HERBERT SMITH FREEHILLS

ADR IN ASIA PACIFIC

SPOTLIGHT ON INDONESIA

IN THIS ISSUE

ISSUE 3

WELCOME

Welcome to the third edition of our *ADR in Asia Pacific Guide* which spotlights alternative dispute resolution (**ADR**) in Indonesia.

On page 2, we summarise the state of play in relation to ADR in Indonesia and its interplay with adversarial processes like litigation and arbitration.

On page 5, we delve into the detail of the Supreme Court's new mediation regulation and decree and analyse how these hope to improve rates of settlement.

We then look at page 6 into some practical aspects of mediation and dispute resolution from a lawyer's perspective - how parties contractually elect to resolve their disputes, when the best time to mediate is, and whether we see mediation becoming more mainstream in Indonesia.

Finally, on page 8, we summarise the ground-breaking Global Pound Conference (**GPC**) series - 40 scheduled conferences in 31 countries looking at all dispute resolution processes and how these can be improved for commercial parties. Herbert Smith Freehills is proud to be global founding sponsor of GPC.

Please do not hesitate to contact me or the authors if you have any questions about ADR or dispute resolution in Indonesia.

February 2017

Narendra Adiyasa
Partner, *Hiswara Bunjamin & Tandjung in association with Herbert Smith Freehills*

ADR IN INDONESIA
THE STATE OF PLAY

KEY POINTS

Mediation in Indonesia is yet to be commercialised and, outside of the court context, remains quite rare. Since 2003, mediation has been a mandatory part of court proceedings for the majority of civil cases. However, mandatory mediation has not been very successful. It has been considered a 'tick-box' exercise by disputing parties. In 2016, the Supreme Court issued a new regulation on mediation with the goal of improving rates of settlement.

Expert determination, whilst permissible in Indonesia, is infrequently used. Arbitration is a rapidly growing formal dispute resolution mechanism which is particularly popular amongst international corporates and investors.

We summarise the interplay of these various dispute resolution processes below.

COURT-ANNEXED MEDIATION

Supreme Court Regulation No. 1 of 2016 (**Mediation Regulation**) obliges disputing parties to mediate their civil disputes before a court at the pre-trial stage. In practice, the court will appoint one judge, who is not scheduled to hear the parties' case, as mediator. More often than not, the parties fail to reach a mediated settlement. This is often because the parties come before the court having already engaged in unsuccessful settlement negotiations. As such, they already have a pre-determined intention to litigate and are not interested or optimistic about the prospect of mediation.

CONFIDENTIALITY

Any statement exchanged or confession made during the course of the mediation cannot be used as evidence in court proceedings. However, Indonesian law does not recognise the more general concept of without prejudice privilege. As such, admissions or statements made by a party outside of formal mediation processes might be admissible in court. Without prejudice negotiations or settlement offers therefore pose practical risks for disputing parties.

ARBITRATION AND ADR LAW

Indonesia's Arbitration and ADR Law (Law No. 30 of 1999) (**Arbitration and ADR Law**) allows parties to refer commercial disputes to either arbitration or other ADR mechanisms. For this purpose, ADR is defined as "a mechanism for the resolution of disputes or differences of opinion through procedures agreed upon by the parties, ie resolution outside the courts by consultation, negotiation, mediation, conciliation, or expert assessment".

Despite the breadth of mechanisms permitted to be used, the *Arbitration and ADR Law* only deals expressly with arbitration and mediation.

ARBITRATION

Parties may agree in writing to refer disputes to arbitration, in which case the District Courts will have no jurisdiction in relation to disputes between the parties. Generally speaking, parties are free to determine the procedural rules to be applied in the arbitration (eg the UNCITRAL rules or the rules of a commercial arbitration institution).

Relative to international practice, arbitration in Indonesia can move quite quickly. *The Arbitration and ADR Law* requires that hearings are completed within 180 days of the appointment of the tribunal and that the award is rendered within 30 days of the completion of the hearings, unless the parties or the tribunal agree otherwise.

MEDIATION

The *Arbitration and ADR Law* allows parties to waive their rights to refer a dispute to the District Courts, in which case the parties should first attempt direct negotiations. If the dispute cannot be resolved, the parties may agree in writing to refer the dispute to one or more expert advisors (see **expert determination** below). If the parties still fail to reach an agreement, the *Arbitration and ADR Law* provides that the parties may request an institution to appoint a mediator.

The *Arbitration and ADR Law* has very short time-frames for these steps, but there is no restriction on parties agreeing longer periods. If the parties reach a mediated settlement, Article 6 requires the parties' written agreement to be registered with the District Court. Notwithstanding this requirement, it is relatively common for parties to enter into settlement agreements but not to register them. In such cases, the settlement agreement will be treated as a contract and may be enforced accordingly.

BANI ARBITRATION CENTER

The BANI Arbitration Center, formally known as the Indonesia National Board of Arbitration, provides a range of ADR services including arbitration, mediation, binding opinions and other forms of dispute resolution. BANI's Arbitration Rules 2006 (**Rules**) provide that arbitral tribunals should recommend disputing parties to first explore amicable dispute settlement methods, including negotiation and mediation. The Rules also require arbitrators to defer arbitration proceedings if the parties opt to initiate negotiation or mediation. In practice, and similar to the court-annexed mediation process, these requirements are often seen as a 'box-ticking' exercise.

ADR IN THE FINANCIAL SERVICES SECTOR

Regulations issued by Indonesia's Financial Service Authority (*Otoritas Jasa Keuangan* – OJK) require financial services providers to establish processes to investigate and resolve consumer complaints. It is also possible for consumer complaints to be referred to ADR institutions recognised by the OJK. To date, seven institutions have been recognised:

NAME OF INSTITUTION	SECTOR
The Indonesia Insurance Mediation and Arbitration Board or *Badan Mediasi dan Arbitrase Asuransi Indonesia* (**BMAI**)	Insurance
The Indonesia Capital Market Arbitration Board or *Badan Arbitrase Pasar Modal Indonesia* (**BAPMI**)	Capital Markets
The Indonesia Alternative Dispute Resolution Institution for the Banking Sector or *Lembaga Penyelesaian Sengketa Perbankan Indonesia* (**LAPSPI**)	Banking
Pension Fund Mediation Board or *Badan Mediasi Dana Pensiun* (**BMDP**)	Pension Funds
The Indonesia Mediation and Arbitration Board for Underwriting Company or *Badan Arbitrase dan Mediasi Perusahaan Penjaminan Indonesia* (**BAMPPI**)	Underwriting
The Indonesian Financing, Pawnshop Mediation Board or *Badan Mediasi Pembiayaan dan Pergadaian Indonesia* (**BMPPI**)	Financing and Pawnshops
The Indonesia Venture Capital Arbitration or *Badan Arbitrase Ventura Indonesia* (**BAVI**)	Venture Capital

The OJK has emphasised that mechanisms must be accessible to consumers throughout Indonesia and this may include online claims handling procedures, tele-conferencing and video-conferencing.

CONSTRUCTION ARBITRATION

The Indonesian Centre for Arbitration and Alternative Dispute Resolution for Construction (**BADAPSKI**) was established by the Ministry of Public Works in August 2014.

The arbitration procedures used by BADAPSKI are based on the BADAPSKI Arbitration Rules. BADAPSKI aims to become the preferred institution to resolve Indonesian construction disputes (domestically and internationally), and to provide the parties with a quick and inexpensive service to settle disputes.

Additionally, the establishment of BADAPSKI is expected to achieve legal certainty while maintaining good relations between the parties.

The BADAPSKI Arbitration Rules have a number of key features:

- the panel of arbitrators must be highly qualified and trained arbitrators. The services fee for the arbitrator must be in accordance with the prevailing compensation fee.
- a preparation session for proceeding with the arbitrator can be conducted via telephone and/or video conference.
- the scope of authority for the arbitrator is wide, including to instruct and initiate fact finding, including the deposition.
- arbitration awards can be finalised with the legal consideration from the panel of arbitrators unless the parties otherwise agree.

Despite its establishment, we have not yet seen BADAPSKI playing an active role in settling construction disputes in Indonesia.

VOLUNTARY MEDIATION

Voluntary mediation (outside of court or arbitral proceedings) is permissible in Indonesia. There are various service providers including the *Pusat Mediasi Nasional* (**PMN**). This body has mediated various civil disputes on issues including employment, debt settlement, and hospital malpractice. Based on available data, only a very small number of these cases have resulted in settlement. Failure to reach a settlement in a PMN proceeding does not bar the parties commencing litigation or arbitration proceedings.

The BANI Arbitration Centre (referred to above), and a new institution, the Indonesian Academy of Independent Mediators and Arbitrators, also offer stand-alone mediation services.

EXPERT DETERMINATION

The *Arbitration and ADR Law* provides for ***expert assessment (penilai/penasehat ahli)***. A dispute may, with the written agreement of the parties, be resolved with the assistance of one or more expert advisers. No decision will be rendered by the expert (ie the parties still need to agree on the terms of any settlement) and therefore, despite the name, it is closer to mediation than typical expert determination.

The *Arbitration and ADR Law* also allows parties to a commercial agreement to request a ***binding opinion (pendapat mengikat)***. Parties seek an opinion on a particular legal question relating to their agreement (for example, the interpretation of a contractual clause). The request must be addressed to, and an opinion provided by, an arbitration institution (eg the BANI Arbitration Center). There is no appeal available to challenge a binding opinion. If one of the parties refuses to be bound by the opinion, the *Arbitration and ADR Law* is silent as to the consequences of this, but it may be that this would be deemed a breach of contract. As a result, in the event of default, the other party would have recourse to the *Indonesian Civil Procedural Law* and would be forced to commence proceedings to enforce the contract.

In practice, there is a risk of a party challenging a binding opinion through the courts. In one case a party whose interests were contrary to the binding opinion which had been handed down filed an annulment application in the Indonesian courts on the ground that the binding opinion had addressed matters which went beyond the issues in the original request (*ultra-petita*). The court granted the application.

In general terms, neither expert assessment nor binding opinion procedures are commonly used in Indonesia and there remain a number of areas where the law is unclear (eg objection and challenge, execution and enforcement).

NEGOTIATION

Whilst the above proceedings always involve a third party (a judge, mediator, arbitrator or an expert), the *Arbitration and ADR Law* also affirms the legitimacy of bipartite negotiation amongst disputing parties. Negotiation remains the primary method for resolving disputes in Indonesia. In practice, negotiation usually results in a written settlement agreement agreed between the parties.

COURT-ANNEXED MEDIATION: THE NEW SUPREME COURT REGULATION

We explore the scope of court-annexed mediation, particularly in light of the procedures introduced in 2016.

In February 2016, the Supreme Court issued Regulation No. 1 of 2016 on Mediation Procedures in Courts (**Mediation Regulation**). The Mediation Regulation redefines the mediation process. This replaces Supreme Court Regulation No. 1 of 2008 on Mediation Procedures in Court.

In June 2016, the Chief Justice of the Supreme Court issued Decree No 108/KMA/SK/VI/2016 on the organisation of Mediation Processes in Courts (**Mediation Decree**). The Mediation Decree supplements the 2016 Mediation Regulation, containing detail on the mediation process to be followed, as well as rules on the education and certification of mediators, and a mediator's code of conduct. The Mediation Decree aims to enhance the quality and success of mediation conducted under the Mediation Regulation.

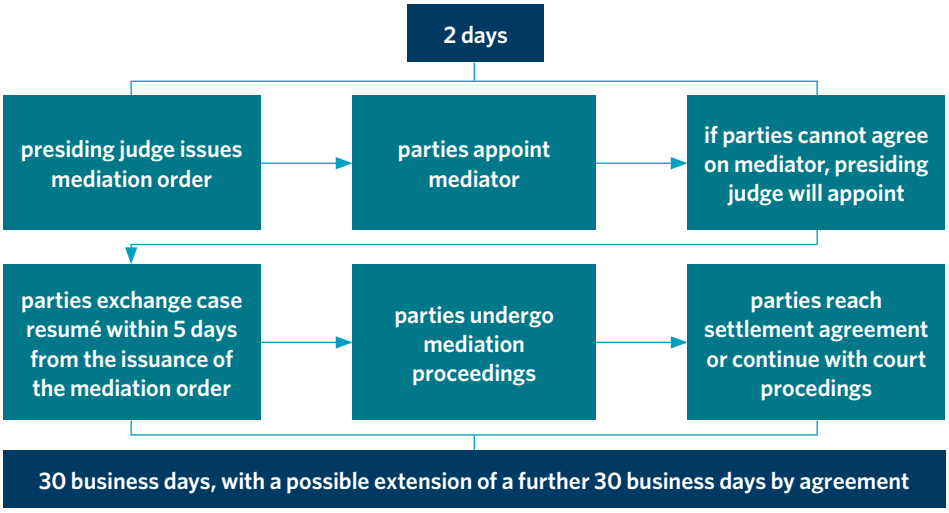
It will take some time for these requirements to bed down. However, to date, there has not been a sea change in parties' approach to mediation. It is still viewed as a 'tick-box' exercise, despite the introduction of a "good faith" provision in the Mediation Regulation.

JURISDICTION

The Mediation Regulation applies to parties involved in civil disputes before the District Courts and Religious Courts. Certain civil cases are excluded from the Mediation Regulation:

- certain cases where there is a fixed deadline for resolution (eg bankruptcy petitions)
- cases where either party is absent
- counterclaims and interventions
- marriage annulment cases
- previously mediated cases

THE PROCESS



The chief justice at either the District or Religious Court must organise the mediation by providing rooms and other facilities, as well as appoint a mediator to oversee the mediation process. The chief justice of the court must also integrate the mediation process into the official case-tracking system.

Under the Mediation Regulation, a given mediation process must be concluded within 30 business days of the presiding judge issuing an interlocutory order for the instigation of mediation proceedings. Mediation proceedings can be extended for a further 30 business days, provided all of the disputing parties agree and there is a reasonable indication that the parties will settle the dispute amicably.

Prior to the 30 business day period, there is a two day period to appoint a mediator. The presiding judge may step in and select a mediator if the disputing parties fail to choose a mediator before the deadline expires. A mediator may be a judge at the court, a court official or a certified mediator. Under the Mediation Decree, certified non-judge mediators must be appointed by the chief justice of the courts, by submitting an application and proof of accreditation and education. The Mediation Decree requires institutions to first be accredited by submitting an application to the Supreme Court.

Under the Mediation Regulation, disputing parties must serve a case resumé to the party, counterparty and mediator. The mediator may hear evidence from experts and others with the approval of the parties.

If the parties agree to settle the dispute at mediation, the disputing parties and the mediator prepare and sign a settlement agreement. Regardless of the outcome (success or failure), the mediator must inform the presiding judge in writing of the outcome. The presiding judge will issue an order to continue the case examination in accordance with prevailing procedural law, should the mediation fail.

ATTENDANCE AT THE MEDIATION

There are limited circumstances where the disputing parties may be absent from a given mediation, eg poor health, where domiciled abroad or if they cannot attend due to important work commitments. The scope of these exclusions is as yet untested. Parties may attend with or without their attorneys.

GOOD FAITH PARTICIPATION IN MEDIATION

The Mediation Regulation introduces a "good faith" provision. The parties and/or their attorneys are required to undertake mediation in good faith. This includes a requirement to attend and actively participate in the mediation, or risk the claim being declared unacceptable and/or cost sanctions. It will be interesting to see how parties and (if escalated) the judiciary, respond to this provision.

THE INSIDE TRACK
A LAWYER'S VIEW

Narendra Adiyasa
Partner, *Hiswara Bunjamin & Tandjung in association with Herbert Smith Freehills*

Antony Crockett
International Counsel, *Hiswara Bunjamin & Tandjung in association with Herbert Smith Freehills*

Antony Crockett (**AC**) interviews Narendra Adiyasa (**NA**) to explore the key issues to mediating in Indonesia from a practitioner's perspective.

AC: In terms of contractual provisions, how are commercial parties electing to resolve their disputes in Indonesia?

NA: The most common contractual stipulation is for disputes to be referred to domestic or international arbitration. Indonesian parties will often have a preference for domestic arbitration, while foreign investors will normally prefer to arbitrate offshore. Singapore is a particularly popular 'seat' of arbitration for Indonesia-related disputes.

Parties may also expressly provide for disputes to be referred to the Indonesian courts. This is less common but may be preferable for certain contracts, for example security documents where the property secured is located in Indonesia.

AC: Do you see a place for ADR clauses in contracts?

NA: It is common to see contracts which oblige the parties to engage in negotiations prior to referring disputes to arbitration. It is less common to see an express requirement to mediate. Parties can always mediate if they are willing to, regardless of what their contract says.

AC: When is the best time to mediate?

NA: It depends. As in most other jurisdictions, litigation or arbitration in Indonesian can be

"Foreign investors in Indonesia may often encounter government officials attempting, as quasi-mediators, to assist in the resolution of disputes. "

"Another practice that may surprise foreign investors in Indonesia is the referral of commercial disputes to the police."

costly. Moreover, there will always be a winner and a loser and it is rare for anyone to be completely happy with the outcome. That said, parties can be reluctant to try mediation because they are unfamiliar with the process or because they no longer trust the other side. We will usually encourage clients at a number of points during a case to consider whether it could be settled amicably, either by mediation or negotiation.

AC: Do you see mediation becoming more mainstream in Indonesia?

NA: There are definitely signs of growing interest in mediation and the Supreme Court Regulation and Decree send a positive message that the Government is motivated to try to improve the efficiency and success rate of court-annexed mediation. In mid-2016, the Government announced a plan to establish a mediation facility to resolve disputes between investors and the Government, which seems to demonstrate that the process continues to enjoy strong official support. We are also seeing new commercial institutions established and as Indonesian lawyers and business people become more familiar with the process, I expect it will be used more often, and more successfully.

AC: What other ADR processes do you see being used in Indonesia?

NA: Simple negotiation between parties is very common, and I don't expect that will change. There are some examples of expert determination being used successfully and, in the construction sector, parties have used Dispute Review Boards.

Foreign investors in Indonesia may often encounter government officials attempting, as quasi-mediators, to assist in the resolution of disputes. This is particularly common in the case of contracts involving state-owned enterprises where the Attorney General's Office may play a role in seeking to resolve disputes. It is not quite accurate to describe the process as mediation because, of course, the government officials are not completely neutral, but it is a common practice. Regulators in certain sectors can also sometimes play a role in seeking to resolve disputes in the private sector.

Another practice that may surprise foreign investors in Indonesia is the referral of commercial disputes to the police. This is a relatively common tactic that is occasionally used to avoid arbitration or more formal means of dispute settlement. In this context too, the police may seek to play a role in helping the parties to resolve an underlying commercial dispute but, obviously, where criminal allegations have been made, parties will need to be very cautious.

SHAPING THE FUTURE OF DISPUTE RESOLUTION
THE GLOBAL POUND CONFERENCE

GLOBAL POUND CONFERENCE SERIES
2016-17

The Global Pound Conference (**GPC**) Series is a unique global dispute resolution initiative involving 40 conferences in 31 countries worldwide. It is inspired by the Pound Conference in the USA that transformed dispute resolution in the 1970s by championing ADR.

Forty years on from the original Pound Conference, dispute resolution has reached an impasse. Mediation remains under-utilised, despite being widely supported and recognised as having the potential to resolve disputes in a quick, cheap and confidential way. It has failed to flourish in Asia like arbitration, despite earlier market predictions to that effect. And it is often regarded as a 'tick-box' exercise in countries such as Indonesia, Hong Kong and China. Court and arbitral claims are at record highs and disputes themselves are becoming more complex, costly and time consuming.

BACKGROUND

Launched by the International Mediation Institute (**IMI**) and with the backing of major international institutions, governments and corporates, GPC is testing the efficacy of current dispute resolution processes. Research indicates a significant gap between what those with commercial disputes expect and need from the system and the systems and services currently provided by lawyers, judges, arbitrators, mediators, institutions and policy makers. Through canvassing the views of thousands of stakeholders, GPC is analysing the scale of that gap and proposing practical ways to bridge it. All dispute resolution processes are in scope: litigation, arbitration, as well as the range of ADR processes, including mediation.

FORMAT

Adopting a unique interactive format, conference delegates from key stakeholder groups (users/parties, advisors, providers and influencers) vote anonymously on

standardised questions using a voting App. The results are debated in real time by world class moderators and panellists. The data outputs will be distilled into a global report and white paper. The overall goal is to help improve processes to meet stakeholder needs.

GPC EVENTS TO DATE

GPC was launched in Singapore in March 2016 and there have since been events in Lagos, Mexico City, New York City, Geneva, Toronto, Madrid and Austin, Texas. In reviewing the information collected in very different locations, there are many similarities in viewpoint.

AND ON THE HORIZON...

In 2017 there are 34 scheduled GPC events, including in Amsterdam, Auckland, Bangkok, Barcelona, Berlin, Chennai, Dubai, Los Angeles, Miami, New Delhi, Paris, Phnom Penh, San Francisco, Sao Paulo, Sydney and Washington DC. The series will conclude in London in July 2017.

Details of scheduled events can be found at: http://www.globalpoundconference.org/conference-series/attend-a-gpc-series-eventhttp://www.globalpoundconference.org/conference-series/attend-a-gpc-series-event

SINGAPORE - A BAROMETER FOR ASIA?

Over 400 people from 25 countries (many across Asia) participated in the inaugural conference held at the Supreme Court of Singapore in March 2016. No significant disparity was discerned between local (Singaporean) delegates and international delegates. Major themes evolved from the voting:

- courts and arbitral institutions continue to play a vital role in the development of dispute management and resolution. End users want them to promote efficient case management and, wherever possible, ADR. Parties had a preference for hybrid dispute resolution processes (mediation combined with arbitration or litigation), something that is evolving but remains relatively 'green'.
- technology is another important part of the jigsaw, particularly in the delivery of dispute management processes. Online Dispute Resolution is popular, being deployed in increasingly complex, multi-party disputes, and the speed and simplicity of resolution it allows is a draw card.
- lawyers (both external and in house) play a critical role in educating their clients (and themselves) about how best to deploy less frequently used processes such as mediation. Whilst in house counsel feel ADR should be a strategic imperative, this is sometimes at odds with the approach of external lawyers.

KEY FINDINGS FOR COMMERCIAL PARTIES AND THEIR ADVISORS

- parties often have a unique perception of what they need, want and expect from commercial dispute resolution
- the way the market meets those needs, wants and expectations is closely linked to the extent to which advisors and providers can tailor their practice and/or processes to accommodate the level of 'dispute-savviness' of the given party
- There is a shared understanding about the challenges facing commercial dispute resolution and the extent to which change is required. This needs to be harnessed and converted into actionable strategies on both sides. This includes the development of education programmes targeted at legal and business professionals and embedding high quality non-adjudicative processes into the mainstream
- In the longer term, it appears there is appetite for a move away from traditional adversarial approach towards initiatives that are party-centric.

WHY ATTEND A GPC EVENT?

GPC is a timely opportunity for all stakeholders (those engaged in disputes, lawyers, advisors, experts, judges, arbitrators, mediators, academics, government bodies and dispute institutions) to reflect on what is working and what needs to change. The time is ripe for a conversation that covers all dispute resolution processes and provides a clear framework for quantitative and qualitative outputs.

Herbert Smith Freehills is proud to be global founding sponsor of the GPC series and leading the organisation of several associated events and research initiatives world-wide.

OUR ADR PRACTICE

The delivery of innovative, creative and cost-effective solutions through ADR has, for many years, been a pivotal aspect of our pre-eminent dispute resolution brand. Our award-winning ADR practice encompasses our entire disputes division, across our international network of offices.

We have a deep understanding of how corporates develop and refine strategies for using ADR at both the policy and operational level. We can provide high impact insight and value adding strategic advice regarding ADR process options, dynamics and influence management.

We have extensive expertise in a wide range of ADR processes including:

- **Mediation** – we are committed to leadership in mediation advocacy and understand the critical role of cultural and communication styles in international negotiation and ADR
- **Expert determination** – we have a wealth of experience in advising on expert determination, in particular in relation to energy, projects and completion account disputes
- **Adjudication** – we have advised and acted in relation to many adjudications, including three of the largest adjudications ever conducted in the UK, international construction disputes involving bespoke variations on the UK adjudication procedure, and adjudications conducted under Australian Building and Construction Industry Security of Payment legislation
- **Bespoke solutions and other ADR processes** – we have experience in designing and executing multi-stage, bespoke ADR solutions for the largest international commercial disputes, as well as conducting early neutral evaluations and baseball arbitrations

Mediation

- **We have acted on high value mediations involving:**
  - shareholder issues
  - construction and engineering
  - energy
  - insurance and reinsurance
  - product liability
  - banking and finance
  - class actions
  - joint venture disputes
  - employment
  - IP/IT/TMT
  - real estate
  - media and fraud

At mediation we have represented:

- **Hong Kong banks** and **private wealth managers** in disputes with account holders over alleged incidents of mis-selling or unauthorised trading
- An **Australian financial services business** in fiercely contested copyright and related Federal Court claims. Settlement was secured shortly after the mediation
- A **European industrial company** in a mediation held in Singapore under ICC ADR Rules, relating to cost and time overruns in the construction of an industrial chemicals complex in Malaysia
- **Hong Kong solicitors** over professional negligence claims by clients
- **Mining companies** in Australia to resolve a dispute with insurers over coverage of losses arising from flooding
- **Tenants** in Hong Kong property disputes
- **Australia Securities Exchange (ASX) listed entities** in the settlement of class actions brought on behalf of shareholders
- An **international hotel management company** in a mediation held in Singapore under the auspices of the Singapore Mediation Centre, relating to a dispute with a property owner under a management contract for a 5-star hotel property in Bangkok, Thailand (agreement and settlement achieved)
- **Shareholders** in a number of joint venture disputes in the financial services, energy and gaming sectors
- **Australian banks** in the recovery of funds from borrowers and valuers
- An **IT consultant** in a dispute over a project with a regional government agency
- In Australia, representing administrators of **Sons of Gwalia** in multi-million dollar actions against directors and auditors for breach of duty and driving settlement via mediation
- A **manufacturer** in a dispute with a mainland Chinese supplier
- Representing an **international contractor** on a multi-million dollar negligence claim in relation to the collapse of a drilling rig of the coast of South Australia. The claims were successfully settled at a two day mediation
- An Asian subsidiary of a **major European pharmaceutical company** in a dispute concerning the termination of a co-promotion agreement
- A **Thai mobile phone network operator** in an ad hoc mediation held in Alabama, USA, leading to the successful settlement of a dispute with a US technology company concerning handset design and development
- Representing a **Chinese State-Owned Enterprise (SOE)** as mediation counsel in a mediation to resolve disputes with a US counterparty around the financial value of trade secrets
- An **ASX top 100 client** in USD 40 million Supreme Court litigation and related mediations. Settlement was successfully reached concerning product liability, negligence and misrepresentation claims
- A **major ASX listed infrastructure fund** in Federal Court proceedings and related mediation against the Australian Tax Office

Expert determination

- **Advising a consortium of leading multinational energy companies** in expert determination proceedings against a Central Asian Republic. The case concerned budget and schedule disputes worth USD 9 billion in a high-profile politically significant dispute concerning one of the world's largest oil and gas projects
- Successfully acting for an **ASX listed iron ore mining company** about the proper construction of a price review mechanism in a long term offtake agreement with a Chinese SOE
- A **global energy super-major** in an expert determination in The Hague, Netherlands, to set a new price for chemical feedstock for a chemical manufacturing plant in South East Asia
- **Acting successfully for a group of oil majors** in an expert determination regarding price review provisions in long term gas sales agreements

- In Australia, acting for a **global insurance company** in relation to AUD 140 million expert determination following the sale of a regional business unit, including tax and cross-border pricing issues
- **Advising the seller of a well-known group of recruitment and temporary staffing agencies** on a claim made by the purchaser arising out of a completion accounts calculation process
- In Australia, acting for **major utility companies** in expert determinations concerning changes to pricing indices and asset valuations
- **Advising the sellers of a hedge fund** against purchasers in relation to a contractual expert determination
- Successfully resolving a joint venture dispute for one of Australia's **major oil and gas** companies
- **Acting on an expert determination** concerning non-payment of milestone payments under a pharmaceutical drug licensing agreement
- **Advising experts themselves** in relation to, for example, questions of jurisdiction and the interpretation of expert determination clauses

Adjudication

- An **Indian client**: acting in relation to an international *ad hoc* adjudication against a Tanzanian company under a contract governed by Indian law
- **Shell**: acting for Shell in an adjudication and subsequent litigation in the Supreme Court of New South Wales concerning the upgrade of an oil refinery
- A **major international chemical company** in two statutory adjudications in Kuala Lumpur, Malaysia, relating to construction works for a major petrochemical facility
- **A leading electricity distribution company**: advising on the adjudication and mediation of contractor disputes relating to network assets
- **Successfully defending a major public transport supplier** in a test case adjudication brought by its contractor for USD 350 million. In the short time frame permitted, we prepared detailed written submissions, 21 witness statements and four expert reports
- **Eastlink Tolling Project**: acting on the adjudication and subsequent mediation of significant claims arising out of this major project in Australia

Other/bespoke processes

- **Docklands Gasworks Remediation project**: advising in relation to the tailored structuring, management and successful implementation of a staged consensual alternate resolution process concerning significant claims, in number and value, associated with this project, the largest remediation project of its kind in Australia
- **Negotiating and implementing a unique and tailored fast track international arbitration process** focusing on defined key issues to successfully achieve a resolution of fundamental issues for the major XOM PNG LNG project, within critical project timeframes to the mutual satisfaction of all parties
- **Developing a number of bespoke dispute resolution procedures** for very large infrastructure clients, in which the firm has developed an holistic approach with adjudication being an important component of a multi-stage dispute resolution procedure
- **BHP Billiton-Mitsubishi Alliance**: acting for the BHP Billion-Mitsubishi Alliance in mediating the settlement of its billion dollar business interruption claim arising from the 2008 floods to its central Queensland coal mines. The process involved six months of presentations and meetings of various experts culminating in a five day mediation in Singapore with representatives of 37 reinsurers as counterparties
- **Winterthur Swiss Insurance Company**, a member of the Credit Suisse Group: advising in a major dispute with XL Insurance (Bermuda) Limited, a subsidiary of XL Capital, which was resolved in Winterthur's favour following what is believed to be the world's biggest ever 'baseball arbitration'
- A **FTSE 250 company**: advising in relation to its dispute with a government department regarding the interpretation of particular contractual provisions referred to non-binding ENE
- **Columbus Stainless**, a South African supplier of stainless steel, and its UK based insurers: acting in the successful settlement of a USD 100 million claim brought against our client and other participants involved in the design and manufacture of Australian coal wagons. The firm was instrumental in development a bespoke ADR process that ran for two years to achieve a settlement with minimal litigation
- **Lend Lease group** of companies: acting in relation to the World Trade Centre clean-up litigation, where over 18,000 plaintiffs sued the City of New York and several prime contractors for respiratory diseases alleged to have resulted from the WTC clean-up operations. The litigation is reported to be one of the largest mass tort actions in the United States. We drove a resolution which involved a mass settlement and the enactment of federal legislation in the United States (the *James Zadroga 9/11 Health and Compensation Act of 2010*), the result of which now means that Bovis Lend Lease's exposure is effectively limited to available insurance

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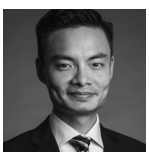

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Anita is a professional support consultant. She trained with the firm and has worked in our London, Paris and Hong Kong offices. She has experience of a broad range of dispute resolution processes including litigation, arbitration, mediation, expert determination and adjudication. Anita primarily supports the firm's leading Alternative Dispute Resolution and Corporate Crime and & Investigations practices, providing legal support, and leading cross-region projects for these practices. Anita currently leads the organisation of Global Pound Conference Hong Kong and is assisting with several other Global Pound Conference events worldwide.

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Some of our recent rankings include:

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