Wadia
	: Mr Mak Hon Pan
	: Mr Shaun Adrian Perera
	: Mr Nadeem Muhd Rafiq Thangaraj
	: Mr Wai Chan Ming

For the 2018-2019 term, the Council met ten (10) times on the following dates:

- 1) 26 July 2018;
- 2) 24 August 2018;
- 3) 27 September 2018;
- 4) 25 October 2018;
- 5) 22 November 2018;
- 6) 13 December 2018;
- 7) 28 February 2019;
- 8) 2 April 2019;
- 9) 24 April 2019; and
- 10) 23 May 2019

2.0 COMMITTEES

The following Committees were formed and chaired by the following Council Members to organize activities for the Institute:-

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|--|-------------------------------------|
| 1) Special Projects | - Sudharsanan Thillainathan |
| 2) Education and Training | - Karen Ng Gek Suan |
| 3) Events and Talks | - Gregory Vinesh Das |
| 4) Social Events | - Mak Hon Pan/
Nadeem Muhd Rafiq |
| 5) Editorial, Publicity and Public Relations | - Dawn Wong Keng Jade |
| 6) International Affairs & Regional Liaison | - Syariah Razman |

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| 7) | Review of Panel of Arbitrators | - Sudharsanan Thillainathan |
| 8) | Young Members Committee | - Nadeem Muhd Rafiq |
| 9) | Membership | - Verghese Aaron Mathews/
Nereen Kaur Veriah |
| 10) | Professional Development and Law Reform | - Nereen Kaur Veriah |

3.0 THE REPORTS OF THE COMMITTEES

3.1 EDUCATION AND TRAINING

3.1.1 DIPLOMA IN INTERNATIONAL ARBITRATION (DIA) [IN COLLABORATION WITH BRICKFIELDS ASIA COLLEGE (BAC)]

From July 2018 to June 2019, the DIA Course was conducted with two (2) intakes, one in September 2018 and another in March 2019.

September 2018 Intake

There were 36 students in the September 2018 intake. 34 students and 1 re-sitter sat for the examination (in total 35 students sat for the examination). The overall passing rate for that intake was 77.14%.

March 2019 Intake

There were 13 students in the March 2019 intake. All 13 students from this intake and 2 re-sitters sat for the examination (in total 15 students sat for the examination). The overall passing rate for that intake was 86.67%.

Upcoming

The DIA Committee aims to continue to improve the quality of the Course. With that objective in mind, the DIA Committee will continue to work closely with BAC to promote and improve the quality of the Course. The DIA Committee hopes to see greater numbers of students enrolling for the future intakes.

3.1.2 Joint Courses on Alternative Dispute Resolution held jointly with IEM, PAM and RISM on 8 and 9 August 2018 at Malakoff Auditorium, Wisma IEM.

On 8 and 9 August 2018, MIArb in collaboration with Pertubuhan Akitek Malaysia, Royal Institution of Surveyors Malaysia and The Institution of Engineers Malaysia (DARP Subcommittee) organised the Joint Courses on Alternative Dispute Resolution for Practitioners. The Course was a two-day course on arbitration, adjudication, mediation and a discussion on common issues in construction contract management.

The MIArb managed the session on “*Arbitration: Practical Aspects*” and delivered three lectures titled “*Introduction to Arbitration. Why Arbitrate?*”, “*The Hearing Process Procedure and Practice & Managing the Expert Witness*” and “*Enforcing the Arbitral Award*”. Speaking for the MIArb were our Deputy President, Ms. Karen Ng Gek Suan, and Past President, Mr Kevin Prakash. The Joint Course was very well received.

3.2 EVENTS & TALKS

3.2.1 The Committee has been chaired by Gregory Das for the 2018 – 2019 term.

3.2.2 Gregory Das continued in his position as the chairman of the Organising Committee of The Jonathan Yoon MIARB Debate Series and also oversaw the running of the MIARB's Member Upgrade Course for the term.

The Jonathan Yoon MIARB Debate Series

- 1) The MIARB continued with this event and held two debates this term. Each debate featured discussions on topical issues in the alternative dispute resolution sector.
- 2) The **first debate** for the term was held on 28 June 2018. The Motion of the Debate was *“This House believes that the continuing duty of disclosure of an arbitrator under section 14(2) of the Arbitration Act 2005 (as interpreted in MMC Engineering Group Bhd. v. Wayss & Freytag (M) Sdn. Bhd. [2015] MLJU 477) is too limited.”*
- 3) The speakers ‘For’ the motion were Mr. Ranjit Singh and Mr. Nahendran Navaratnam and the speakers ‘Against’ the motion were Mr. Yatiswara Ramachandran and Dato’ Malik Imtiaz Sarwar.
- 4) The debate was a closely fought contest that attracted wide participation from the floor.
- 5) Ultimately, the arguments ‘Against’ the Motion were upheld by the House and the Motion was defeated.
- 6) The **second debate** for the term was held on 31 January 2019. The Motion of the Debate was *“This House believes that the appointment process of an arbitrator under Sections 13(4), 13(5) and 13(6) of the Arbitration Act 2005 warrants amendment to ensure greater transparency and less unilateralism in the process.”*
- 7) The speakers ‘For’ the motion were Mr. Sanjay Mohanasundaram and Mr. Alex De Silva and the speakers ‘Against’ the motion were Mr. Foo Joon Liang and Mr. Rajendra Navaratnam.
- 8) The Second Debate was also evenly matched and ultimately the Debate Motion was carried by the House.
- 9) Each of the two debates were followed by an Evening Cocktail Reception.

3.2.3 The MIARB Membership Upgrade Course

- 1) The Membership Upgrade Course this term was held on 23 February 2019 and 24 February 2019. It attracted 17 registrants. The sessions were conducted by a series of experienced practitioners from a variety of spheres in the dispute resolution domain.
- 2) The majority of the registrants successfully passed the assessments on the Course, with 2 participants being awarded the grade of Distinction.

- 3) Particular mention must be made of Raja Junaidah, whose assistance in the running of the Course this term was indispensable.
- 4) The Programme and Events Committee thanks all members of the Institute, the speakers and the participants of the events for their support of the Committee and its events and looks forward to their continued support in the following terms.

3.3 EDITORIAL AND PUBLICITY

In mid 2019, the Editorial Committee produced the first issue of 2019 featuring three articles contributed by lawyers from Messrs Steven Thiru & Sudhar Partnership, Messrs Christopher & Lee Ong, and Messrs Koh Dipendra Jeremiah Law. The Editorial Committee also unveiled the second installment of the new Q&A feature in this issue, featuring Dato' Mahadev Shankar, retired Judge of the Court of Appeal. The Editorial Committee would like to extend a special thank you to Dato' Mahadev Shankar for his time and participation.

The Editorial Committee would also like to thank Contract Solutions-i (and Council Member Mr Wai Chan Ming in particular) for taking out an advertisement in the Newsletter. In a bid to increase the Institute's visibility and readership, the Newsletter was printed and distributed to members. The Newsletter was also circulated to members via email, and a copy is readily available on the MI Arb website. The Editorial Committee has recommended that an e-mail blast is sent out in advance of circulation to ascertain which of the Institute's members would prefer a hard copy of the Newsletter.

The Editorial Committee thanks all advertisers, contributors, and readers for their constant support.

The Editorial Committee encourages and welcomes members to contribute advertisements, articles, and feedback.

3.4 INTERNATIONAL AFFAIRS & REGIONAL LIAISON

- 3.4.1** The main part of this Committee is to maintain strong collaborative relationships with international and regional ADR institutions, industry associations and centres of higher learning, at the same time reaching out and building new ties with other institutions as it positions itself as the national institute of arbitrators.

MIARB is proud to announce that in this term, it has promoted and supported International and Regional events as follows:-

- 8 August 2018 Thailand: Annual International Arbitration & Regulatory Summit (Legal Plus)
- 24 October 2018 South Korea: 7th Annual International Arbitration, Regulatory & Competition Law Summit (Legal Plus)
- 21 November 2018 BA APAG International Arbitration Training Day (IBA Asia Pacific Arbitration Group)
- 6 December 2018 Indonesia Legal Event (Legal Plus)
- 6 – 7 December 2018 CI Arb Malaysia International Arbitration Conference, Penang (CI Arb Malaysia)

- 29 March 2019 The YSIAC Advocacy Workshop (SIAC)
- 29 March 2019 SIAC Kuala Lumpur Conference 2019 (SIAC)
- 30 – 31 March 2019 Time and Cost Savers at SIAC: Emergency Arbitration, Expedited Procedure and Early Dismissal (SIAC)
- 23 April 2019 CIPAA in Construction Dispute Resolution (Legal Plus)

3.4.2 The Institute also continues to be an active member of the Regional Arbitral Institutes Forum (RAIF). This year, the institute was represented by the President, Mr Sudharsanan Thillainathan, the Honorary Secretary, Ms Syarihah Razman and council member Mr Anish Wadia at the annual RAIF Conference, which was hosted by BANI Arbitration Center and Indonesian Arbitrators Institute on 28th to 29th November 2018 in Jakarta. The RAIF Conference was entitled Enhancing Regional Arbitration Cooperation: Emerging Current Issues and was well attended by local and international delegates.

Mr Sudharsanan presented Malaysia's country report at the Presidential Meeting held on the eve of the conference. Amongst the issues discussed at the Presidential Meeting, there was a proposal to invite Thailand to be a member of RAIF. The committee is to follow up with Thailand. It was also decided that the next RAIF conference will be held in Brunei in 2019.

During the RAIF conference, there were discussions with Singapore and Hong Kong for a possible collaboration to conduct a joint seminar either in Kuala Lumpur, Singapore or Hong Kong, respectively. While Singapore Institute of Arbitrators have in principal agreed to host a joint seminar together with MIARB, however, due to time constraints, the joint seminar could not be organized within this term. The incoming council will be advised to continue discussions with Singapore and Hong Kong, for a possible international seminar for our members.

3.5 REVIEW OF PANEL OF ARBITRATORS

The institute received applications from Mr Anish Wadia (F/124), Mr Kwan Weng Hing (F/73), Ms Janice Tay Hwee Hoon (F/125), Justice Zaki Ullah Khan (F/114) and Mr Philip Rompotis (F/145) respectively for empanelment on the Institute's Panel of Arbitrators. Upon review, all applications were approved and these candidates have since been empaneled on the Institute's Panel of Arbitrators.

3.6 YOUNG MEMBERS COMMITTEE

The Young Members Committee, during the present term, undertook numerous steps to promote arbitration amongst young practitioners. These steps included attending various conferences and reaching out to young practitioners, as well as participating in events organized by other institutions. The Young Members Committee intended to hold an event in the first half of 2019, to give young practitioners the opportunity to discuss, engage and exchange ideas with senior practitioners in various industries. However, due to time constrains, the intended event was not able to come to fruition.

3.7 MEMBERSHIP

3.7.1 Membership Drive

- 1) The Membership Committee's ("MC") 2-year initiative to update the membership list and remove long standing defaulters has been implemented.
- 2) As at May 2018, MIArb had 643 members. This figure included defaulters. The MIArb has since removed the defaulters from existing active and paying members. Below are the total members as at May 2019.

Table 1: Summary of Membership 1993-2019

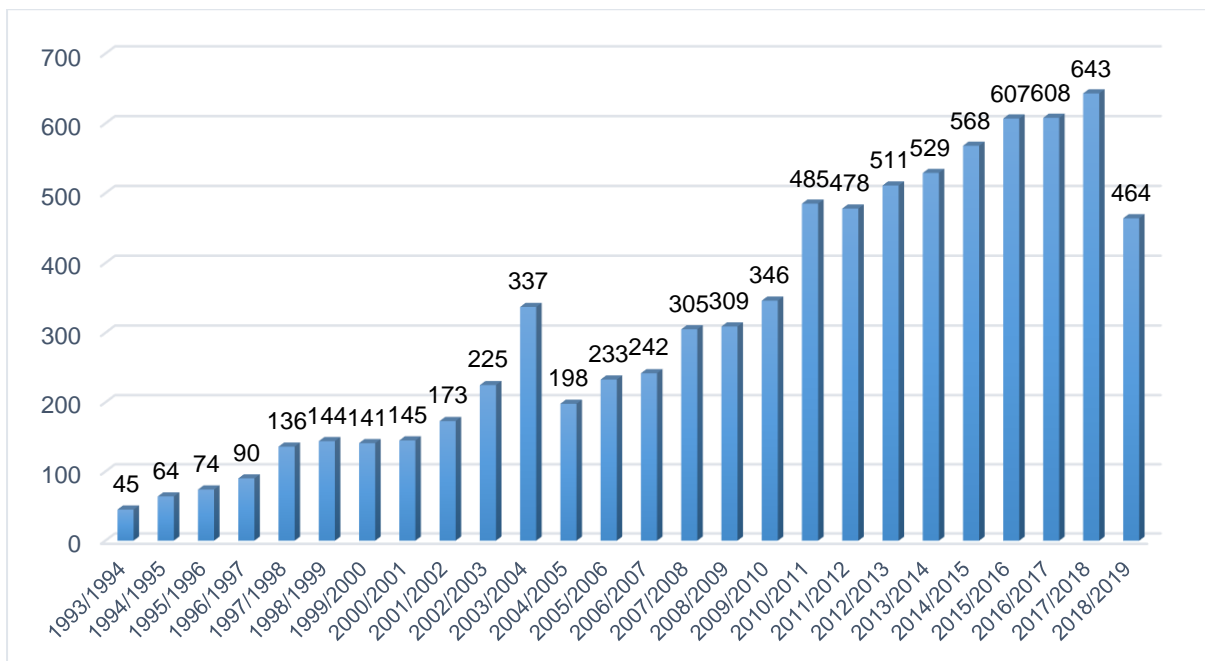
YEAR	TOTAL MEMBERSHIP
1993/1994	45
1994/1995	64
1995/1996	74
1996/1997	90
1997/1998	136
1998/1999	144
1999/2000	141
2000/2001	145
2001/2002	173
2002/2003	225
2003/2004	337
2004/2005	198
2005/2006	233
2006/2007	242
2007/2008	305
2008/2009	309
2009/2010	346
2010/2011	485
2011/2012	478
2012/2013	511
2013/2014	529
2014/2015	568
2015/2016	607
2016/2017	608
2017/2018	643
2018/2019	464

- 3) The decrease in the number of members is as a result of the removal of the defaulters from the roster. Accordingly, the figure stated in the table 1 above is an accurate reflection of the true composition of members within the MIArb.

Table 2: Membership as at May 2019

Grade	B/f from May 2018	Adj.	New	Upgraded	Resigned/ Deceased	Defaulters/ Terminated	Current Total
Fellow	110	-	14	6	-	(6)	124
Member	261	-	30	3	-	(41)	253
Associate	101	-	7	-	(1)	(40)	67
Affiliate	171	-	1	-	-	(152)	20
TOTAL	643		52	9	(1)	(239)	464

Table 3: Fig. 1 Histogram of membership 1993-2019



- 4) In order to boost membership, the MC has put forward and passed a simplified Membership Application Form. The form is intended to make application process user friendly and give potential applicants a snapshot of the categories of membership and the corresponding qualifications required when applying to be a member.
- 5) MC also proposes that the Membership desk diversify its focus to not only sign up new members at the events but to also encourage and promote the upgrade course so as to target existing Associates/Members.

3.8 PROFESSIONAL DEVELOPMENT AND LAW REFORM

In the past year, the Institute has played host to the 5th Annual Law Review held on 23 August 2018.

This event was attended to by over 100 delegates, including members of the judiciary (past and present) and subject matter experts.

The event comprised of three panel discussions, namely on the following topics:

- i. an annual review of select decisions of the Appellate Courts relating to the arbitration industry;
- ii. international developments in arbitration, and
- iii. the way forward from the removal of Section 42 to the Arbitration Act 2005, with a networking session thereafter.

The event was intended to provide delegates with an in depth look into the trend of arbitration both at home and overseas as well as provide a platform for delegates to pose questions to the experienced panelist during the question and answer sessions.

The Institute intends to also increase its visibility with the State Bars and hopes to co-host lecture series with the different State Bars in the last Quarter of 2019.

3.9 SOCIAL EVENTS

The Social Events Committee has, during the present term, undertaken various social events to foster relations between members and non-members alike. These social events consisted of standalone events, as well as social events including MIARB's 2019 New Year's Party held on 03.01.2019.



SUDHARSANAN THILLAINATHAN
President

14 June 2019



WAN SYARIHAH RAZMAN
Honorary Secretary