Confidentiality in e-Arbitration: A Comparative Analysis of Malaysia, China and the United Kingdom

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ABSTRACT

The widespread of COVID-19 pandemic has entailed a new normal in global dispute resolution including arbitration. In enhancing the access to justice, several established arbitration centres have implemented electronic arbitration or e-arbitration in their regions. Compared to traditional arbitration proceedings, e-arbitration is conducted in an online environment with the assistance of advanced technology. Nevertheless, the use of technology has brought with it the issue of confidentiality. The Arbitration Act 2005 is the current law governing arbitration in Malaysia. By adopting qualitative research methodology, this article seeks to examine whether the existing Malaysian legal framework sufficiently provides for online arbitration and whether such legal framework is adequate to govern the issue of confidentiality. For comparative analysis, this article further scrutinised the position in other jurisdictions, particularly China and the United Kingdom. The collected data will then be critically analysed using the content analysis method. Subsequently, this article provides recommendations for Malaysia to administer e-arbitration on a full-fledged basis with the issue of confidentiality not being compromised.

Keywords - traditional arbitration, e-arbitration, online dispute resolution, confidentiality

INTRODUCTION

Definition of E-Arbitration

The term e-arbitration is not defined in Malaysian law. Nonetheless, such a definition may be observed from the scholars and the laws of other jurisdictions. *Arsic* defines e-arbitration as a dispute resolution mechanism in which all of its procedures are conducted in the online environment by using electronic communication technologies, such as e-mail, online conferencing, or chat groups, including oral hearing (Arsic, 1997). Likewise, *Amro* asserted that in e-arbitration, the e-arbitral proceedings, including the oral hearing, are entirely made online (Amro, 2019). Labanieh et. al defined e-arbitration in their article as "*out-of-court dispute resolution mechanism where all procedures are conducted using electronic means, with parties submitting their dispute to an independent and impartial arbitrator appointed by or for the parties*" (Labanieh et al., 2024). Meanwhile, Article 2 of the Shenzhen Court of International Arbitration ("SCIA") Online Arbitration Rules 2019 refers to e-arbitration as a dispute resolution method of conducting arbitration by use of the internet or other information technologies.

Positive Attributes of E-Arbitration

Generally, e-arbitration allows for a greater efficiency to the disputing parties, particularly in expediting the arbitration proceedings. It is 25% to 30% quicker than a traditional hearing (Croagh et al., 2017). Further, it is easily accessible for parties of different geographical locations as the proceeding can be conducted in any location using any means of technology and thus, enhancing the access to justice. In fact, e-arbitration contributes

to the cost reduction because the proceedings are conducted partially or wholly online. The proceedings are entirely paperless or reduce the paper documents submission and require less travelling for the disputing parties, arbitrators, lawyers, and other parties involved. Incidentally, less travelling reduces the carbon dioxide emission and global warming effect.

Moreover, e-arbitration extends some of the benefits of traditional arbitration and adds several valuable benefits. For instance, in a traditional arbitration, all the parties must come to an agreement on the venue for the proceeding. E-arbitration maintains the party autonomy due to the parties still having the power to control the dispute resolution processes, for example, the parties can agree on the seat of arbitration as well as the applicable procedural and substantive laws. It is further less formal and less intimidating compared to traditional arbitration since the physical appearance and face-to-face meetings of the parties is not required. Therefore, e-arbitration is a very flexible approach and allows it to become a more practical option for dispute settlement, following the COVID-19 pandemic era.

LITERATURE REVIEW

The Emergence of E-Arbitration

Arbitration started off in a traditional way where parties resolve their dispute through physical meetings, hearings as well as physical service of documents. Nevertheless, almost everything is done online today, including resolving disputes through online dispute resolution mechanisms such as online arbitration or electronic arbitration (e-arbitration). Online arbitration, also known as e-arbitration or virtual arbitration, primarily refers to "*communication through an electric medium using various systems and software which allows communication through the internet on platforms like Zoom, Google Meets or Microsoft Teams*" (Mohammad & Zakariah, 2021). Unlike traditional arbitration, which takes place in a physical setting, e-arbitration occurs online, i.e. in cyberspace (Labanieh et al., 2020). Definition for online dispute resolution was also provided in UNCITRAL Technical Notes on Online Dispute Resolution 2016 ("2016 Technical Notes") as "*mechanism for resolving disputes through the use of electronic communications and other information and communication technology*". For the purposes of this article, the authors will use the term "e-arbitration" which includes any reference to electronic arbitration, online arbitration or virtual arbitration.

Arbitration has been conducted online since 1995 when the first Virtual Magistrate ("VM") arbitration programme was established with a small scope of dispute settlement involving the filing of complaints and communications between parties via email (Kallel, 2008). The VM has further led to the emergence of other e-arbitration providers, such as Cyber Tribunal (Labanieh et al., 2022) which was established in 1998 and has a larger scope than VM (Kallel, 2008). It is important to note that even though the VM did not serve its purposes (Sewart & Matthews, 2002) and the Cyber Tribunal was not functioning a few years after (Kallel, 2008), it can still be considered as a starting point for the establishment of e-arbitration.

On 11 March 2020, the World Health Organisation ("WHO") declared the COVID-19 outbreak as a "global pandemic" due to positive cases spreading rapidly outside China (Abdou, 2021). Later, on 18 March 2020, the Malaysian government announced the first Movement Control Order ("MCO") whereby people's movement has been restricted from one place to another in order to prevent the spread of COVID-19 (New Straits Times, 2020). The COVID-19 pandemic has forced all government and private sector premises to be closed down temporarily including courts and the arbitration centres. On 17 March 2020, the Asian International Arbitration Centre ("AIAC"), in its official website, announced that its premises and offices would also be closed during the implementation of the MCO and no physical service of documents would be accepted (AIAC, 2020). In this period, electronic communications such as email and video conferencing were widely used, resulting in e-arbitration. For instance, since in-person hearings are prohibited during the Conditional Movement Control Order, AIAC had further announced on 13 October 2020 that parties have the option to explore virtual hearings and meetings (AIAC, 2020). The mandatory restrictions on physical movement and communication indirectly forced a shift to a new normal, notably the adoption of e-arbitration for out-of-court dispute resolution.

E-arbitration is more practical than traditional arbitration because parties can access their cases whenever they want and documents and arguments can be filed from any location especially when the disputers are located in

different jurisdictions (Labanieh & Hussain, 2022). Nevertheless, concerns were raised about the risk of cybersecurity when parties and arbitral tribunals use unfamiliar technologies and work remotely using unsecured networks (Wood & McKenzie, 2020). E-arbitration offers the potential for heightened confidentiality compared to court litigation, but this advantage is weakened by the risk of digital documents being forwarded to unauthorized parties inherent in online platforms simply by clicking a button (Labanieh & Hussain, 2022). This will eventually affect the integrity and confidentiality of arbitration proceedings (Wood & McKenzie, 2020) and compromise the effectiveness of e-arbitration (Labanieh & Hussain, 2022).

Generally, COVID-19 has accelerated the shift towards the use of electronic communication technologies in arbitration during the pandemic and potentially beyond. Thus, in line with the development of technology, there are several concerns that need to be properly addressed, namely (i) the legal position of e-arbitration in Malaysia; and (ii) the adequacy of the law to protect the confidentiality of e-arbitration proceedings in Malaysia.

Legal Framework in Malaysia

The legal position of e-arbitration in Malaysia

The principal legislation that governs arbitration in Malaysia is the Arbitration Act 2005 (Act 646) ("the Principal Act") which came into force on 15 March 2006. The Principal Act has been amended multiple times, including the Arbitration (Amendment) Act 2011 ("the 2011 Amendment Act"), the Arbitration (Amendment) Act 2018 and Arbitration (Amendment) (No. 2) Act 2018 (collectively referred as "the 2018 Amendment Act") and the Arbitration (Amendment) Act 2024, which received its Royal Assent on 23 October 2024 and was published and gazetted on 1 November 2024 ("the 2024 Amendment Act"). However, the 2024 Amendment Act has not yet been in force (Federal Legislation, 2024), pending a date to be appointed by the Minister (Ooi & Thiagarajan, 2024).

The 2011 Amendment Act seeks to confine "court intervention" to the Principal Act's scope and minimize the use of inherent powers (Kumar, 2011). Meanwhile, the 2018 Amendment Act brings notable changes to the "substantive law" (Abraham et al., 2022), aligning Malaysian arbitration law with the "latest revision of the UNCITRAL Model Law" and arbitration laws of leading jurisdictions (AIAC, 2018). The 2024 Amendment Act further reflects the restructuring of the AIAC, as mandated by the "Supplementary Agreement between Malaysia and Asian-African Legal Consultative Organization (AALCO)" on 20 February 2024, and aligns the "Malaysian arbitration regime" with "international best practices" (LAW Partnership, 2025).

The 2018 Amendment Act brought about a paradigm shift in traditional arbitration through the introduction of electronic processes. The definition of "arbitration agreement" has been expanded to recognise arbitration agreements concluded via any electronic communication, such as emails and faxes (Philip, 2018). Under the new substitute Section 9(4)(a) of the 2018 Amendment Act, any form of arbitration agreement may be entered into, including oral, as long as the contents of the agreement are recorded. This is further strengthened by the insertion of the new section 9(4A) of the 2018 Amendment Act that expands the definition of "in writing" to include electronic communication whereby it states that "*the requirement that an arbitration agreement be in writing is met by <u>any electronic communication</u> that the parties make by means of <u>data message</u> if the information contained therein is accessible so as to be usable for subsequent reference*". This section specifically enables arbitral agreements concluded using data messages to be legally binding, valid and legitimate in the same way as a traditional arbitral agreement under the Principal Act (Labanieh et al., 2022). With this amendment, the positive and evidentiary writing requirement is eliminated in an effort to keep up with communication technological advancements (Wong, 2018).

The definition of "data message" is further provided in the new section 9(6) of the 2018 Amendment Act as "*information generated, sent, received or stored by <u>electronic</u>, magnetic, optical or similar means, including, but not limited to, <u>electronic data interchange</u>, <u>electronic mail</u>, telegram, telex or telecopy*". It is significant to note that this definition, regardless of the medium or technology employed, can be regarded as exhaustive since it encompasses all circumstances in which information, such as the arbitral agreement, is communicated, generated, stored or received in the form of data message and it would definitely "accommodate future technological developments" in arbitration (Labanieh et al., 2022).

The statutory recognition of electronic means is further seen through the 2024 Amendment Act. Section 33 of the Principal Act is amended by inserting a new subsection (2A) which allows the use of "digital signatures" and "electronic signatures" by arbitrators for arbitral awards (Yuong et al., 2024). Nevertheless, cross reference should be made to Digital Signatures Act 1997 [Act 562] for digital signature and Electronic Commerce Act 2006 [Act 658] for electronic signature, as stated in the new inclusion of subsection (9). Digital and electronic signatures promote faster execution of arbitral awards by removing the necessity for physical document processes (AIAC, 2024).

In light of the Malaysia's adoption of e-arbitration, it is important to draw attention to the Principal Act's amendments in 2018 and 2024, which include the replacement of section 9(4) and the insertion of the two new subsections (4A) and (6) under Section 9, as well as the insertion of two new subsections (2A) and (9) under Section 33. In drafting or recording arbitration agreements, Section 9 provides for electronic communication and data messages such as Email, WhatsApp or short messaging service messages (Yaakob et al., 2020). The adoption of digital and electronic signatures for arbitral awards under Section 33 is a positive development, aligning with established commercial practice and facilitating international arbitrations by smooth-running procedures for arbitrators (LHAG, 2024). Notably, the 2018 and 2024 Amendment Acts provide statutory recognition for electronic communication and digital and electronic signatures, which streamlines the process of e-arbitration.

Apart from the above amendments, several other provisions in the Principal Act can be invoked to legalise e-arbitration in Malaysia. For instance, traditional arbitration proceedings in Malaysia start when a respondent receives from a claimant a request in writing to refer their dispute to arbitration as provided under Section 23 of the Principal Act. The issue arises as to whether this written request can be done electronically. It can be argued that the wording of "*unless otherwise agreed by the parties*" at the beginning of Section 23 of the Principal Act underscores the non-mandatory nature of this section and allows the parties to agree otherwise (Labanieh et al., 2022). The parties, may, for example, agree that the arbitration will begin when the respondent receives a request made electronically rather than on paper.

Other issues concerning e-arbitration are the legality of e-hearing and e-notification since parties to arbitral proceedings have the rights to conduct oral hearing and to receive reasonable prior notice of any hearing as stipulated under Section 26 of the Principal Act. These rights however can be legalised in an online environment based on the principle of party autonomy. This principle is recognized by Article 19(1) of the UNCITRAL Model Law on Electronic Commerce 1985 (amended in 2006) ("MLICA 1985"). Based on the Commentary provided in MLICA 1985, Article 19(1) "guarantees the parties' freedom" to decide the rules of procedure to be followed in the arbitration proceeding. Section 21(1) of the Principal Act which is similar to Article 19(1) of the MLICA 1985, also provides that parties can select or design the rules of procedure according to their preferences while section 21(2) provides an arbitral tribunal with extensive power to decide how to conduct the arbitral proceedings, in cases where parties fail to do so. Thus, the principle of party autonomy is indeed "ensured and recognised" under this section (Labanieh et al., 2022). This denotes that the parties or the arbitral tribunal may decide to use electronic communication technologies, such as video conference for e-hearing and submit e-notification via email.

In addition to the Principal Act, the AIAC Arbitration Rules also introduced significant changes regarding electronic means, i.e. AIAC Arbitration Rules 2021 ("2021 Rules") and AIAC Arbitration Rules 2023 ("2023 Rules"). The AIAC Arbitration Rules generally refers to "*a comprehensive set of procedural rules upon which parties may agree to conduct their arbitral proceedings*" (Leong, 2021). Effective 24 August 2023, the 2023 Rules introduced significant changes from the previous 2021 Rules (Subramaniam & Rasadurai, 2023). However, it is worth noting that the 2021 Rules seems to be the first initiative to legalize e-arbitration by "*explicitly permitting the conduct of virtual hearing*" (AIAC, 2021), a crucial step especially after the COVID-19 pandemic's MCO.

These assertions are evidenced by several provisions in the 2021 Rules, which were later refined in 2023 Rules. The 2023 Rules refined the definition of the word "virtually" from 2021 Rules to include "*the use of technology to remotely participate in the arbitral proceedings, including attending or appearing at meetings, conferences, deliberations or hearings including the taking of testimony of witnesses and experts by using a video*

conferencing platform, telephone or any other appropriate means". Compared to the 2021 Rules, the 2023 Rules expand the definition by adding the statement "*including the taking of testimony of witnesses and experts*" by using video conferencing platforms.

A significant change in the 2023 Rules pertains to communication between parties. Under the previous 2021 Rules, communication between parties through electronic means, i.e. email is introduced in Rules 3.1 and 3.2(c) of the AIAC Arbitration Rules. However, under 2023 Rules, communication through "electronic means", can now be found in Part II UNCITRAL Arbitration Rules. This shift reflects a move from the 2021 Rules' integrated AIAC and UNCITRAL framework to a distinct separation in the 2023 Rules, mirroring the AIAC Arbitration Rules 2018 (Rahmat Lim & Partners, 2023). The 2023 Rules now allow for complete adoption of the UNCITRAL framework, moving away from the partial integration present in the 2021 Rules (Subramaniam & Rasadurai, 2023). Nevertheless, the AIAC Arbitration Rules permit virtual hearings and communication through electronic means between the parties, thereby eliminating much of the uncertainty regarding the implementation of e-arbitration in Malaysia.

The adequacy of the law to protect the confidentiality of e-arbitration proceedings

With the increase of technological advancement, numerous risks arise particularly with regards to the confidentiality of the arbitral proceedings such as hacking and covert recording (Wong & Asmadi, 2020). A newly-added Section 41A and Section 41B of the 2018 Amendment Act explicitly provide for and protect the confidentiality of arbitration proceedings, stating that all arbitration proceedings are confidential unless there is another agreement (Dipendra, 2018). The 2018 Amendment Act however, is silent regarding the requirement to provide cybersecurity in an online context (Labanieh et al., 2020). The 2024 Amendment Act made no amendments to the confidentiality of arbitral proceedings. Therefore, the existing provisions remain unchanged, and there is no development in the Principal Act to specifically address cybersecurity and data protections to safeguard confidentiality in e-arbitration.

In addition to the Principal Act, the AIAC Arbitration Rules strengthen the confidentiality protections for arbitral proceedings (Zul Rafique & Partners, 2022). The 2021 Rules expanded confidentiality requirements, as evidenced in Rule 44.3, which extended the duty to maintain confidentiality to the Arbitral Tribunal, the Director, the AIAC, tribunal secretary, witnesses, and experts. Additionally, Rule 44.4 required all parties, including service providers, to provide an undertaking of confidentiality to all of the arbitration parties. Meanwhile, in the 2023 Rules, these confidentiality protections were moved to Rule 21. While the core provision remained largely unchanged, the requirement for a formal undertaking of confidentiality appears to have been removed. However, even with these changes, the 2023 Rules still did not explicitly address confidentiality within the context of e-arbitration.

On 25 October 2021, the AIAC further announced the introduction of its Protocol on Virtual Arbitration Proceedings ("VAP Protocol") in order to facilitate virtual arbitrations (AIAC, 2021). With this VAP Protocol, the AIAC hopes to assist users and arm them with the necessary "know-how" for conducting virtual hearings in their arbitration proceedings (AIAC, 2021). This VAP Protocol applies to meetings, witness examinations and hearings where there is little to no in-person participation, as agreed between parties and arbitral tribunal in writing as provided under Clause 1.1 of the VAP Protocol. It should be highlighted that the parties should express their consent in writing to hold the hearing virtually and acknowledge that they will not subsequently challenge an award on the grounds that the hearing was not done in person as provided under Clause 1.4 of the VAP Protocol. The arbitral tribunal is also encouraged to explain the rationale behind conducting the virtual hearing if the parties did not reach a written agreement prior to the conduct of Virtual Arbitral Proceedings ("VAP") as provided under Clause 1.5 of the VAP Protocol.

It is worth noting that AIAC has provided virtual hearing options for use by parties for quite some times (Wong & Asmadi, 2020). The AIAC now provides parties and tribunals with access to its licensed versions of the Zoom and Webex platforms in order to help in the conduct of virtual hearings (AIAC, 2020). Particularly in the context of pre-hearing conferences and/or settings, both of these platforms have been utilised in both adjudication and arbitration processes at the AIAC (AIAC, 2020). Since the VAP platforms available for use at the AIAC are third party solutions (e.g., Zoom, WebEx), this has posed a question whether confidentiality of the arbitral

proceedings will be compromised. Clause 3.4.1(c) and Clause 7 of the VAP Protocol provides that the parties and the arbitral tribunal shall ensure that the platform and technology used for the VAP adequately safeguards the confidentiality and privacy required of the VAP, for instance, against any hacking, illicit access, unlawful recording, or interception by third parties and in compliance with data protection laws of the relevant countries. In addition, unless otherwise agreed in writing by the parties, each VAP member shall provide a formal secrecy undertaking on terms to be decided by the arbitral tribunal as provided under Clause 7.2 of the VAP Protocol. Further, the parties and arbitral tribunal must verify that the third-party platform, equipment and software used for the VAP appropriately guarantee the secrecy and privacy of the proceedings as provided under Part V of the VAP Protocol. To conclude, although the Arbitration Act and AIAC Arbitration Rules do not explicitly address confidentiality in e-arbitration, the VAP Protocol, which specifically safeguards such confidentiality, can still be referred to.

Implementation of e-Arbitration in the United Kingdom and China

E-arbitration has developed tremendously on international levels for the past years. This is evidently proved by implementation of e-arbitration by the numerous arbitration centres in various jurisdictions prior to the occurrence of the pandemic COVID-19. In this article, the development of e-arbitration in China and the United Kingdom is analysed in order to examine the management of confidentiality and the solutions adopted in compromising the confidentiality in e-arbitration proceedings.

Legal Framework in China

Traditional arbitration in China is regulated by the Arbitration Law of People's Republic of China 1994 (the "Arbitration Law"). In addition to the Arbitration Law, the Supreme People's Court of China Interpretation of Some Issues on the Application of Arbitration Law of the People's Republic of China 2006 (the "Supreme Court Interpretation") also provides explanation and definition on the Arbitration Law. In addition to traditional arbitration, e-arbitration in China has developed progressively whereby in 2018 it was found, the number of arbitration institutions that are implementing online arbitration is 22 from the total 255 arbitration centres in China whereas the number is increased to more than 30 in the following year and the online arbitration cases amounted to forty percent (40%) from the total cases registered in 2019 (China Trade News, 2020). Among reasons that contributed to the development of e-arbitration in China is the critiques by some of issues of traditional arbitration that become too rigid, centralized and having too many similarities with process of court therefore e-arbitration is introduced to provide more flexibility, efficiency and effectiveness in term of time saving to cope with the development of e-commerce in China (Zhi, C., 2019).

Among the first arbitration bodies which set out its own specific rules governing e-arbitration in China is China International Economic and Trade Arbitration Commission (also known as the Arbitration Court of the China Chamber of International Commerce) ("CIETAC"). CIETAC Online Arbitration Rules 2015 ("CIETAC Online Rules") was developed in addition to its CIETAC Arbitration Rules 2015 ("CIETAC Arbitration Rules") which governs the traditional/conventional arbitration. The main intention of the CIETAC Online Rules is to ensure that the economic and trade transactions dispute to be resolved in an independent, impartial, efficient and economic manner by way of online arbitration as stated in Article 1, CIETAC Online Rules. The CIETAC Online Rules further provides the definition for online hearing in Article 2 as oral hearing conducted on the internet through video conferencing and other electronic or computer communication forms.

The e-arbitration process that CIETAC implements is by way of document-based arbitration unless parties agreed otherwise as stipulated in Article 32 of CIETAC Online Rules. However, in the event that online hearing is required during the arbitration process, in Article 33 of the CIETAC Online Rules, such hearing could take place by way of video conferencing or any other computer communication or electronic forms. It is the duty of the arbitration centre in safeguarding the confidentiality of the documents, communication and transmission of the documents and also the storage of such as stipulated in Article 15 of the CIETAC Online Rules. For such purposes, CIETAC will make reasonable efforts in securing the online transmission of case data among the parties, the arbitral tribunal and CIETAC and thus, store the case information through data encryption. Despite the effort taken by the arbitration centre to protect the confidentiality of the documents and the arbitral

proceedings, the parties to the arbitration proceeding should be aware that the risk of breach of confidentiality still exists and they should be more vigilant in minimizing the risk. The risk is further heightened to the fact that in the event parties to the arbitral proceeding suffered loss due to online transmission date acquired by non-intended recipients caused by Internet system failure during the arbitral proceeding, CIETAC has specifically mentioned its exclusion of liability as stated in Article 16 of the CIETAC Online Rules.

Although the issue of confidentiality is not specifically mentioned in CIETAC Online Rules, by virtue of Article 54 of the CIETAC Online Rules, it is stated that for any other matters which are not covered in the CIETAC Online Rules, reference should be made to CIETAC Arbitration Rules whereby in pursuant to Article 38(2) of the CIETAC Arbitration Rules, the confidentiality principles is observed by requiring for all cases heard in camera, the parties and representatives, the arbitrators, the witnesses, the interpreters, the experts consulted by the arbitral tribunal, the appraisers appointed by the arbitral tribunal and other relevant persons shall not disclose to any outsider any substantive or procedural matters relating to the case.

Another major arbitration body in China which has developed and implemented e-arbitration is Shenzhen Court of International Arbitration ("SCIA"). E-arbitration implementation in SCIA is regulated by the SCIA Online Arbitration Rules ("SCIA Online Arbitration Rules") which was effective from 21 February 2019 (SCIA, 2019). The SCIA Online Arbitration Rules is formulated with the aim to resolve commercial disputes between equal parties through impartial and efficient online arbitration as mentioned in Article 1, SCIA Online Arbitration Rules. Paragraph 1 of Article 3 of the SCIA Online Arbitration Rules provides the scope of jurisdiction of SCIA to include disputes arising from online transactions or other commercial disputes where parties submitted to the SCIA for e-arbitration. Unlike the CIETAC Online Rules 2015 which is silent on the requirements for parties who wish to use e-arbitration, the SCIA Online Arbitration Rules clearly provides the requirements of necessary equipment and technical capacity to the parties agreed to conduct the e-arbitration and failure of complying such requirements, the SCIA may decide that e-arbitration will not take place and will be replaced with traditional arbitration as stated in Article 5 of SCIA Online Arbitration Rules. This provision is highly recommended to be implemented in e-arbitration to facilitate a smooth and safe arbitration process in addition to observing the principle of upholding the confidentiality of e-arbitration. Further examination of the SCIA Rules showed that the SCIA has put measures on minimizing the cybersecurity and confidentiality risks connected to e-arbitration by providing a dedicated log-in account and verification of identity of parties to the arbitration through the online service arbitration platform in reference to Article 7 of SCIA Online Arbitration Rules. Moreover, Article 13 of the SCIA Online Arbitration Rules provides for a review on the authenticity of electronic data submitted by parties via the online service arbitration platform based on certain criteria.

Similar to the CIETAC's approach, the SCIA in general shall not hold hearings for e-arbitration but in the event, it is necessary, may hear the case through online video hearings, online exchange of information, teleconferences, and other appropriate means, or may decide to hold offline hearings while the other processes are still conducted online as mentioned in Article 23, SCIA Online Arbitration Rules. Similar to CIETAC Online Rules 2015, the SCIA also limits its liability, together with the connected person and the arbitrators for loss caused by computer viruses, cyber-attacks, system instability, network faults, force majeure or other non-intentional circumstances caused by SCIA or the arbitral tribunal.

In summary, the development of e-arbitration in China showed although it was introduced in 2015, it took several years before it is well accepted and such development is highly contributed by the support by the people and the government of China in addition to the efforts done by the arbitral bodies of issuing advice and promoting the use of virtual hearings for international arbitration in China (Evans, J., & Dang, H., 2022).

Legal Framework in the United Kingdom

The main law governing the arbitration in England, Wales and Northern Ireland is the Arbitration Act 1996 (the "English Arbitration Act") whereas for Scotland, provisions in relation to arbitration are provided in Schedule 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (the "Scotland Act"). Similar to the position in China and Malaysia, arbitration bodies in the United Kingdom also establish their own rules in regulating the arbitration cases brought before the arbitration bodies. This is evidenced in practice by the London Court of International Arbitration Centre and the London Chamber of Arbitration and Mediation.

London Court of International Arbitration Centre ("LCIA") deals with commercial dispute resolution by means of arbitration, mediation and other ADR process. LCIA governing rules is the Arbitration Rules 2020 (the "LCIA Arbitration Rules"). Unlike arbitration bodies in China which established specific rules in relation to online arbitration, LCIA has incorporated online arbitration in the relevant provisions of the LCIA Arbitration Rules. For instance, Article 14.3 of the LCIA Arbitration Rules states that the parties and the arbitral tribunal shall make contact whether by a hearing in person or virtually by conference call, video conference or using other communications technology or exchange of correspondence. With reference to Article 14.3 of the LCIA Arbitration Rules, the parties in the arbitral proceedings may use the conference call, video conference as medium for online or virtual hearing. Therefore, online arbitration is given legal recognition by LCIA as one of the methods available for arbitral parties at LCIA. This is further supported by Article 19.2 of LCIA Arbitration Rules which provides that the hearing involving participants in one or more geographical places is allowed to take place either by way in person, virtually by way of conference call, video conference or any other communication technology or in a combination thereof.

Another arbitration body that implements e-arbitration is London Chamber of Arbitration and Mediation ("LCAM"). The online arbitration service provided by LCAM is regulated by its Arbitration Rules which is in force effective from 1 September 2022 ("LCAM Arbitration Rules"). The legality of online hearing of arbitration is derived from Article 28.2 of the LCAM Arbitration Rules in which it states that the arbitral tribunal has the discretion to determine the format of any hearing with the consultation of the parties. The format of the hearing may be in person, telephone conference, and video conference or combination thereof as mentioned in Article 28 of LCAM Arbitration Rules.

On the issue of confidentiality, there is no mandate on maintaining confidentiality found in the arbitration laws in the United Kingdom but the parties can enter into confidentiality agreement as such right is provided under Section 34 (1) of the English Arbitration Act (Yaakob et al., 2020, 88). However, protection of confidentiality principle in arbitration can be examined in Article 30.1 of the LCIA Arbitration Rules where it states that the parties are required as general principle to keep confidential all materials in the arbitration created for the purpose of the arbitration, inclusive of documents created not contained in public domain and the awards. The same undertaking of confidentiality also imposed on the parties involved in the arbitration process inclusive of any authorised representative, witness, the expert and service provider. Article 30.3 of the LCIA Arbitration Rules further states that the LCIA shall not publish any award or part of an award without prior written consent of all parties and the arbitral tribunal.

Whereas the similar rules are applied in LCAM Arbitration Rules where it provides in Article 28 that the hearing shall be held in private in order to uphold the principle of confidentiality in arbitration unless being agreed otherwise by the parties. In addition to that, Article 9 of the LCAM Arbitration Rules states that it shall maintain the confidentiality of the arbitration and also the award. Additional advanced measures taken by LCAM is using blockchain technology in their effort to provide a secure case management and documents storage solution. This exceptional measure could boost confidence of the parties to bring their dispute to the LCAM for settlement as the confidentiality of the dispute, the evidence submitted and the parties involved are protected from the risk of confidentiality and cybersecurity breach.

Based on the above, it can be concluded that although China has introduced the implementation of e-arbitration since 2015, the United Kingdom has implemented more remarkable and advanced technology in securing the e-arbitration platform from any risk of breach of security and confidentiality.

RESEARCH METHODOLOGY

Qualitative research methodology is the best method to adopt since this article requires a legal study on the laws regulating e-arbitration as an online dispute resolution and the potential risks of its implementation in Malaysia. The important characteristic of qualitative research is that it involves observation and document analysis that value depth over quantity. This method applies the collecting and analysing non-numerical data that further helps to have a better understanding of the concepts and development of the laws governing e-arbitration in Malaysia, China and the United Kingdom. Most of the data are found in legislations, articles and related research papers. Hence, it is more suitable for this study as it allows us to determine the subject in depth and gain deep insights

on the context of the implementation of e-arbitration. This method also adopts a library-based study that analyses the primary and secondary sources of laws in relation to e-arbitration in Malaysia, China and the United Kingdom which were retrieved from online sources. It further relies on articles and research papers which discuss the implementation of e-arbitration in Malaysia as well as in China and the United Kingdom and encompasses purely legal analysis.

Data Collection

In this study, data is collected from the primary and secondary sources of laws, amongst others the Arbitration Act 2005, the AIAC Arbitration Rules, VAP Protocol and the relevant legislations in force in China and the United Kingdom. A critical analysis is conducted to understand the laws, rules and practices governing e-arbitration in Malaysia, China and the United Kingdom. The collection of data in this study includes further in-depth examination on research papers conducted by other scholars. For the purpose of collection of data, various online sources are used such as Lexis Advance Malaysia, Current Law Journal, Wiley Online Library and Hein Online provided in the UiTM library website as well as from other databases such as ResearchGate.

Data Analysis

Once the data has been collected, it will be analysed through available methods such as statutory analysis and content analysis. The statutory analysis is used to analyse the existing legal framework governing e-arbitration in Malaysia such as the Arbitration Act 2005, AIAC Arbitration Rules, VAP Protocol as well as the legislations in force in China and the United Kingdom. On the other hand, the content analysis is used to make valid inferences from written data collected from the library-based documents such as newspapers reports, books and journal articles. The written data collected in qualitative content analysis are presented in words and themes and this makes it possible to draw some interpretation of the result by categorizing and discussing the meaning of words, phrases and sentences. In order to rely on the secondary sources of law, it must also be up-to-date to ensure its relevance and reliability in the current research.

DISCUSSION AND FINDINGS

The preliminary findings of this paper have shown that e-arbitration is identical to traditional arbitration, with the exception that e-arbitration takes place in an online environment by leveraging advanced technology. It is undeniable that e-arbitration expands some of the efficiencies of traditional arbitration, thus it is a preferable avenue for dispute settlement. E-arbitration is a familiar alternative in the international jurisdictions and Malaysia has adopted the same approach in 2020 when AIAC encouraged the parties to explore the option of conducting a virtual hearing and/or meeting during the CMCO (AIAC, 2020).

This paper further analysed that the current laws and procedural rules in Malaysia are sufficient in governing e-arbitration. It is explicit that the amendment to the Principal Act has legalised e-arbitration in Malaysia. Moreover, e-hearing and e-notification are recognised as well under the Principal Act. Further, the AIAC Arbitration Rules supported the notion of e-arbitration by expressly permitting the conduct of virtual hearing to cope with the challenges brought by the pandemic COVID-19. The VAP Protocol, on the other hand, serves as a manual to the relevant parties in conducting virtual hearings. It can be deduced that the Principal Act, AIAC Arbitration Rules and VAP Protocol are a comprehensive set of legal frameworks which provides for electronic or online hearings, correspondences, submissions, and signatures. Therefore, the implementation of e-arbitration is legalised in Malaysia and adequately provided in the current legal framework. Additionally, it does appear that the legal profession has taken several measures, steps and solutions in creating a more efficient arbitrary framework in the wake of the pandemic (Mohammad & Zakariah, 2021). In analysing the implementation of e-arbitration between Malaysia, China and the United Kingdom, it could be inferred that the current laws and procedural rules in Malaysia are at par with the development of the laws and procedural rules in China and United Kingdom jurisdictions. It is interesting to note that some arbitral bodies in China are strict on requirements to be complied by the parties before e-arbitration is allowed to take place. These requirements are significant as e-arbitration relies heavily on the capability of information technology for its successful implementation.

Nevertheless, legal experts have warned of some challenges pertaining to the use of technology in e-arbitration, particularly the confidentiality issue. Therefore, this paper seeks to highlight that the current legal frameworks in Malaysia need further improvement in governing the threat of confidentiality in e-arbitration via the provisions of the Principal Act, AIAC Arbitration Rules and the VAP Protocol. These legal frameworks are aimed to safeguard the confidentiality of the data and documents shared, and the overall e-arbitration process. The AIAC's reliance on third-party VAP platforms like Zoom and WebEx introduces potential confidentiality risks. Compared with other jurisdictions, the United Kingdom employs much more advanced technology in securing their e-arbitration process against the risk of breach of confidentiality. Additionally, it is worth taking a glance at the United Kingdom's remarkable approach in adopting blockchain technology.

CONCLUSION AND RECOMMENDATIONS

A nationwide awareness and capacity-building strategy should be implemented to enhance the adoption of e-arbitration in Malaysia. This includes conducting hands-on training programs and public education campaigns targeted at legal practitioners, arbitrators, and disputing parties. These sessions should incorporate live simulations of e-arbitration using the AIAC's digital platforms. Additionally, AIAC should develop an awareness portal on its website that offers step-by-step guides, frequently asked questions, and video tutorials to help users navigate the e-arbitration process with ease. A national task force, comprising representatives from the AIAC, the Malaysian Bar Council, the judiciary, academic institutions, and IT professionals, should be established to chart a strategic roadmap for e-arbitration development and public outreach.

Given the recent amendments to the Arbitration Act, the adoption of the AIAC Arbitration Rules (2023), and the implementation of the VAP Protocol (2021), Malaysia's legal framework for e-arbitration remains relatively untested. To address potential ambiguities, particularly concerning confidentiality and the enforceability of digital evidence, AIAC should publish interpretive commentaries and guidance notes on these rules. In parallel, a legal review panel should be created under the ministry to systematically monitor emerging legal issues and propose amendments where necessary. Malaysia can also benefit by benchmarking its legal framework against more established models. For example, China's Provisions on Online Arbitration and its integration with national e-court systems offer an advanced example of legislative alignment with digital proceedings. Meanwhile, the UK's arbitration framework under the Arbitration Act 1996 supports party autonomy and technological flexibility, encouraging innovation through arbitral institutions like the London Chamber of Arbitration and Mediation (LCAM).

Confidentiality remains a core concern in e-arbitration. To mitigate risks, AIAC should mandate the use of encrypted communication channels, such as end-to-end encryption and multi-factor authentication, for all virtual hearings and digital submissions. In addition, AIAC should appoint an independent Data Protection Officer (DPO) to ensure compliance with cybersecurity standards and to oversee breach reporting and response protocols. The VAP Protocol should be amended to include mandatory minimum standards for data protection, breach response procedures, and liability provisions for third-party technology providers.

From a technological standpoint, Malaysia must move beyond reliance on external video-conferencing platforms and instead develop a proprietary, AIAC-branded digital arbitration platform. This platform should include an integrated e-filing system for the secure submission of notices, pleadings, and evidence; a user-friendly e-payment gateway for handling arbitration fees; and a secure virtual hearing room equipped with encryption, timestamping, document annotation, and participant authentication features. To further strengthen security and transparency, AIAC could integrate a blockchain-based module for evidence verification, drawing inspiration from the blockchain technologies employed by the LCAM in the UK. Similarly, China's experience in developing Internet Courts and the CIETAC's case management systems may serve as effective models for a centralized and secure digital arbitration infrastructure.

To support this technological transformation, there should be an allocation for annual funding to AIAC through the legal reform. AIAC should also form partnerships with local universities to co-develop technological solutions, conduct legal-tech research, and train the next generation of professionals. In the short term, AIAC may also collaborate with international technology vendors with experience in legal tech systems to co-develop Malaysia's first end-to-end digital arbitration platform.

Lastly, to ensure accountability and continuous improvement, AIAC should implement a digital user feedback mechanism to capture the experiences of arbitrators, disputants, and legal representatives after each e-arbitration session. These insights can guide iterative improvements to the platform. In addition, AIAC should conduct bi-annual independent audits of its e-arbitration systems and publish anonymised summaries to promote transparency and reinforce stakeholder confidence.

By learning from China's infrastructure-driven model and the UK's innovation-led practices, Malaysia can advance from the emergency digitalisation prompted by COVID-19 to a sustainable, full-fledged e-arbitration ecosystem. This transition requires not only updated laws but also investment in digital infrastructure, capacity building, and ongoing collaboration between legal and technology experts.

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