BIG QUESTION
Is ADR broken?

NET ZERO: ARBITRATION POST-COP26

CASE STUDIES: ADR IN BRAZIL AND THE UAE

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THE Resolver

SPRING 2022 CIARB.ORG

ADR for all

How alternative dispute resolution underpins civil society

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President's welcome

As the world comes to terms with a war in Europe, the skills of dispute resolution and conflict management have never been more relevant. These skills are being put to use right now in myriad ways in the attempt to find a way to bring the current conflict to an end. But we also live in an era when individuals, corporations and governments need to engage more broadly in difficult conversations related to climate change, race, terrorism, politics and, of course, the pandemic that has deeply affected us.

Soon after starting out as a solicitor about 30 years ago, I realised that I was most interested in alternative ways of looking at problem-solving. And so I've worked in dispute resolution for most of my career. It's given me a great respect for how humans connect with and understand each other. I've also seen the potential for the skills, mindsets and methods of our profession to go beyond the parameters of litigation and formal dispute resolution to create a more peaceful world.

With that in mind, my vision for this presidential year and beyond is that people from all walks of life are able to apply the principles of mediation and conflict management in their own families, workplaces and communities. This aligns with CIArb's own aims for 2021–2023: to promote the constructive resolution of disputes across the globe; to be a global, inclusive thought leader; and to develop and support an inclusive global community of diverse dispute resolvers.

I would encourage us all to go back to basics: to reflect on the essence of dispute resolution, on our own experiences of conflict and how our profession helps to uphold the rule of law (on that note, please read Dr Isabel Phillips FRSA's excellent article on page 13).

I look forward to sharing more of my ideas and experiences with you in the next issue of *The Resolver*.

Jane Gunn FCIArb FRSA FPSA is President of CIArb. She is CEDR accredited, CMC registered and an IMI Certified International Mediator.
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INSIDE THIS ISSUE

The opener

UK government consults on Singapore Convention

A consultation is currently open on whether the UK government should sign and ratify the Singapore Mediation Convention, a move that could have a significant impact on the attractiveness of mediation as a mechanism for resolving international commercial disputes.

The Singapore Mediation Convention was negotiated and drafted through the UN Commission for International Trade Law (UNCITRAL) and is designed to provide a consistent framework for the recognition and enforceability of mediated settlements. CIArb has played a key role in promoting the Singapore Mediation Convention since it was introduced in 2019 (coming into force in 2020) and has recommended that the UK join. To date, 55 countries have signed up, with nine having ratified it.

CIArb Director General Catherine Dixon said: "CIArb passionately believes in the important role mediation can play in resolving disputes. Mediation can maintain relationships, underpin business confidence and support economic growth. We've seen significant growth in the use of mediation for cross-border commercial disputes in recent years, and the Singapore Mediation Convention is valuable in continuing that trend."

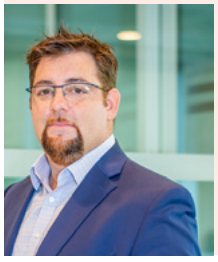
CIArb will respond to the consultation. The deadline for viewpoints to include in CIArb's response has now passed but members are encouraged to submit their own responses. The consultation closes on 1 April.

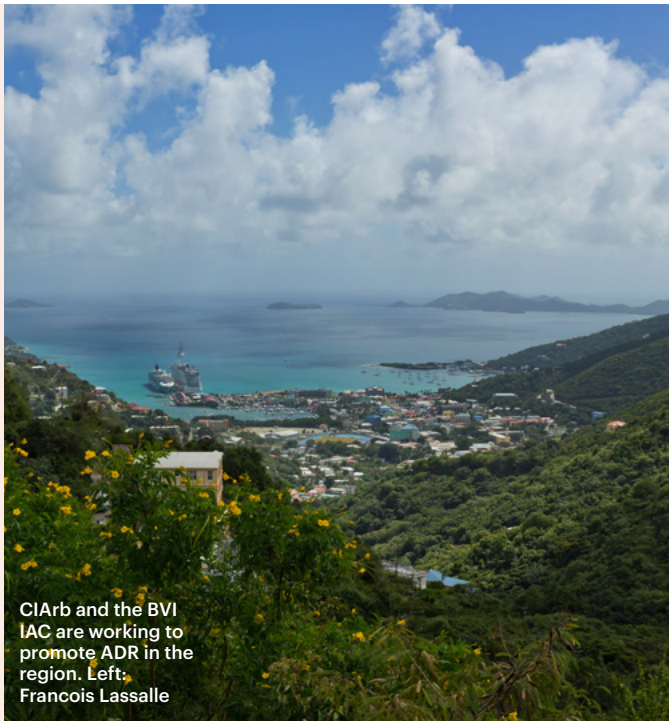
Promoting ADR in the British Virgin Islands

CIArb and the British Virgin Islands International Arbitration Centre (BVI IAC) are aiming to create a positive environment for ADR with a memorandum of understanding. The document was signed at the 4th Annual BVI IAC International Arbitration Week.

It supports, among other things, delivering CIArb education and training, working together more closely, and promoting ADR within the region.

Signing the MoU, Francois Lassalle, CEO of the BVI IAC, said: "The BVI IAC and CIArb share a commitment to high standards of ethics, professionalism and competence. Many on the BVI IAC Panel are already members of CIArb. The BVI IAC will continue to look favourably on the CIArb post-nominal qualification in recruiting new panellists and we look forward to the BVI IAC's continued collaboration with CIArb within the region."





CIArb and the BVI IAC are working to promote ADR in the region. Left: Francois Lassalle

SHUTTERSTOCK

International Women's Day 2022: Break the Bias

Between 2015 and 2019 the proportion of women working in commercial arbitration rose from 12% to 15%. This is progress, but clearly the profession still does not reflect the make-up of society as a whole.

This was one of the first points that CIArb Director General Catherine Dixon made as women and men across the globe gathered online to discuss how to 'Break the Bias' at CIArb's International Women's Day event. Catherine also emphasised, however, that the session – for which more than 1,000 people registered – should not be about "restating the problem" but about finding solutions.

This positive energy was abundant in the first section of the event, which was a pre-recorded video featuring the personal and professional stories of 10 women in ADR from 10 countries. These remarkable and successful women shared their ideas on how to break the bias, and gave examples of how they've done so in their communities and workplaces.

Kshama A Loya, a leader in the international dispute resolution practice at Nishith Desai Associates in Mumbai, India, described how, in her experience, women are denied opportunities "for reasons unrelated to their competency, and so have to work doubly hard at a higher standard consistently to prove their mettle". She added: "The tolerable margin of error is much narrower for women – and over time this creates women who lose confidence in their abilities. We fight for physical security for women but what about professional and mental security at the workplace too?" She looked forward to a time when women can become "the best version of ourselves" without constant fear of failure.

Aysha Abdulla Mutaywea, Resident Partner at Mena Chambers Law Firm in Bahrain, spoke passionately about "grabbing a seat at the table".

"Conversations tend to be more thoughtful and people more considerate when there's just someone very different in the room," she said. She is encouraged and excited by the increasing number of women entering the ADR profession in Bahrain and the Middle East. "I think the future is really quite bright," she concluded.

"We fight for physical security for women but what about professional and mental security at the workplace too?"

Watch the video on CIArb's YouTube channel

SHUTTERSTOCK

IN BRIEF

Young Members Group welcomes new Chair and Vice-Chair to 'most diverse Committee in history'

The CIArb Young Members Group (YMG) has appointed new leaders to its Global Steering Committee: Noreen Kidunduhu (Chair) and Ana Gerdau de Borja Mercereau (Vice-Chair). The pair are based in different parts of the world – Nairobi and Paris respectively – but will work closely together to organise and promote activities targeted at practitioners under the age of 40 and students across the globe.

Noreen Kidunduhu

Ana Gerdau de Borja Mercereau

CHRISTOPHE LARTIGE

Noreen, an energy lawyer, routinely represents clients in both institutional and ad hoc arbitrations under a wide variety of arbitral rules and has also appeared in many court matters related to arbitrations. She said: "I am honoured to chair the most regionally diverse and inclusive Committee in the history of CIArb's YMG. We have a pipeline of interactive programmes and projects for our members to deepen their understanding of ADR, hone their skills and network. I look forward to a dynamic and interactive YMG that caters to our members' priorities and specialisms. I'd also like to thank our predecessors, Laura West and Sebastiano Nessi, for their enthusiasm and dedication to the Committee. Ana and I have big shoes to fill!"

Ana said she was "enchanted" with the regionally diverse Committee. She added: "It is always a pleasure to work with professionals I admire and to pursue CIArb's educational mission, which is of the essence to me."

Ana is a lawyer at Derains & Gharavi and has acted as counsel and secretary to arbitral tribunals in numerous and wide-ranging commercial and investor-state arbitrations.

ANALYSIS

Four lessons from the YMG conference

What the up-and-coming generation of ADR professionals discussed at the Young Members Group's Annual Conference 2021

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1 The profession is evolving for the better

Arbitral institutions, through procedural rules, continue to innovate with remedies such as emergency arbitrators. They have provided tribunals with more power and enhanced the fairness of the arbitration process. Arbitrator selection is on the minds of arbitral institutions and practitioners more than ever as they strive to increase the arbitrator pool – and the diversity in it.

(L–R) Peter Anagnostou, Celia Johnson-Morgan, Arun Visweswaran, Sarah Pearson-Baird, Melissa McLaren, Juan Olwagen, Michael Caddick and Kyle Louw

2 Delegates favour virtual hearings as the default in the future... but only just

This was the result of a vote following a debate on the topic. Efficiency, cost savings, accessibility and environmental advantages were pitted against the 'human factor' and ability to read body language and verbal cues. The real conclusion was that there is room for both virtual and physical hearings, depending on need and context.

3 Arbitration of the future will be conducted through the lenses of environment and diversity

The investment treaty world can have a major impact on the climate crisis through the decisions taken, and the international arbitration profession itself has a significant carbon footprint. Both of these factors can and should be taken into account in the course of an arbitration, a panellist argued. Equally, a diverse and inclusive tribunal achieves holistic results and is more likely to lead to the resolution of disputes, and so diversity should be a key factor when appointing tribunals.

4 There's no escaping social media but practitioners need to be prudent

Having a presence on social media can be a great way for practitioners to network, share good practice and advocate for others. But it could also pose a threat to an arbitrator's impartiality. Therefore, perhaps more guidance is needed for individual arbitrators in navigating social media to help them avoid bringing the industry into disrepute.

This article is based on a conference report by **Arun Visweswaran ACIArb** (CIArb UAE YMG Committee Chair and Senior Associate at Clifford Chance), **Michael Caddick FCIArb** (UAE YMG Committee Member and Senior Manager at Kroll) and **Melissa McLaren MCIArb** (CIArb UAE YMG Committee Vice-Chair and Senior Lawyer at Pinsent Masons)

How can ADR promote access to justice?

As an enabler of access to justice, alternative dispute resolution has three key strengths, writes Catherine Dixon

Access to justice is a fundamental principle that is inextricably linked with the concept of the rule of law. As the UN puts it, without access to justice people are unable to be heard, exercise their rights, obtain redress when they have been wronged or challenge decision-makers to ensure accountability. In short, without proper, fair and equal access to justice for all, the rule of law cannot be upheld.

The concept of 'access to justice' is sometimes viewed as limited to interactions with state legal systems. It is the case that fair and transparent recourse to court-based systems of dispute resolution are vital to upholding the rule of law and the underpinning of civilised society.

However, access to justice covers a broader and deeper range of redress mechanisms, operating at different levels and meeting different needs. Justice is a concept of moral rights based on ethics, rationality, law, natural law, religion, equity and fairness as well as the administration of law. To be truly effective, access to justice must therefore allow for a multiplicity of conceptions of 'justice', from retributive and distributional to relational and restorative. Alternative dispute resolution (ADR) is in a uniquely strong position to deliver against these criteria.

As Director General of CIArb, I am committed to facilitating meaningful access to justice, which I believe is central to our role as a professional body. CIArb's Royal Charter makes clear our public-interest mandate "to promote and facilitate worldwide the determination of disputes by arbitration and alternative means of private dispute resolution other than resolution by the court". In essence, to provide different avenues of redress for individuals and businesses, regardless of their circumstances and means, in a way that best meets their needs. As an enabler of access to justice, ADR has three key strengths.

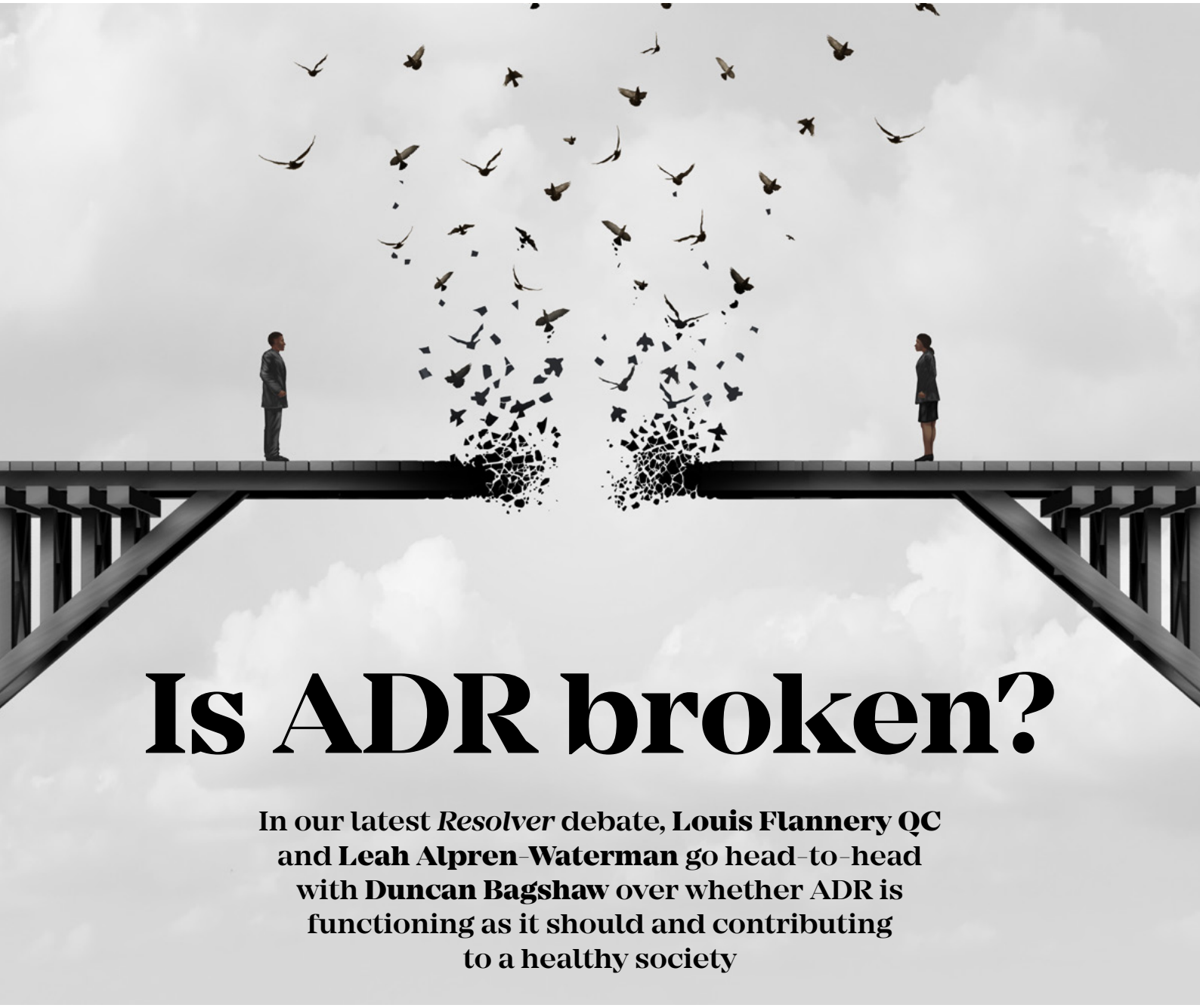
First, ADR can be flexible in a way that is not possible through court-based systems. Whereas litigation is adversarial in nature and is typically restricted to an adjudicative award, ADR offers a wider range of options. For example, mediation can allow for a deeper and more holistic consideration of the relationship between the parties and allow for more imaginative outcomes that benefit the parties. Where a final and binding decision is sought by the parties, ADR can also offer significant advantages over court processes. Arbitrators can be selected based on subject matter expertise and, particularly in processes such as adjudication, outcomes can be reached far more quickly than through litigation.

Second, ADR offers an important alternative to often over-burdened court systems. In 2021, it was widely reported that the parties subject to court proceedings around the world were experiencing often significant delays. These delays and capacity problems can be detrimental (justice delayed is justice denied).

Finally, ADR can offer a range of more affordable options to the parties. While complex international arbitrations may still necessarily involve higher costs, we are increasingly seeing a recognition of how lower-cost mechanisms can be of value, particularly for those who would otherwise struggle to obtain redress. The CIArb Business Arbitration Scheme, which carries a fixed fee, is a good example of this.

This issue looks at the question of access to justice in depth, examining the extent to which ADR is fulfilling its potential and what more might need to happen to make access to justice truly universal. I am committed to ensuring that access to justice is at the forefront of our efforts to promote the benefits of ADR and that ADR is available to everyone.

ABOUT THE AUTHOR
Catherine Dixon is Director General of CIArb. She is a solicitor and accredited mediator.



Is ADR broken?

In our latest *Resolver* debate, Louis Flannery QC and Leah Alpren-Waterman go head-to-head with Duncan Bagshaw over whether ADR is functioning as it should and contributing to a healthy society

NO

LOUIS FLANNERY QC
AND
LEAH ALPREN-WATERMAN
MISHCON DE REYA LLP

Far from being broken, ADR is well and truly thriving. In fact, as the Master of the Rolls made clear in his March 2021 speech on the relationship between formal and informal justice, ADR is no longer 'alternative', but rather an integral part of the dispute resolution practitioner's toolkit, to be ignored at the practitioner's peril.

The expense of commercial litigation continues to mount, meaning access to the courts is limited for all but the most affluent. Reforms aimed at reducing costs instead simply add to the bottom line (the disclosure pilot that continues to run in the Business and Property Courts is a particularly egregious example). At the other end of the scale, delays in the County Court exacerbated by (but by no means entirely the fault of) the Covid-19 pandemic bring to mind the maxim 'justice delayed is justice denied', while cuts

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to legal aid mean individuals have little choice but to navigate the labyrinthine civil procedure rules as litigants-in-person.

In that context, ADR plays a vital role in assisting parties to resolve their disputes, and ensuring that neither commerce nor society judders to a stop. It may be trite, but it is also undeniably true that ADR mechanisms like mediation, adjudication and expert determination are cheap, efficient and can preserve valuable commercial relationships, whereas lengthy court proceedings rarely do anything but drive the parties apart. Arbitration may often lack some of those attributes, but its flexibility and the role of party autonomy mean that it is also a valuable alternative to court litigation.

The benefits and value of ADR continue to gain traction around the world. International arbitration is, of course, well entrenched and provides international parties with access to reassuringly independent decision-makers in circumstances where some national courts may have competing loyalties. The Singapore Mediation Convention, designed to facilitate the enforcement of international settlement agreements resulting from mediation, has now been ratified by nine countries, and there are a further 46 signatories. Compulsory ADR schemes have been adopted in Italy, Australia, Greece and Ontario, and responses to the Civil Justice Council's June 2021 report indicate that a similar scheme may well be on the horizon for England and Wales.

Meanwhile, less familiar forms of ADR, such as early neutral evaluation (ENE), are now receiving greater attention. The Court of Appeal's decision in Lomax v Lomax (2019) shone a light on these underused schemes, which can provide parties with a much-needed reality check and help to facilitate settlement, while in Sky's the Limit Transformations Ltd v Mirza (2022), the Technology and Construction Court suggested ENE could become an integral part of a new streamlined procedure for domestic building disputes.

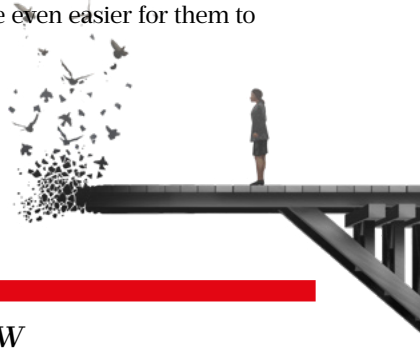
But what about concerns that ADR undermines the rule of law? Famously, Lord Thomas expressed

ADR mechanisms like mediation, adjudication and expert determination can preserve valuable commercial relationships

ABOUT THE AUTHORS
Louis Flannery QC is a Partner, and Leah Alpren-Waterman is a Managing Associate, at Mishcon de Reya LLP

ABOUT THE AUTHOR
Duncan Bagshaw is a Partner at Howard Kennedy LLP

concerns that by keeping disputes out of the courts and the public eye, the rise of ADR (and in particular the explosive growth in domestic and international arbitration) has stifled the development of the common law. It seems a rather overblown concern – in mediation, a truly contentious issue requiring judicial determination will ultimately find its way to the courts, and there is still a steady stream of reported judgments on appeals under section 69 of the Arbitration Act 1996 on questions of law. In any event, the development of the common law is not an end in and of itself – it exists to serve its users. If those users prefer to seek a resolution of their disputes before a private tribunal (in the case of arbitration), a neutral facilitator or, indeed, a computer program, the common law must yield to that choice. And, of course, where necessary, the courts will always be there, ready to step in where the parties require. Indeed, if thanks to ADR the cause lists are a little emptier and there is a little more capacity, it may be even easier for them to do so.



YES

DUNCAN BAGSHAW
HOWARD KENNEDY LLP

ADR is broken. It has crumbled under the weight of an unrealistic expectation of court-level due process.

The distinguishing factor about ADR should be the contrast between ADR and court processes. This should mean simple procedures that do not require technical knowledge; complete finality of any resolution achieved by ADR; and rapidity in contrast to the duration of court proceedings.

ADR has forgotten its mission to achieve these things. Arbitration lawyers are highly specialised, technically knowledgeable experts on the law of arbitration. Summary determination procedures in arbitration are hotly debated but their adoption is hamstrung by soul-searching about eroding procedural safeguards. Meanwhile, the LCIA's Mediation Rules run to 15 pages and whole books are written about adjudication (in England and Wales).

The problem is that the practice of these techniques has also lost the simplicity and

expedition that they once had. Arbitrators bend over backwards to allow parties to explore every avenue in disclosure, and to demand disclosure and information similar to the levels of those in court proceedings. Mediation agreements are negotiated like M&A transactions.

At the same time, in England and Wales at least, the commercial courts are adjusting their procedures to make them more tailored and flexible. The disclosure pilot (while not perfect) demonstrates that the courts are moving in the right direction. The business and property courts' reaction to the pandemic and adoption of remote hearings and electronic working has shown that – further closing the gap and undermining ADR's distinguishing feature.

Arbitration is broken. Things too often go wrong. When a party to a mediation, having spent the whole mediation discussing the case in detail, makes their first offer – generously offering to accept their best case result, plus costs – it is easy to feel a sense of despair with the process.

When an expert determines a result by adopting a theory that neither party has suggested, or even heard of, let alone commented on, one might feel that a judge would have been a safer pair of hands.

When an arbitration – billed to the client as efficient and cost-effective – enters its second year and its second million in costs, who can hold their client's eye when breaking the news (and submitting the bill)?

The problem is that there is a negative feedback loop between lawyers and clients. Lawyers naturally want to protect their clients at all costs. Clients want to be protected. Speed and simplicity provide fewer opportunities to do this and expose the client to a greater level of risk of something being missed or misunderstood, or simply to a bad outcome.

So clients and lawyers agree to incorporate more and more complexity and time into their processes to seek to guard against the risk of failure.

Lawyers tend to abhor a legal vacuum. They therefore come up with laws to regulate everything. We have rules for every aspect of the arbitration process. We even have elaborate laws, in England, about the consequences of a failure to mediate. This pushes parties to mediate even when it will serve no purpose save to cost money and time, just to tick a box.

The combined effect of these factors is to push parties into ADR who are not going to embrace the process constructively, and then to empower such parties to disrupt or prolong ADR processes. ADR facilitators do not feel that they can cut through such tactics, without risking providing even more avenues for challenge.

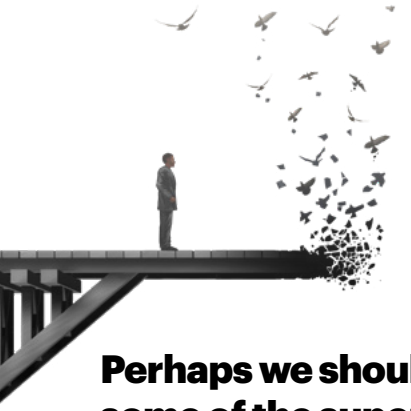
ADR, rather than being an alternative to litigation, is very often simply the precursor to it.

When the stakes are high, it is never possible to guarantee that the resolution in an ADR process will be the end of the matter.

Arbitration lawyers are masters of finding grounds to challenge awards, or arbitrators. Issues are considered at all levels of the English court, delaying the proceedings or the enforcement of a decision for years, because there are so many avenues to attack decisions or procedures.

Even mediations do not always produce a final result. If they did, what was the purpose of inventing the Singapore Convention to regulate enforcement? There is a delicious irony about the need for this being recognised which irrefutably demonstrates that mediation is not being practised so as to achieve its purpose.

Just because ADR has been shored-up with a complex structure of regulation and law, that does not mean that it is not broken. If we want to fix ADR, perhaps we should strip away some of the superstructure of regulation and restore the simplicity, finality and freedom of choice that set ADR apart.



Perhaps we should strip away some of the superstructure of regulation and restore the simplicity, finality and freedom of choice that set ADR apart

These contributions are written to entertain and provoke and should not be taken to reflect the views of the authors.

What do you think?
Do you have a differing viewpoint or a debate to suggest? Email the editor at sarah.campbell@thinkpublishing.co.uk

Climate change and arbitration post-COP26

Wendy Miles calls on ADR professionals to be at the heart of the transition to net zero – and suggests three key ways they can do this

The November 2021 Conference of the Parties for the United Nations Framework Convention on Climate Change (UNFCCC), known as COP26, focused the minds of international governments and financial institutions on the investment required to transition global energy, infrastructure, industry and land use systems to net-zero greenhouse gas emissions by 2050 and, critically, to 45% reduction by 2030. The ensuing Glasgow Pact was an important update on the implementation of the Paris Agreement and the achievement of its objectives.

International commercial arbitration is currently the predominant dispute resolution mechanism for cross-border investment in global energy, infrastructure, industry and land use systems. The statistics published by major arbitral institutions, including the International Chamber of Commerce (ICC) Court of Arbitration, the London Court of International Arbitration (LCIA), the Permanent Court of Arbitration (PCA), the Singapore International Court of Arbitration (SIAC) and the Hong Kong International Court of Arbitration (HKIAC), demonstrate that the majority of claims relate to energy and infrastructure investment and the caseloads of all major arbitral institutions is increasing.

ABOUT THE AUTHOR
Wendy J Miles QC is a specialist in international arbitration and dispute resolution with a focus on private and public international law. She works closely with the International Chamber of Commerce (ICC) and has represented it at the Conferences of the Parties (COP) on climate change since 2015.

Investment treaty arbitration currently also remains the predominant dispute resolution mechanism for international investment protection agreements between states and foreign investors pursuant to international investment protection and free trade agreements. The statistics published by major arbitral institutions administering investment treaty arbitration, including the International Centre for Settlement of Investment Disputes (ICSID), the PCA Court and the Stockholm Chamber of Commerce (SCC) Court of Arbitration, also demonstrate an uplift in claims and in particular those relating to energy and infrastructure systems.

ARBITRATORS' CRITICAL ROLE

Those involved in administering international arbitration, as arbitrators, counsel, institutions,

CIArb's global reach... places it in a unique position to develop all three elements of a climate change strategy

experts or other service providers, are all involved in the resolution of disputes at the heart of the transition to net zero. As non-state parties, they play a critical role in helping to achieve the objectives of the Paris Agreement. They can achieve that in three key ways.

First, the international arbitration community can and should monitor, calculate, report on and reduce its own greenhouse gas emissions. This is the operational element of achieving net zero by 2050, and requires carbon accounting and accountability based on science-backed targets. Law firms are signing up to firmwide net-zero targets, including through the Net Zero Lawyers Alliance, launched in London in June 2021. Arbitral institutions, the ICC, LCIA, PCA, HKIAC, SIAC and others, as well as CIArb, should all be monitoring their own carbon footprints and working to reduce their carbon.

As to the operation of arbitration proceedings, the Green Arbitration Pledge and its accompanying protocols for hearings, conferences and administration of proceedings all provide useful and practical guidance as to the reduction of greenhouse gas emissions in the conduct of arbitration.

Second, international arbitration should adapt procedurally to particular challenges arising out of disputes that involve climate change related issues. The ICC Task Force on Climate Change Related Disputes considered these procedural aspects and published recommendations in a 2019 report, *ICC Report on Resolving Climate Change Related Disputes through Arbitration and ADR*.

Recommendations included procedures to improve the role of experts and expert evidence (in particular in relation to climate change related science, but equally applicable to the valuation of climate change related risk), the use of dispute boards and expert determination (e.g. 'green standing tribunals' for the duration of a transition project), timely resolution of disputes dealing with urgent climate change related issues, enhanced transparency and the use of amicus briefs for disputes involving matters of broader public interest in relation to climate change.

Third, international arbitration disputes in any of the energy, infrastructure, industry and land use systems may raise substantive issues of law or fact that tribunals will be required to resolve. In order to do so in a manner that takes into account the global commitment by states, and increasingly by non-state parties, parties and counsel need to put the relevant

arguments before tribunals or, where they do not, tribunals need to request that they do so.

International arbitral tribunals are required to resolve disputes in accordance with the parties' contract (or the relevant treaty) and law. Contractual and treaty interpretation is subject to the applicable governing law, the proper law of the contract as well as any mandatory law, including of the place of performance of the contract or investment. The arbitral process has its own legal framework emanating from the New York Convention on the Recognition and Enforcement of Arbitration Agreements and arbitration statutes.

A CHANGING LEGAL FRAMEWORK

Increasingly, states are implementing their Paris Agreement commitments through new policies and regulation and litigation. This impacts a broad range of laws, including in relation to energy and electricity production and use, infrastructure standards, financing transition, greenhouse gas reporting, climate change financial risk reporting, greenhouse gas reduction standards and obligations, and accompanying environmental standards and administrative procedures relating to environmental impact assessments.

This changing legal framework impacts the operation of contracts as well as their interpretation and the determination by tribunals (or national courts enforcing their awards). If arbitral tribunals fail properly to address the relevant legal framework in their substantive decisions, it is not inconceivable that awards may be challenged before national courts or annulment committees on the grounds of jurisdiction (excess of powers), arbitrability or public policy.

CIArb's global reach, coupled with its mission to be the thought leader on dispute resolution and promote and facilitate creative and effective resolution of disputes, ensuring practitioners are highly trained, places it in a unique position to develop all three elements of a climate change strategy for international arbitration and the arbitration community: operational, procedural and substantive.

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A perfect fit

Different disputes need different solutions – the rule of law can be strengthened through justice systems that include a range of ADR processes. Dr Isabel Phillips FRSA goes back to first principles.

At the simplest level, 'the rule of law' could be described as the principle that 'the law' applies to all, and that no individual or institution is implicitly or explicitly exempt. Described this generally, it is not a new concept; it can arguably be traced back to between 3500BC and 350BC among traditions from across the world. The term is now often used so loosely that the Collins dictionary defines it like this: "The rule of law refers to a situation in which the people in a society obey its laws and enable it to function properly."

ABOUT THE AUTHOR

Dr Isabel Phillips FRSA is Director of ADR and Mediation at CIArb. She is a conflict specialist and mediator in commercial and violent conflict, with extensive consultancy experience.

While this definition might not be technically wrong, it reduces it to contexts where individuals are legally obedient (whatever the nature or origin of these laws). This contrasts with the rule of law as a comprehensive system of factors where dispute resolution mechanisms at all societal levels minimise the physical, mental and economic harm caused by disputes, while also contributing to the maintenance of social trust and promoting and enabling constructive conflict engagement.

CIVIL JUSTICE

The World Justice Project assesses the situation in 139 countries and jurisdictions against different

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The potential for mediation, arbitration and adjudication to deliver more than just distributive and retributive justice is clear to practitioners

factors to produce the overall WJP Rule of Law Index. The seventh of the eight 'issues/factors' measured for the index is civil justice. Many of these are the same issues that led to the advent of the 'modern' forms of private dispute resolution, the antecedents of current international commercial arbitration, established in the late 17th/early 18th centuries. Businesspeople – not least those in the maritime context – wanted subject matter experts as neutrals, to provide swift, workable and appropriate outcomes given either a lack of relevant legal processes or court processes that were perceived as arbitrary, corrupt or inappropriate.

As the WJP index demonstrates, problems in access and affordability, discrimination, corruption, improper government influence, unreasonable delay, enforcement issues and lack of access to ADR mean that 1.4 billion people cannot meet their civil justice needs. Hyper-regulated, arbitrary and/or highly corrupt contexts produce one set of issues.

Contexts where government and infrastructure, including court systems, have completely broken down arguably create even greater difficulties. There is no 'magic bullet' in either context. However, in less extreme situations, where the rule of law exists but it is weak, and access to justice is problematic, the full range of complementary ADR processes can offer interim or transitional solutions. These can provide a bridge to the re-establishment of civil justice systems, as well as longer-term solutions that match the type of justice sought with the process used.

FORMS OF JUSTICE

Most legal systems offer access to a couple of types of justice, of which there are many: distributive, relational, reparative, retributive and procedural, to name a few. However, few systems even attempt the challenging undertaking of matching need and form. The potential for mediation, arbitration and adjudication to deliver more than just distributive and retributive justice is clear to practitioners. This is particularly true of flexible ADR forms such as mediation, which may offer access to a number of different forms of justice simultaneously (e.g. integrative, relational and distributive). However, the challenge is getting this information at the right time, in the right form, to parties. This is because information about ADR, and the advice to use it, tends to lie within the legal profession in any given jurisdiction.

In many jurisdictions, accessibility and affordability of civil courts rests less with court costs and more with the cost and inadequacy of legal representation. And in case the link is unclear, three of the WJP factors and measures for civil justice are: people can access and afford legal advice and representation; civil justice is free of discrimination in practice based on socioeconomic status; ADR mechanisms are accessible, impartial and effective.

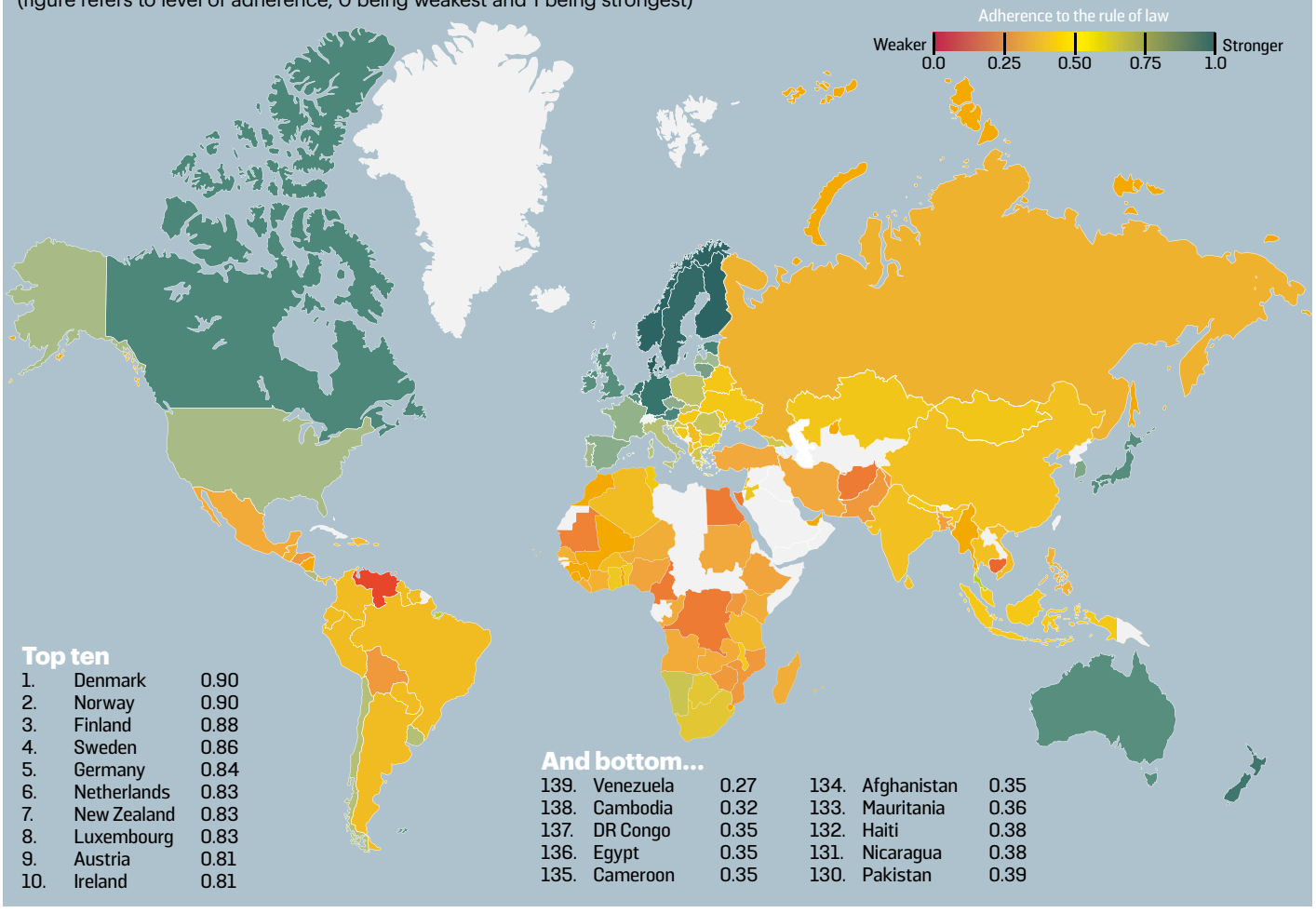
ACCESSIBILITY AND AFFORDABILITY

In all the mediations I have done, the parties (re) assess their risks and make decisions based on their understanding of the other alternatives on offer, e.g. walking away, going to court, using a different ADR process (e.g. negotiation). Particularly in small or informal business disputes, contracts have often been reached with little, if any, legal input; therefore there is an argument that resolution of such issues through mediation without legal advice is proportional and appropriate.

However, while low-cost, time-limited ADR processes can result in huge savings in time and cost for the parties (and the state), and these savings can be portrayed as improving access to justice, if people who do need legal advice in order to

Top of the table...

Countries ranked highest in the World Justice Project's Rule of Law Index
(figure refers to level of adherence, 0 being weakest and 1 being strongest)



Top ten

1.	Denmark	0.90
2.	Norway	0.90
3.	Finland	0.88
4.	Sweden	0.86
5.	Germany	0.84
6.	Netherlands	0.83
7.	New Zealand	0.83
8.	Luxembourg	0.83
9.	Austria	0.81
10.	Ireland	0.81

And bottom...

139.	Venezuela	0.27	134.	Afghanistan	0.35
138.	Cambodia	0.32	133.	Mauritania	0.36
137.	DR Congo	0.35	132.	Haiti	0.38
136.	Egypt	0.35	131.	Nicaragua	0.38
135.	Cameroon	0.35	130.	Pakistan	0.39

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make effective decisions can't get it, to present this cost and time saving alone as improving A2J is deeply problematic.

In my experience this is the exception rather than the rule within mediation, but is definitely an important issue. Therefore, if access to sound, affordable legal advice is not considered in the context of how DR systems as a whole, and ADR schemes specifically, are set up, overall delivery of access to justice will continue to be an issue.

It is unsurprising that at the other end of the scale – large international commercial and investor–state disputes – the appraisal of the options, risks and opportunities is complex, costly and heavily legalised. Therefore, the drivers around the use of ADR, particularly international commercial and investor–state mediation, tend to be the attempt to try and manage complexity and workability, as well as avoiding getting embroiled in jurisdictions that are weak in terms of the rule of law and/or problematic in terms of the enforcement of the New York Convention.

THE SINGAPORE CONVENTION

The excitement about the Singapore Convention on mediation is therefore understandable; it already provides a level of assurance to parties that international mediation sits alongside international arbitration as legitimate complementary ADR processes. This is despite the fact it could be years before a substantive number of parties have gone through the process of seeking enforcement under the convention. However, this 'downside' speaks to the key benefits of integrative solutions reached by mutual consent (even in contexts where the rule of law is weak and access to justice is problematic): enforcement is much less likely to be required than it is when an outcome is imposed.

BRAZIL CASE STUDY

The 'craft' of ADR ensures justice is served

By **Cesar Pereira FCIArb**

On 17 July 2007, an Airbus 320 hit the runway at Sao Paulo city-centre airport but could not stop, launching itself over a traffic-jammed avenue and onto a petrol station. With 199 casualties, it was the deadliest aviation accident in Brazilian history. National commotion demanded a prompt response, but lawsuits in national courts can easily take 10 years to be resolved. Access to justice is not exclusive to state jurisdiction. Inspired by dispute resolution practices used in the wake of 9/11, the airline attorneys created a mediation and negotiation institute to process damages and other forms of relief for the aggrieved families. They invited the State Public Prosecution, Public Defenders, the Ministry of Justice and the National Secretariat for Consumer Defence to oversee the negotiations and guarantee justice would be delivered. The initiative solved 92% of all demands in its first year of existence and was lauded for its ingenious effectiveness. It also resulted in an agreement with public authorities to rebuild the airport runway, preventing such disasters from repeating. This dispute resolution experiment not only provided justice to the relatives of the deceased, but it prevented more families being faced with the same outcome.

ABOUT THE AUTHOR
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Some 12 years later, when the collapse of a mining dam caused millions of tonnes of toxic waste to engulf the countryside of the state of Minas Gerais in Brazil, the same dispute resolution mechanism returned to dampen the consequences. The waves of iron ore detritus killed 270 people. A team of dispute resolution specialists seasoned from the Airbus incident was immediately deployed. Hundreds of mediated agreements were closed with families to mitigate the consequences of the disaster.

In 2014, an international corruption scandal ensnared Petrobras, the publicly traded, state-controlled Brazilian oil company. Among its multiple ramifications, the episode led to disputes regarding the losses incurred by shareholders arising from the company's alleged false information regarding corrupt practices. A decade earlier, Brazilian corporate laws had introduced arbitration in shareholder disputes, and since 1989 a statute has insured shareholders against losses of this kind. However, little had happened in practice. Especially after a 2018 settlement made in a US class action, several arbitral proceedings with thousands of claimants, large and small, are known to have been initiated at the Brazilian stock exchange (B3) arbitration centre. This process prompted greater awareness of shareholders' rights and showed the possible benefits of ADR even for individual and small shareholders. Mass arbitration disputes involving other publicly traded companies have marked Brazil's stock market since then, and they can prove to be an effective tool in the hands of shareholders, irrespective of their size or sophistication.

These widely diverse experiences illustrate that ADR may provide real people with a path to justice. Even though private dispute resolution methods are popularly associated with large transactions between businessmen wearing suits, this falls short of showing how far ADR techniques have evolved. Today, it is in the interest of both companies and citizens alike to avoid the hurdles of classic litigation and try more efficient, thought-out ways of reaching a conclusion to their complications. What is more, these experiences show in practice how the craft of dispute resolution may protect interests that could otherwise be ignored and left unattended.

These diverse experiences illustrate that ADR may provide real people with a path to justice

A simpler alternative to legal proceedings

By **Asha Bejoy**

UAE CASE STUDY

Business-related disputes have increased dramatically in the 21st century as businesses have experienced explosive growth. Most businesses will have had moments when a dispute arose at the most unexpected of times, hampering the business in the short term at the very least. ADR methods help remove high costs and lengthy procedures associated with litigation. As a practising attorney in the UAE specialising in institutional arbitrations and litigations in the DIFC and AGDM Courts, I have come across many examples of how ADR helps businesses to resolve their disputes quickly and cost-effectively. This case study is a typical example of how ADR methods effectively resolved a dispute between the parties over the ownership rights of a domain name.

In this instance, the Complainant is a multinational entity and the exclusive owner of a known trade name, which they have been using and promoting for many years in multiple jurisdictions. The Respondent was an individual residing in the UAE. The Respondent had registered a domain name identical to the trade name of the Complainant – but with a '.ae' domain. Upon realising that there was a domain registered under their trade name in the UAE, the Complainant approached the Respondent and enquired if he would be willing to sell the '.ae' domain name. The Respondent quoted a very high price, and the Complainant indicated their disinterest in purchasing the same.

The Complainant then decided to resort to legal measures. Rather than instituting a suit in

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Asha Bejoy is Managing Partner at ATB Legal Consultancy, UAE

ADR methods help remove high costs and lengthy procedures associated with litigation

Above: Abu Dhabi Global Market court facilities

the conventional litigation space, they decided to approach the World Intellectual Property Organization (WIPO) Arbitration and Mediation Center. A complaint was filed, pursuant to the UAE Domain Name Dispute Resolution Policy (UAE DRP, approved by .ae Domain Administration), the Rules for the UAE DRP and the WIPO Supplemental Rules for the UAE DRP. The Complainant disputed the right of the Defendant to use the domain name within the UAE and highlighted that it violates the Complainant's registered trademark. They alleged that use of their trade name by the Defendant would cause deception in the mind of the Complainant's customers in the UAE. Thus, the Complainant contended that the Respondent primarily registered the disputed domain name to obtain illegitimate consideration from the Complainant or a competitor.

The proceedings were referred to the appropriate forum and were presided by a sole panellist. Both the parties were given equal opportunities to present their case and engage lawyers. After carefully examining the written submissions from both parties, the arbitrator decided in favour of the Complainant and ordered that the domain name be transferred to the Complainant.

It took less than three months for the completion of the entire proceedings

The key highlights of the process were duration and costs. It took less than three months for the completion of the entire proceedings. This is an attractive aspect of ADR methods over conventional litigation. In terms of costs, parties would have incurred only a fraction of the costs compared with traditional litigation, as the procedure was purely document-driven. Although the Complainant was a well-established business and might have been in a position to afford higher legal costs, a delayed launch of the business in the UAE or a dilution of their trade name in the UAE would have cost them dearly, especially if the proceedings were to drag on for many months or years in a traditional litigation.

This is only one among many cases where ADR has helped businesses settle their disputes in a short time frame and saved millions of dollars in costs or lost revenue. WIPO statistics show that, from 2012 to 2021, the number of cases filed in the WIPO ADR system increased by 95% and that businesses have significantly benefitted from ADR methods. It can be safely stated that, in the interest of costs and time, ADR mechanisms should be explored by more and more businesses.

Get involved with your global ADR community!

Your CIArb membership brings you lots of opportunities to engage with your global ADR community and to develop your career. Here are just some of the ways in which you can get involved.

Consultations

UK consultation on Singapore Mediation Convention

The UK Government is consulting on whether it should sign and ratify the Singapore Mediation Convention.

The Chartered Institute of Arbitrators (CIArb) has played a key role in promoting the Mediation Convention since its introduction and will engage fully with the Ministry of Justice throughout the consultation process.

CIArb Director-General Catherine Dixon said: "CIArb passionately believes in the important role mediation can play in resolving disputes. CIArb supports ratification of the Convention by the UK which will reinforce confidence in international mediation and thereby increase the use of ADR globally."

We encourage all interested members to respond to the consultation which closes on **Friday 1 April 2022.**

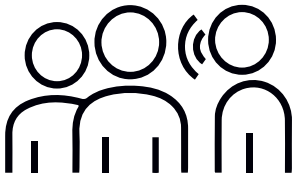
Read more **here**

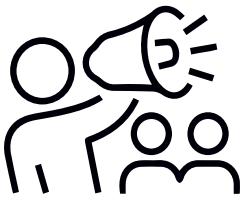
Arbitration Act of England & Wales: Law Commission Review

Following a consultation process last year (which CIArb contributed to), the Law Commission is conducting a review of the Arbitration Act (1996). CIArb's position is that the Act has provided an incredibly strong and well-regarded framework within which arbitration has flourished, and that now – 25 years since it was introduced – is a good time to consider where iterative, targeted amendments might be beneficial.

We will be a key partner as this review is undertaken and the Law Commission wants to hear the views of our members directly.

For more information please contact Lewis Johnston (Director of Policy and External Affairs) at **ljohnston@ciarb.org**.





Call for papers

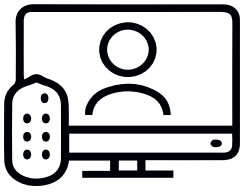
Mediation Symposium 2022

This year's Mediation Symposium will address fundamental questions about the use of mediation to support long term global sustainability. For example, is mediation just about time-bound disputes, or does it have a role in establishing dispute and conflict systems? How are the knowledge and skills of the mediator currently applied in complex systems and complex decision-making processes?

Whether you are an ADR practitioner or provider, researcher or mediation user, we want to hear from you! How can mediation and its associated skills and knowledge contribute to a more sustainable future? How are you applying, or could we apply, these skills and knowledge to resolve the conflict and/or disputes which arise directly, or indirectly, out of the climate crisis?

The deadline for submissions is **Friday 1 April 2022**.

Make your submission **here**



Career development

Virtual Diploma in International Maritime Arbitration

Starting on 11 May 2022

With international maritime arbitrations on the increase, there's never been a better time to broaden your career horizons.

With our 2021 Diploma fully booked and well underway, we now welcome bookings for the Chartered Institute of Arbitrators' 2022 Virtual Diploma in International Maritime Arbitration.

CIArb members save 10%! To redeem your offer, please book your place before **31 March 2022** by email to education@ciarb.org, quoting your CIArb membership number.

Ongoing Learning

CIArb's Ongoing Learning webinars are designed to help you deepen your knowledge and skills, and keep you informed and up-to-date.

International Construction Industry Trends
22 March 2022

For more information, please visit:
www.ciarb.org/events

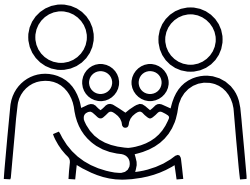
Virtual Module 1 Mediation Training and Assessment

Starting on 7 June 2022

Mediation is increasingly used as an effective way of resolving complex disputes outside of court. Develop your mediation knowledge and skills through this practical and comprehensive course. Delivered by experienced practising mediators, this course will help you to understand:

- What conflict is and how it arises.
- What a mediator does and how mediation differs from other forms of ADR.
- The core skills required to be an effective mediator.
- The main mediation strategies.

For more information, visit **www.ciarb.org/training**



New partnerships

OAC

CIArb and the Oman Commercial Arbitration Centre (OAC) announce their partnership to provide, for the first time, CIArb arbitrator training and accreditation courses in Oman, and to support the use and development of ADR in the region.

BVI IAC

CIArb and the British Virgin Islands International Arbitration Centre (BVI IAC) sign Memorandum of Understanding to promote international ADR. This partnership is to support the effective and ongoing development of arbitration in the Caribbean.

For more information visit **www.ciarb.org/news**

Find out more

There's so much more we'd like to include here but there just isn't the space! Ensure you don't miss out on the opportunities available to you as a member of CIArb:

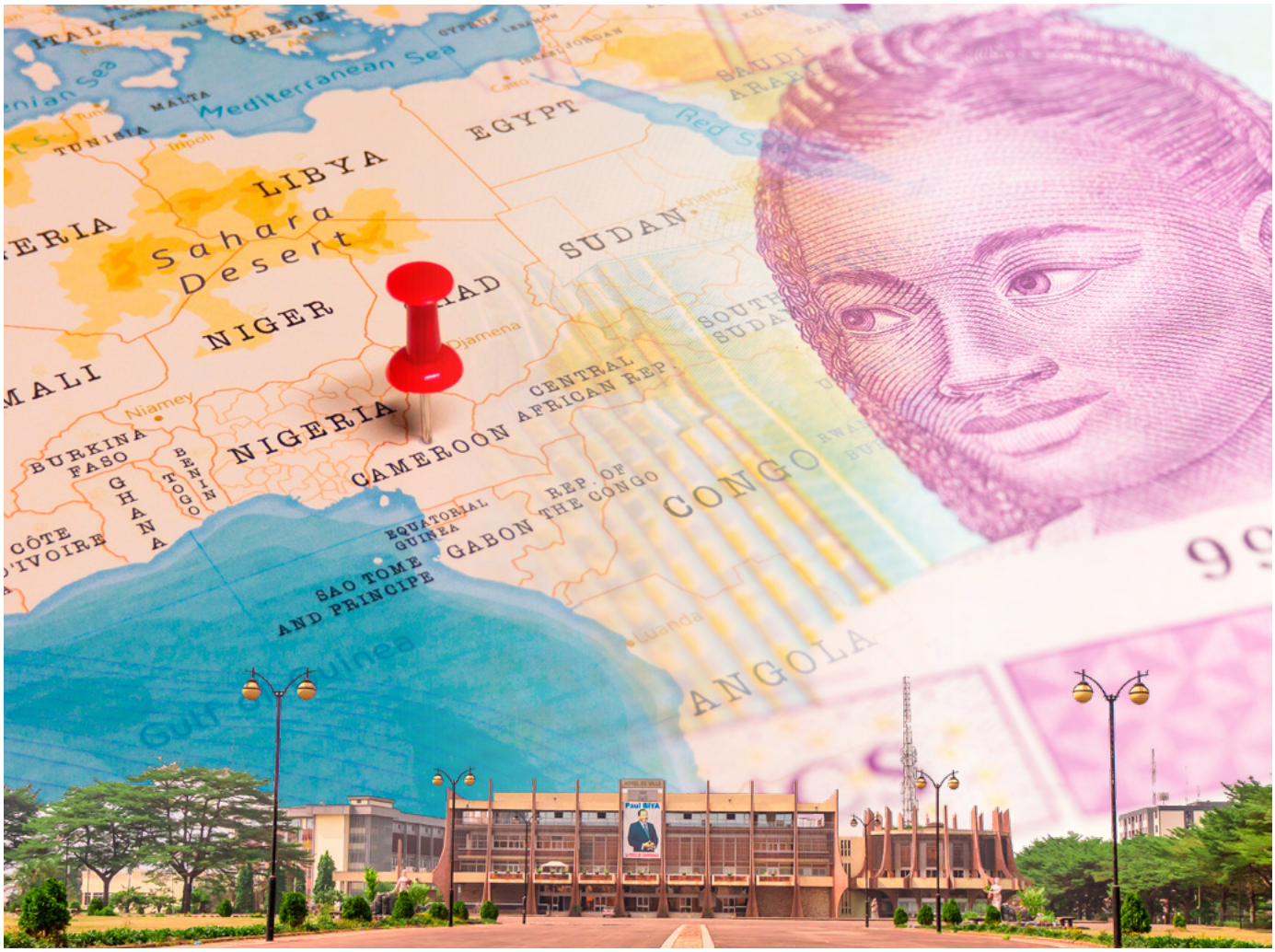
- Visit our website at **www.ciarb.org** to get the latest information
- Ensure you're receiving your monthly **eSolver** email newsletter* which is sent on or around the 15th of each month.

*Haven't received eSolver? Please check your spam or junk folder for the emails. If they are not there, please email us at marketing@ciarb.org and we'll be happy to investigate further.

Case note

Hope Services v Cameroon

Report by Kateryna Honcharenko MCIArb, Research Executive, CIArb



The investment journey of a Cameroonian businessman, Jean Emmanuel Foumbi, began in 2009, when he founded Hope Services – a company registered in the US state of Delaware with subsidiaries registered in France and Cameroon, and with numerous offices and employees.

Hope Services later entered into an agreement with the government of Cameroon to jointly create a digital platform that would help raise and centralise donations worth billions of US dollars (according to the Cameroonian government) made for the benefit of various community projects in the country, and thus make funding opportunities more transparent and accessible.

The platform was launched in 2012, and in the same year, while negotiations with the government relating to the project were still pending, the architect of the project, Foumbi, was arrested on suspicion of fraud and later received two convictions. According to Foumbi, the conditions of his three-year imprisonment were life-threatening and in violation of his human rights, as he was subjected to inhumane living conditions and violence that has resulted in many permanent health conditions, including permanent paralysis of the right side of his body.

According to Foumbi, the conditions of his imprisonment were in violation of his human rights

After the intervention of the French government and several NGOs, Foumbi was released and allowed to go to France, from where he successfully had one of his fraud convictions overturned on appeal. The second was not appealable as, he claimed, the

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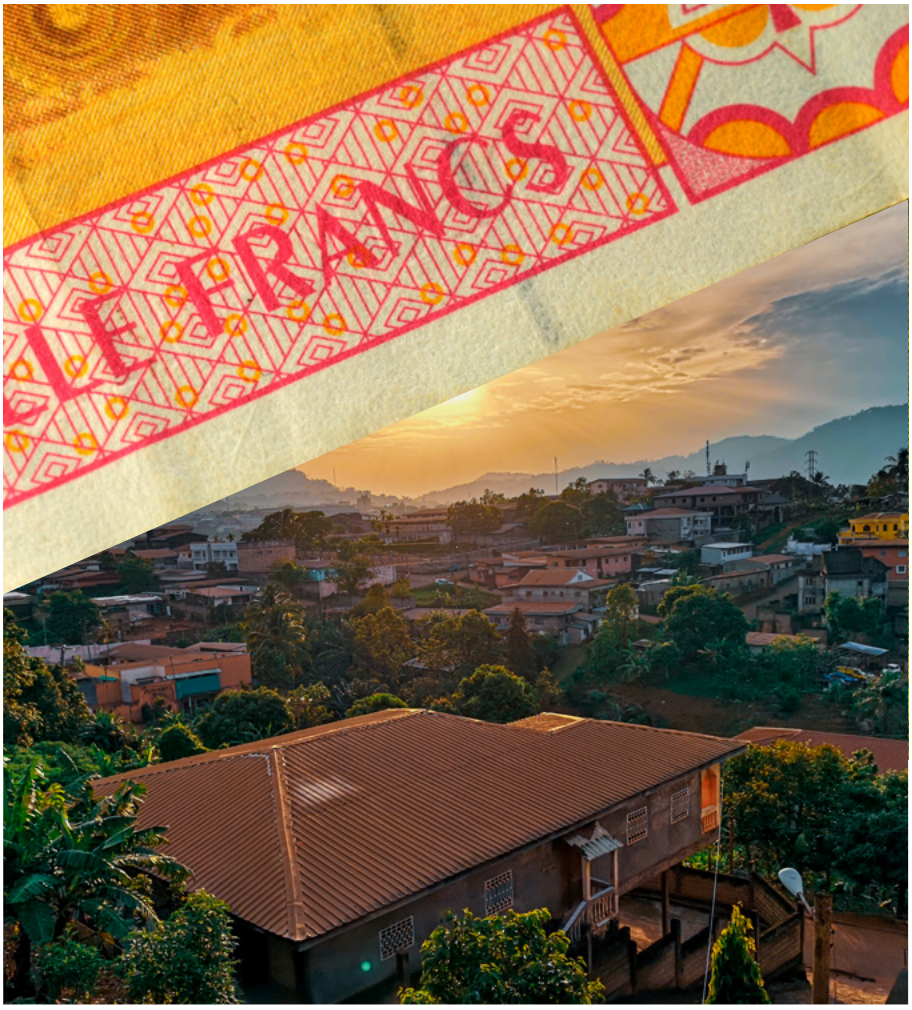
Cameroonian court had lost the file. Foumbi claimed that his conviction and imprisonment were wrongful and done only so that the government of Cameroon could acquire the Hope Services donation platform for its own benefit.

Foumbi's imprisonment, according to Hope Services' ICSID claim filed against Cameroon (respondent) in 2019, dealt a crippling blow to the operation of the platform, which, it further asserted, was the intention. The company sought almost US$1bn, alleging expropriation of an investment – in particular, the platform itself and the contract establishing the platform. The claimant alleged this and various other violations of provisions of the US–Cameroon BIT.

In 2020, the Tribunal (Professor Dr Maxi Scherer, Professor Pierre Mayer and Professor Nassib G. Ziadé) held the first session with the parties, following which the respondent filed a request to bifurcate under Article 41 of the ICSID Convention. According to the respondent, bifurcation is especially important in cases where a state is one of the disputing parties. The respondent claimed that the Tribunal has no jurisdiction to hear the dispute because, it asserted, Hope Services had no control or ownership over the investment and therefore could not benefit from protection under the US–Cameroon BIT.



After reviewing the positions of the parties on the bifurcation request, the criteria to order bifurcation, its relevance and their own authority to do so, the Tribunal granted the request to bifurcate and preliminarily consider objections to jurisdiction raised by the respondent. In December 2021, the Tribunal issued an award on jurisdiction, finding that it had no jurisdiction under the US–Cameroon BIT because it found that the claimant failed to demonstrate that it owned or controlled the investment at the relevant time. The claimant was additionally ordered to pay in excess of US$100,000 for the cost of the arbitration.

Statements have been made by Cameroon in the aftermath of this award accusing Foumbi of misusing the ISDS system as a forum for his human rights grievances. However, it is not uncommon in domestic legal systems for victims of crime to seek compensation for civil claims they may have arising from the same facts. Any evidence of Foumbi's treatment was offered in this case as factual evidence of the respondent's interference with the business of Hope Services, and it is worth noting that the Tribunal did not need to examine this evidence to make its determination on the lack of existence of an investment, as the interference would have been examined as part of the merits claims.

The respondent claimed that the Tribunal has no jurisdiction to hear the dispute because Hope Services had no control or ownership over the investment and therefore could not benefit from protection under the US-Cameroon BIT

What's on

Give your career a boost with this selection of training opportunities

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SPOTLIGHT ON

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5 May £240

Disputes can arise in almost any sector and knowing what ADR is and the various processes involved is beneficial in any career path you take. Our popular online course provides you with an introduction to the various methods of ADR.

Once you have successfully completed the course and the accompanying assessment, you will be able to:

- Understand the background to ADR.
- Understand how ADR can support dispute cases.
- Describe the processes and procedures of the various forms of ADR.
- Apply for Associate membership of CIArb.

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11 May £4,550

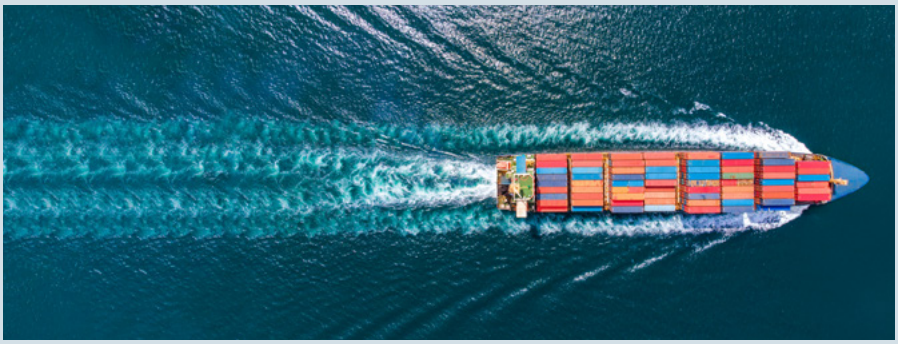
With international maritime arbitrations on the increase, there's never been a better time to broaden your career horizons. This prestigious Diploma gives you the in-depth training you need to increase your knowledge and gain the relevant skills to help you navigate the complex law, practice and procedures of this fascinating field of international arbitration.

Dariusz, a current Diploma delegate, shares his views on the course so far:

"A demanding but highly rewarding course, expertly conducted, with sessions presented by practitioners highly experienced in their field."

Captain Dariusz Gozdzik, Independent Maritime Consultant, Leicester Maritime

CIArb members save 10%!
To redeem your offer, please book your place before 31 March 2022 by emailing **education@ciarb.org**, quoting your CIArb membership number.



Professional development

- **Avoiding and Resolving Contractual Disputes** Open entry £36
- **Brand Protection in Times of Disputes** Open entry £36
- **A Guide to Arbitration Award Writing** Open entry £150

ADR

- **Online Introduction to ADR** Open entry £24 *Separate assessment available, open entry £72; student course/ assessment bundle £48*
- **Virtual Introduction to ADR** 5 & 6 May £240 *Assessment from 6 May £72*

Mediation

- **Online Introduction to Mediation** Open entry £109 *Separate assessment available, open entry £72*
- **Virtual Introduction to Mediation** 24 & 25 March £240 *Assessment from 25 March £72*
- **Virtual Module 1 Training & Assessment** 2 June £3,600
- **Virtual Module 2 Law of Obligations** (*note that this module is the same across all pathways*) 8 April £1,080 *Assessment 13 October £342; separate assessment available 15 March £342*
- **Module 3 Mediation Theory and Practice** Open entry £1,140

Construction adjudication

- **Virtual Module 1 Law, Practice and Procedure of Construction Adjudication** 31 March £1,080 *Assessment 7 July £174; separate assessment available 17 March £174*
- **Virtual Module 2 Law of Obligations** (see above)
- **Virtual Module 3 Construction Adjudication Decision Writing** *Assessment only* 10 June £408

Domestic arbitration (England and Wales)

- **Virtual Module 1 Law, Practice and Procedure of Domestic Arbitration** *Assessment only* 17 March £174
- **Virtual Module 2 Law of Obligations** (*see above*)
- **Virtual Module 3 Domestic Arbitration Award Writing** *Assessment only* 10 June £408

International arbitration

- **Virtual Module 1 Law, Practice and Procedure of International Arbitration** 31 March £1,080 *Assessment from 14 July £174; separate assessment available 17 March £174*)
- **Virtual Module 2 Law of Obligations** (*see above*)
- **Virtual Module 3 International Arbitration Award Writing** *Assessment only* 10 June £408 *Separate assessment available 19 August £408*

Accelerated programmes

- **Virtual Accelerated Route to Membership: International Arbitration** 15–17 March £1,200
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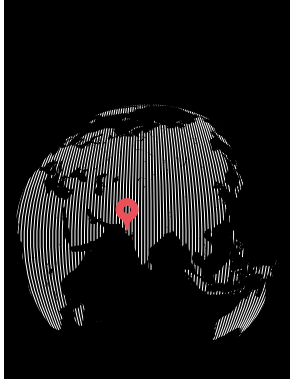
- **Virtual Diploma in International Maritime Arbitration** 11 May £4,550 *Assessment 9 December £408*



Challenges overcome

Mian Sheraz Javaid FCIArb, the founder of CIArb's newest branch, describes a turning point for ADR in Pakistan

Setting up a CIArb Pakistan branch was something Nasir Ahmed Khan and I dreamed of while completing our Fellowship (FCIArb) training in 2015.

In 2018, the Law and Justice Commission of Pakistan held the 8th Judicial Conference. Here, three themes were discussed: regional economic integration and effective dispute resolution mechanisms in the context of the China–Pakistan Economic Corridor (CPEC); ADR methodologies and deterring factors; and strategies for delay reduction and expeditious disposal of the backlog of cases. The conference ended with some key recommendations: that dispensation of justice through private resolution methods would be facilitated by the courts; the understanding that the presence of international institutions will play an important role in coordinating legal education and developing an ADR skills framework; and the understanding that Pakistan's socio-economic growth due to the CPEC requires effective multi-tier dispute avoidance and resolution mechanisms.

CIArb PAKISTAN

In light of these recommendations, we started to talk seriously about opening the CIArb Pakistan branch. Initially, there were reservations regarding the economic situation of the country. Some thought that Pakistan should be a chapter within a branch of an adjacent country, such as India or Singapore.

Karachi, Pakistan

And while the CIArb Board of Trustees approved the formation of a Pakistan branch in 2018, the Security Exchange Commission of Pakistan expressed reservations regarding the organisation's name and the nature of it being a not-for-profit foreign-controlled entity – and so it took another four years to get approval of the regulatory documentation.

However, two factors were key to Pakistan getting its own branch: the CPEC's $70bn investment to solve disputes with foreign nationals through ADR; and the backlog of 2.5 million cases and the intention of the superior judiciary to send those cases for ADR.

A CHANGING ADR SCENARIO

ADR is fast gaining policy traction in Pakistan. Moreover, with the promotion of investment in the country, it is pertinent that Pakistan's legal system provide modes for immediate redressal of grievances for commercial parties. In the past decade, the ADR scenario in the country has changed. With the enactment of the Recognition and Enforcement (Arbitration Agreement and Foreign Arbitral) Act 2011, it seems that the country is ready to adopt the best international practices. However, although ADR acts have been passed both at the federal and provincial level, such as the Alternative Dispute Resolution Act, 2017 at federal level and the Punjab Alternate Dispute Resolution Act 2019 and the Khyber Pakhtunkhwa Alternate Dispute Resolution Act 2020, their implementation still has a long way to go.

CIArb Pakistan will offer a range of courses and qualifications, providing public recognition of expertise in dispute resolution. The branch will also provide a platform to bring together dispute resolution practitioners. By holding events and conferences regarding the latest developments in the field, the practitioners of the country will get to engage with the best minds.

Lastly, an ADR-conducive environment will help the economy by bringing revenue in the form of increased investment. International companies will be more willing to conduct their businesses in Pakistan due to the trust developed by the presence of efficient ADR mechanisms. Furthermore, with continuous efforts, Pakistan can strive to become a favoured seat of arbitration.

An ADR-conducive environment will help the economy by bringing revenue in the form of increased investment

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ABOUT THE AUTHOR

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