A very good afternoon.

1. I am very honoured and privileged to stand here before you and deliver my lecture in front of this august gathering. I chose to speak on the topic “Transformation and Expansion of Arbitral Institutional Roles amidst the Rise of Regionalism”. My reasons for choosing this particular topic is many fold. Key amongst the reasons is the nature of this gathering and this event. AFIA is known across the world for providing, especially younger members, with a forum to discuss issues and developments in international arbitration, with a particular focus on Asia-Pacific. This topic which is close to heart, is something that is most suitable for the forum at hand as in this audience are many young practitioners who will play a crucial role in the future of arbitration, much like the role that...
arbitral institutions have played in moulding the evolution of international commercial arbitration.

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2. It of course comes as no surprise that Arbitration has, always has had, and I hope will have, a vital role to play in running the wheels of commerce and industry, and it is natural that arbitration institutions in the region would have to establish reputable and credible legal and physical infrastructure to facilitate Arbitration domestically and internationally.

3. I am going to delve briefly today into the ways that arbitral institutions in the Asia-Pacific region have developed, and innovated, I will draw some examples and lessons from other institutions around the world, and examine current trends in the region and the directions they are headed in. Examining what has been done is important at an esteemed forum like this one, as we collectively develop and grow our institutions.

4. The regional arbitral institutions in the Asia-Pacific have maintained a unique balance between domestic development, and regionalism and internationalization. Aside from the move to cooperate regionally, these institutions have developed their own domestically driven specializations as well.
5. The tendency for convergence and harmonisation has existed since the adoption of the UNCITRAL Model Law, which purported to unify international arbitration legislation. In this region it is facilitated by the broad adoption of the Model Law into domestic laws in the region, by Japan, South Korea, Australia, New Zealand, Singapore, Malaysia, Thailand, Vietnam, The Philippines, India, Sri Lanka and (substantially) Hong Kong. Keeping this scale of development in this region in view, I will describe the expansion and transformation of Arbitral Institutions in Asia, and then connect this expansion to innovations, and regional cooperation.

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Expansion and Transformation of Arbitral Institutions in Asia

6. All regional jurisdictions wish to attract international and domestic stakeholders for international arbitration. This is being done by modifying local arbitration legislation and establishing competitive arbitration institutions in the region. These legislative changes stipulating the best practices in international arbitration have enhanced the attractiveness of international arbitration in this region. The development of an international arbitration infrastructure catering to both domestic and international markets, as well as pro-arbitration have made the Asia Pacific an arbitration hotspot.
7. The genesis was the establishment of the Kuala Lumpur Regional Centre for Arbitration in 1978 also followed by the Hong Kong International Arbitration Centre (HKIAC) in 1985. This has been followed by steady growth growing success. With the success of the HKIAC, it became obvious the concept of arbitral institutions could flourish in this area of the world. Today, it is estimated that there are 30-plus international arbitration institutions around the region of varying ages and stages

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8. Riding the wave, arbitral institutions enjoying excellent reputation in the international sphere include the Singapore International Arbitration Centre (SIAC), the Kuala Lumpur Regional Arbitration Centre (KLRCA), and the China International Economic and Trade Arbitration Commission (CIETAC) emerged. The “Pacific Tigers” as they have been labelled in the arbitration community, have constantly evolved and innovated in order to ensure harmonization and convergence of regional practices with international standards and to enhance their attractiveness to foreign players.

9. But, at the same time, as tigers don’t have the same stripes, Asian arbitral institutions understood very early that it was crucial to differentiate themselves in the competitive arbitration market by proposing forward-thinking innovations and distinctive services. It is
here that the seeds for the transformative roles to be adopted by Institutions was first planted.

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10. Seeing that there was general trend towards convergence first, the vast majority of South East Asian jurisdictions mirrored the text of the Model Law to elaborate their arbitration laws. Within those jurisdictions, arbitral institutions have developed over time, analogous set of procedural rules addressing most of the common issues that may pepper arbitral proceedings.

11. In Asia and its regions, there is also a need to maintain a balance between regional interests and international harmonisation is felt more strongly now than ever before. It would not be a far stretch to say that the success of development thus far has been on the successful managing of regional interests while ensuring harmonisation. It is an unfortunate truism that success of this magnitude comes with its challenges which will be encountered on a regular basis.

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12. Of particular import will be problems that will arise from rapid development in the region such a) the prospect of a multiplicity of proceedings leading to inordinate delays in ongoing matters, (b)
escalating costs, (c) a proliferation of arbitral centres throughout Asia, and the corresponding fear that many of these may constitute mere duplicates of one another and (d) the definite possibility of increased competition both between and amongst established and emergent institutions. The biggest question of course emerges as follows. As a result, the procedural cornerstone in administered arbitrations in the ASEAN region is standardized to such a degree that observers wonder: “are all institutional rules now basically the same”\(^1\)?

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**Innovations in the region**

13. With that question, I come to examine the ways these arbitral institutions have actually adopted a transformative role in the milieu of arbitration. With innovation as its corner stone, many arbitral institutions have actively chosen to disprove the theory that arbitral institutions are clones. What are some of the ways that the arbitral institutions have carved unique spaces for themselves? (Slide 8).

The emergency arbitrator option serves as a prime example. This

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sophisticated mechanism, launched by the ICC and later adapted by the Stockholm Chamber of Commerce (SCC) has now been adopted, in various forms. Back home, the KLRCA has also incorporated a fairly sophisticated emergency arbitrator mechanism for the benefit of the stakeholders.

14. An illustration of the distinctive services provided by institutions, is SIAC’s Scrutiny of Awards mechanism Inspired by a similar instrument at the ICC. The SIAC Rules provide that an award may not be rendered without the prior review and potential corrections of the relevant SIAC’s administrative body. It aims to enhance the quality of awards rendered under the administration of the centre and to prevent setbacks that could arise from a flawed arbitration award.

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15. In terms of innovation, HKIAC has excelled in developing two highly sophisticated services that were introduced in 2014. HKIAC has revised its Model Arbitration Clause to include a choice of law provision. This revision was aimed at fostering the efficiency of the proceedings, and to prevent uncertainty throughout the arbitration. It also served to avoid costs of potential preliminary disagreements over which national law should apply to the dispute.
16. The Asia-Pacific region has one of the highest concentrations of UNCITRAL Model Law countries in any region of the world. Interestingly however, the way in which the Model Law has been utilized in these countries varies considerably.

17. For instance, in New Zealand, the Arbitration Act 1996 incorporates the Model Law and deals with both domestic and international arbitrations in the one statute. Hong Kong, Malaysia and other states including South Korea have the same, Model-Law based, single statute on arbitration. Other states, notably Australia, have adopted a different approach involving separate domestic and international regimes but with both based on the Model Law. Finally, some countries, including The Republic of the Philippines, have a Model Law based statute for international arbitration but domestic arbitration is dealt with differently.”

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i. Diversity of products and localization

18. The most prominent way to show that Asia-Pacific is not just adopting the model law, or internationally recognized standards and
practices, but also adapting to local needs is by examining the diversity of products developed in this region. For example, the i-Arbitration and Adjudication services introduced by the KLRCA. the KLRCA’s i-arb rules were introduced to cater to Shariah principled transactions, which form a significant number of commercial/financial transactions that take place not only in the Malaysia, but throughout Asia and the Middle East. This set of Shariah compliant rules bridges the gap where it is suitable for arbitration of disputes arising from commercial transactions premised on Islamic principles, thus marking it as an innovative method to fulfil the specialized needs of parties in the region.

19. Initiatives such as these balance the notion of internationalization along with the needs of the domestic market. Whilst such initiatives engage a broader customer service base (i.e. international market share), they are also instituted to cater to local market needs. Thus, there is harmonization between local and international practices. It should be noted that Common Law courts are traditionally resistant to classifying Shariah principles as an applicable system of law. Therefore, parties engaged in disputes over Shariah-based transactions may be compelled to seek a forum that recognizes and applies these principles. With the i-arb Rules, parties can be assured that whenever the arbitral tribunal has to
form an opinion on a point related to Shariah principles, the Rules allows for a reference process to the Shariah Advisory Council or Shariah expert agreed between the parties. As such, an award issued under the KLRCA \textit{i}-Arbitration Rules ensures that the award does not contain anything that contradicts the mandatory principles of Sharia Law.

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20. The emerging pattern from this region appears that a culture of innovation focused on standing out from the competition is also reflected through the rise of hybrid ADR mechanisms such as Med-Arb throughout the continent. Here to, Institutions have gone beyond the realm of their duty and adopted transformative roles. Institutions in the region have begun to offer med-arb and other hybrid variety of ADR dispute resolution mechanism in an attempt to stay ahead of the curve and cater to the needs of the market. This development follows a great wave that has flooded the landscape of arbitration in the region. Indeed, three years before Singapore, some major arbitration venues such as China were revising their national arbitration law in order to provide a legal framework for hybrid ADR processes. Arbitral Institutions in this region have recognized the importance of Alternate dispute resolution in the coming era. Hybrid clauses, multi-tiered dispute resolution
mechanisms and other innovations are quickly becoming rapidly popular.

21. Presently the UNCITRAL Working Group on Arbitration and Conciliation is working on a convention on the international enforcement of commercial settlements. The New York Convention is predictably a basis. The main problem in this regards is the absence of domestic legislation for enforcing mediated settlements in many countries. Thus, experience of the regional jurisdictions would foster the utilization of mediation and allow mediation to live up to its promise of preserving commercial relationships, enable creative business oriented solutions, facilitate international transactions. I am confident that given the trend, arbitral institutions in the region will play a pivotal role in catering to the successful implementation of hybrid ADR mechanisms in the region.

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22. To mirror the developments in the region, there have been positive developments in the different regions of the world as well, where arbitration is evolving as a way of dispute resolution. In the Arab world, arbitration practices are evolving positively. The greater presence of Arab actors not just as respondent states, but also as

claimants and investors, and hopefully in the future increasingly as arbitrators and counsel, will result in the continuing confidence of the Arab World in the system of international arbitration as a mechanism for dispute resolution that is closely connected to its historical roots in the region.6

23. Another interesting development that has recently taken place is the suitability of Asian regional and international arbitral institutions towards entities based in states facing economic sanctions as part of an ongoing conflict. The recent sanction policy against Russia may force Russian entities to be looking east to Asia, where the combination of well-established arbitration institutions within arbitration-friendly (sanctions-free) jurisdictions is perceived as an attractive alternative to arbitration in the US or Europe. Almost all Asian jurisdictions in the region are Model Law jurisdictions. Regional courts have significant experience in handling arbitration-related matters, both in terms of providing assistance during the course of the proceedings and with respect to post-award applications.

24. Innovations have emerged in both products and diversification of arbitral institutions. A third aspect to innovation is the progress in

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6 http://kluwerarbitrationblog.com/blog/2015/07/01/the-evolution-of-arbitration-in-the-arab-world/
the practice of arbitration itself. The use of technology to improve Arbitration services, and also connect internationally with other arbitration institutions is another vital development. This innovation is another key trend to pay attention to in the coming years. Having detailed, some of the key emerging trends, it is essential to now analyse the role this will play in the future outlook of arbitration in the region.

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Analysis of Recent Trends and Future Outlook of Arbitration in Asia

25. To better understand these innovations and the role of arbitral institutions, we need to undertake an honest appraisal of the future of arbitration, particularly in the region. The vascillation of dispute resolution between local courts and arbitral institutions raises questions about localization and harmonization. Supporters of legal reforms argue that measures to conform to regional and international practices bring substantial financial benefits to the enacting jurisdiction; and that enacting a new or revised arbitration statute will cause an upsurge in the number of arbitration proceedings held in the country.⁷ It is here that I strongly believe that

the role of arbitral institutions is crucial in not just enabling regionalism but also promoting the delicate balance of harmonisation.

26. It is also important to remember that if the evolution of arbitration has taught us one concrete lesson it is that no one jurisdiction has a dominant position in international arbitration law. Different jurisdictions have no choice but to compete actively and successfully to attract international arbitration business by enacting arbitration-friendly laws.8

27. Another method adopted by countries to aid the institutions is the liberalization of the legal services sector in the region. Many jurisdictions throughout the East have removed the barriers to foreign law firms, allowing leading law firms from the United States and Europe to establish their offices. These jurisdictions have opened their markets to the import of legal services have, eventually, become favourable arbitration destinations. It is a truism, that the credibility of an arbitral regime depends more on the attitude

of the national courts. Essential to this attitude is their determination to support arbitrations happening locally and a better understanding of international arbitration law. The court judgements comply with the modern standards of international arbitration and it has made local cities more attractive as a venue for international arbitration.

28. Governments in the region are constantly promoting arbitration in their jurisdictions, thereby confirming the advantages of a “safe seat” as prescribed by the London Principles, convenient dispute resolution mechanisms and options, as well as the relevant infrastructure (such as hearing facilities) all attract investment.

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29. The next significant trend is preserving regionalism through regional consistency in jurisprudence by means of regular reference to case law of Asian – Pacific jurisdictions. Australian Chief Justice Allsop has stated in his paper that the legal and cultural acceptance of international (i.e. foreign) arbitration by most court and legal systems in the region is a given. Among areas related to

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10 [https://www.ciarb.org/centenary/conference-lon](https://www.ciarb.org/centenary/conference-lon)

international arbitration focus could be sharpened on regional consistency – in legislation and in jurisprudence.

30. Closer home here, Australia enjoys close ties to Asia and has a stable and robust economic, political and legal environments. The Australian International Disputes Centre the AIDC) responding to recent regional trends houses leading ADR providers: the Australian Centre for International Commercial Arbitration (ACICA), the Chartered Institute of Arbitrators (CIArb) Australia, Australian Maritime and Transport Arbitration Commission (AMTAC) and the Australian Commercial Disputes Centre (ACDC). The launch coupled with the amendments to Australia’s arbitration laws, at both a State and Federal level, aiming to provide disputing parties with best-practice local laws to resolve their disputes in the most time/cost-efficient manner.

31. Accordingly, the collective success of these Asian arbitral institutions in expanding their internal rules, services and facilities which are targeted at both generic and specialist market shares. The role of Arbitral Institutions is clearly rapidly evolving and will will no doubt enlarge the pool and give parties the possibility to choose institutions with closer cultural affinity and greater geographic or linguistic convenience. With the surfacing of regional economic centres around the world, there has been a trend towards referring
disputes to arbitral institutions closer to home. Regionalism – whether as a result of new independent regional institutions or an expansion of international institutions into new jurisdictions – should be seen as one of the solutions towards other challenges modern international arbitration faces in the present era.

32. Another important innovation that is being undertaken and should be undertaken with more seriousness in the coming years is capacity building. Arbitration centres and institutions in Asia continue to develop both in terms of organising educational initiatives to promoting and supporting international arbitration, and establishing new physical infrastructure to handle the increasing caseload. Knowledge sharing with the upcoming institutions and jurisdictions will play an integral role in sustaining the momentum of growth in the region. Promoting strategic alliances is an innovation in itself which will ensure that sustained growth and momentum in the years to come.

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Internationalization & Innovations

33. Asian Arbitration institutions are moving towards cooperation and transformation to maintain distinctiveness. As we have examined, local policies have also led substantial support to the growth of these institutions, and in fostering regionalization, but the
question arises about how they are viewed internationally. As put forth by Lord Goldsmith at the launch of the new BVI International Arbitration Centre back in May, “Arbitration is a primarily commercially-driven enterprise, and has followed trade to the regions where it now takes place”. He stressed that “it is becoming increasingly clear, that the likes of London, New York, and Paris, or “Old world centres”, no longer have the monopoly over arbitration. Of course, they still remain the real powerhouses of practice, but the loss of their market share is notable.\textsuperscript{12}Notable is the recent 2015 International Arbitration Survey conducted by the School of International Arbitration at Queen Mary University of London that the most improved arbitral seats (taken over the past five years) are in the Asia-Pacific region.

34. Synonymous with this rise is the growing caseload in Asia which inevitably brings more legal talent into the region and fosters a culture of innovation to keep Asia at the leading edge of thinking in International Arbitration. Whilst most arbitral institutions in Asia are relatively new and young entrants in arbitration, this also means that these institutions are less bureaucratic and can operate at a higher level of efficiency. This enables these institutions to respond

swiftly to any need for improvement and can take quick actions to perfect their arbitration systems in a creative manner. As a result, Asia is transitioning from a “follower”, emulating traditional arbitral jurisdictions, to a “mover” that develops innovative arbitration practices to shape the future of arbitration.\cite{13}

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Conclusion

35. Innovation, coupled with regionalism – whether as a result of new independent regional institutions or an expansion of the international institutions into new jurisdictions – should be seen as one of the solutions for modern international arbitration.\cite{14} In the midst of this struggle towards internationalisation, credibility and legitimacy, and innovation, jurisdictions with developing, regional arbitral institutions may simply be perceived as merely jumping on the global arbitration bandwagon whilst overlooking national needs, especially in the context of the unique Asian market place.

36. At the same, we are witnessing the simultaneous rise and acceptance of innovative and cutting-edge regional arbitral

\cite{13} See http://globalarbitrationreview.com/reviews/71/sections/237/chapters/2875/innovation-asia/. See also http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1041&context=ab

institutions which can simply be seen as an inevitable consequence of harmonization; a reflection of the increased popularity and growth of arbitration globally and therefore, a trend to be welcomed. These institutions provide the best of both worlds with their generalist as well as specialist expertise offered, and they will no doubt be embraced by the unique Asian market share of which are predominantly needs based and of which locality, language and culture play a major role in the users' selection of an institution.

37. This move away from having just a few established international institutions which enjoy a monopoly on international arbitration, to a wider choice of institutions (in the Asian context) should no doubt improve the users’ experience of international arbitration, thereby furthering the notion that Asia is increasingly become a trendsetter and a leader in the realm of public international law. The roles that Arbitral Institutions in the coming years will remain most crucial.

38. Along with a growth in regionalism, will arise an era of regional integration. This reflects the economic growth in the region which is also deeply focussed on regional integration. This transformation
and adaptation to the expanding role and duties of arbitral institutions will ensure the quick evolution of International Arbitration and ADR in the coming era.

39. I would like to conclude by appealing to this young and vibrant forum. The AFIA is of course without doubt the best platform for young practitioners in Arbitration spanning the Asia-Pacific region and globally. Arbitral Institutions in this region, were relative new entrants to the world of arbitration and quickly have established themselves not just as fore runners, but as the transformative vehicle of change in the arbitration world. This growth will only sustain with continued growth and sustainable development. This forum in my humble opinion is the most appropriate venue to commence this dialogue for continued growth and development. A collaborative effort on the part of all of us stakeholders gathered here will only further enhance the transformative role played by arbitral institutions in the years to come and alter the perception of arbitration in Asia-Pacific region in the world.

40. Without further ado, let me conclude by once again stating what an absolute honour and privilege it has been for me to deliver this lecture here before you all. I look forward to an exciting and intellectually stimulating panel discussion that is to follow. I would
like to end my lecture today with a quote. While ending with a quotation might be a cliché, I can think of no better way to end today for my topic has been about the transformative role played by Institutions and one that it has to continue to play. Perhaps this quote may also be used as a word of caution in the days to come. Bill Drayton, social entrepreneur says the following about transformation. “Every successful organization has to make the transition from a world defined primarily by repetition to one primarily defined by change.” So to must arbitral institutions in the region, continue to innovate and strive to be the world of change in international commercial arbitration.

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41. Thank you

Thank you/Q&A