CHAPTER 8

Judicial Procedures in I-Fintech: The Malaysian Experience

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Abstract This chapter seeks to examine and discuss the vagaries of prevailing procedures relevant and available to e-commerce and/or I-fintech disputes. This brief would invariably entail discussions and analyses on dispute resolution mechanisms under the prevailing judicial—civil courts and other alternative dispute resolution ('ADR') legal—framework.

The chapter will also navigate, highlight and analyse models of ADR framework that offer fintech or I-fintech dispute resolutions and juxtapose them with ADR models and procedures available or potentially made available under the Shari'ah–Islamic financial system.

Finally, the author will highlight and argue that broader context of institutionalized Shari'ah–Islamic I-fintech judicial framework would not only be consistent and comparable with the rigours of existing modern dispute resolution legal framework demands but also underscore a viable case of an alternative judicial legal framework that not only is effective but also, more importantly, represents vibrant alternative judicial procedures to serve the needs and demands of any present and future I-fintech disputes.

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M. M. Billah (ed.), *Islamic FinTech*,
https://doi.org/10.1007/978-3-030-45827-0_8

Keywords FinTech • Judicialcial procedures • Law • Application • Shari'ah • Malaysia

The Case for Litigation Before the Civil Courts

It is not uncommon for e-commerce litigants to canvass and ventilate their disputes before the courts. In Malaysia, disputes between litigants are, most often than not, brought before the Civil courts. The establishment of specialized courts is generally governed by Practice Directions. For example, *Practice Direction No. 5 of 2016 issued by the Chief Registrar of the Federal Court of Malaysia* sets out the establishment of Cyber Courts both Civil and Criminal in Malaysia whilst *Practice Direction No. 6 of 2013 issued by the Chief Registrar of the Federal Court of Malaysia* sets out the classification of codes for cases relating to Intellectual Property.

Groupon Sdn Bhd v Tribunal Pengguna & Anor [2016] *1 LNS 555* is a typical case involving e-commerce dispute and a case of judicial review. The facts are illustrated as follows:

> The Appellant ('Groupon') is a business agent connecting merchant partners ('Company') to consumers. The 2nd Respondent purchased an online voucher tour package deal from the Appellant for a total sum of RM999/- (with an exclusion clause contained in the Voucher of RM652/-). The sum of RM999/- was paid to Appellant whilst RM652/- was paid directly to the Company which was at all material time unlicensed and insolvent. The tour was eventually cancelled. The Appellant refunded RM999/- but not the RM652/- to the 2nd Respondent.

The main question was whether the Appellant is liable for the sum of RM 652 that was directly paid to the Company. The First Respondent argued that the Appellant was negligent for not ensuring the Company is reputable. It was held that the First Respondent had misconstrued the exclusion clause. The RM 652/- was not included in the tour and travel deal. Consequently, the Court held that it is not to be borne by the Appellant as the Second Respondent had paid directly to Company instead.

Groupon Sdn Bhd v Tribunal Pengguna & Anor [2017] 7 MLJ 354 is yet another case on e-commerce dispute and a case on judicial review. In this case, the Second Respondent purchased a package from the Appellant's (Groupon's) website for RM 999. Groupon also required the Second

Respondent to pay RM 450/- to a third party for flight and accommodation fees. The Appellant however failed to provide the services and the package was cancelled. As it was, the Appellant refunded RM 999/- but not the RM 450/-.

YA Dato' Hanipah binti Farikullah J (as her Ladyship then was) held that since the Second Respondent bought the package from the Appellant's website, the contract formed was between the Second Respondent and the Appellant. Further, the Appellant acted as agent that connects the merchant partner to consumers. Accordingly, the Appellant is responsible for the failure to provide the services and is thus responsible to refund the RM 450/-.

The author submits that these two cases established not only the readiness and willingness of litigants to refer to specialised Civil courts to decide disputes involving e-commerce but also the structure of time-tested dispute resolution legal framework at work. It is also important to note that the Civil courts occasionally employ Mediation process between litigants under *Practice Direction No. 5 of 2012 on Mediation*. However, before we embark and consider any novel judicial procedures to be adopted in I-fintech disputes, it will be instructive to observe and discuss existing ADR models outside courts in Malaysia.

Ombudsman: Ombudsman for Financial Services ('OFS')

OFS (formerly known as Financial Mediation Bureau) was incorporated on 30 August 2004 and commenced its operations on 20 January 2005. OFS is the operator of the Financial Ombudsman Scheme (FOS) approved by Bank Negara Malaysia (BNM) pursuant to the Financial Services Act 2013 and the Islamic Financial Services Act 2013.

The OFS is a non-profit organisation and functions as an alternative dispute resolution channel to resolve disputes between Members who are financial service providers (FSPs), licensed or approved by BNM and financial consumers. 'Financial consumers' refer to (1) individuals and (2) small and medium enterprise ('SME').

The term 'individuals' refers to:

(1) Insured person under group insurance, person(s) covered under a group takaful, (2) third party making a claim for property damage

involving motor insurance/takaful, (3) guarantor of a credit facility, (4) insured person and (5) beneficiary of the insured person under a group insurance.

Term 19 of Term of Reference for the Ombudsman for Financial Services empowers the OFS, in resolving a dispute, to employ any of the following methods during the entire resolution process, including the case management and adjudication stage, as the case may be:

(a) Negotiation
(b) Conciliation or mediation
(c) Adjudication

The writer submits that I-fintech disputes could potentially fall under the purview of OFS if and when such dispute involves Members offering fintech products.

Tribunal: Tribunal for Consumer Claim

More often than not, tribunals are bodies or fora established under administrative laws, set up to hear, decide and settle disputes independent from courts. Whilst courts in general are the creation of judiciary, tribunals are part of the administrative system. Both the courts and tribunals operate independently of each other. Decisions, findings or awards (as the case may be) are however subject to court's review only when such decisions, findings or awards are challenged based on their legality.

In Malaysia, the Tribunal for Consumer Claims Malaysia ('Tribunal') is an independent body established under the Consumer Protection Act 1999 ('CPA') with the primary function of hearing and determining claims lodged by consumers under and subject to the provisions of the Act and in particular section 107 of the CPA.

The Tribunal was established to provide an alternative channel apart from the civil courts for consumers to claim losses in respect of goods purchased or services acquired from traders or service providers where the claim does not exceed RM 25,000/-.

It is still uncertain whether parties to I-fintech disputes would avail themselves to the Tribunal's jurisdiction although theoretically, so long as the dispute does not exceed a claim of RM 25,000/- involving services

provided by any fintech company, the claim may still be adjudicated by the Tribunal.

An example of an e-commerce website, that is, Shopee's Terms and Conditions [https://shopee.com.my] evidences a willingness to avail itself and buyer to the jurisdiction of claims tribunal. Paragraph 20 states:

20. Disputes

- *20.1 In the event a problem arises in a transaction, the Buyer and Seller agree to communicate with each other first to attempt to resolve such dispute by mutual discussions, which Shopee shall use reasonable commercial efforts to facilitate. If the matter cannot be resolved by mutual discussions, Users may approach the claims tribunal of their local jurisdiction to resolve any dispute arising from a transaction.*

It is apparently clear that by agreeing to Shopee's terms and conditions, e-commerce buyers would first be subjected to claims tribunal instead of courts. Another important feature of this provision also evinces an intention to pursue mutual discussions prior to submission to claims tribunal.

Mediation: Mediation Under the Asian International Arbitration Centre (AIAC)

Mediation is another method of ADR available to parties in disputes. Mediation is essentially a negotiation facilitated by a neutral third party. Unlike arbitration, which is a process of ADR somewhat similar to trial, mediation doesn't involve decision-making by the neutral third party. ADR procedures can be initiated by the parties or may be compelled by legislation, the courts, or contractual terms.

Section 4 of Mediation Act 2012 states:

> *(1) Subject to sec. 2, any person may, before commencing any civil action in court or arbitration, initiate mediation.*
> *(2) A mediation under this Act shall not prevent the commencement of any civil action in court or arbitration nor shall it act as a stay of, or extensive of any proceedings, if the proceedings have been commenced.*

Whilst this provision provides the jurisdictional legitimacy of mediation under the AIAC read together with Rule 1 of the Mediation Rules 2018, the process of mediation is by no means exclusive to AIAC. It is common

to observe that mediation process are not only being utilised in courts but also employed in other ADR models.

Arbitration

The oft-quoted principles and objectives of arbitration as quoted in Mustill and Boyd (2001) rest on the following principles:

1. A fair, speedy and inexpensive trial. It seeks a fair resolution of disputes by an impartial tribunal without unnecessary delay or expense.
2. Party autonomy. An absolute doctrine of 'party autonomy' entitles the parties and their lawyers to control all aspects of proceedings.
3. Judicial minimalism. Arbitration seeks to marginalize court's intervention.

Two important arbitration models are discussed here, namely the Malaysian Institute of Arbitrators ('MIArb') and the Asian International Arbitration Centre (AIAC).

Arbitration Under the MIArb

MIArb was established in 1991 with the main aim of promoting the determination of disputes by arbitration in a variety of professional disciplines from industries such as building and construction, engineering, banking, finance, law, insurance, service and manufacturing industries. MIArb has widened its objectives to promoting and facilitating other forms of ADR such as mediation and adjudication.

Rule 1 of MIArb Arbitration Rules states:

> *Where any agreement, submission or reference provides for arbitration under or in accordance with the Arbitration Rules of the Malaysian Institute of Arbitrators ("the Institute"), the arbitration shall be conducted in accordance with these Rules or such amended Rules as the Institute may have adopted to take effect on or before the commencement of the arbitration.*

Presently, MIArb has developed and made available its Arbitration Rules and Mediation Rules for parties' adoption to govern the procedure of their arbitrations and mediations.

Arbitration Under AIAC

Another important model of arbitration is an arbitration under the auspices of AIAC which derives its jurisdictional basis from the Arbitration Act 2015.

Section 4 of Arbitration Act 2005 states:

(1) Any dispute which the parties have agreed to submit to arbitration under an arbitration agreement may be determined by arbitration unless the arbitration agreement is contrary to public policy.

The general framework of the arbitration process will be guided by the AIAC Arbitration Rules 2018. In addition, AIAC has also come out with the AIAC i-Arbitration Rules, the AIAC Fast Track Rules and the AIAC Mediation Rules.

Rule 1 of AIAC Arbitration Rules 2018 states:

Where Parties have agreed in writing to arbitrate their disputes in accordance with the AIAC Arbitration Rules, then:

(a) *such disputes shall be settled or resolved by arbitration in accordance with the AIAC Arbitration Rules;*
(b) *the arbitration shall be conducted and administered by the AIAC in accordance with the AIAC Arbitration Rules; and*
(c) *if the seat of arbitration is Malaysia, Section 41, Section 42, Section 43 and Section 46 of the Malaysian Arbitration Act 2005 (as amended) shall not apply.*

AIAC has also made available the AIAC-I Arbitration Rules effective 9 March 2018 to cater for Islamic financial disputes.

As alluded to earlier, another example of an e-commerce website, that is, Lazada's Terms and Conditions evidence a willingness to avail itself and buyer to submit to AIAC's jurisdiction. Lazada's Terms and Conditions [https://lazada.com.my] states:

8. Arbitration

- *8.1 Any controversy, claim or dispute arising out of or relating to these Terms of Use and/or other Lazada Terms and Conditions or the breach, termination or invalidity thereof shall be referred to and settled by arbitration in accordance with the Arbitration Rules of the Asian*

International Arbitration Centre ("AIAC") held in Kuala Lumpur, Malaysia. The arbitral tribunal shall consists of a sole arbitrator who is legally trained and who has experience in the information technology field in Malaysia and is independent of either party. The place of arbitration shall be Malaysia. Any award by the arbitration tribunal shall be final and binding upon the parties.

8.2 Notwithstanding the foregoing, Lazada reserves the right to pursue the protection of intellectual property rights and confidential information through injunctive or other equitable relief through the courts.

Arguably, we note examples of e-commerce websites deploying 'terms of use' to lead users to unwittingly agree on specific terms, and this invariably includes arbitration terms, or in the case of Lazada, it is the AIAC, whilst in the case of Shopee, it is the Consumer Claims Tribunal.

SIDREC

SIDREC was established by the Securities Commission under the Capital Markets and Services (Dispute Resolution) Regulations 2010 (P.U.(A) 437/2010) ('the Regulation'). Regulations 3(2)(a) states that SIDREC will be able to act as a dispute resolution body by receiving references in relation to disputes or claims and resolving such disputes or claims in an accessible, efficient and effective manner, based on the principle of fairness and reasonableness.

Key to SIDREC's role in the investor protection framework is the independence and impartiality to provide investors an independent and impartial ADR with capital market expertise, to resolve their monetary disputes with any SIDREC Member in a timely and cost effective manner. The process is informal and voluntary.

SIDREC's members comprise entities, who are either licensed or registered by Securities Commission (SC) pursuant to the Capital Market and Services Act 2007 (CMSA) and include investment banks, commercial banks, Islamic banks, stockbrokers, derivative brokers, fund management companies, unit trust management companies (UTMC), private retirement schemes (PRS) and fund managers (excluding Real Estate Investment Trusts [REITs] managers).

The SIDREC model is significant and interesting as it demonstrates that an industry-wide (in this context, capital market) dispute resolution

model is not only workable but also proves that a specific fintech industry with wide judicial procedures may be considered as an alternative model.

It is submitted that potential I-fintech disputes involving the investors of capital markets and SIDREC members may fall under the SIDREC scheme. For example, hypothetically, an investor to the crowdfunding Investment Account Platform ('IAP') may avail itself to SIDREC to resolve their monetary disputes with any of the consortium of six Islamic bank institutions. IAP was launched in February 2016 is a bank-intermediated Fintech platform spearheaded by a consortium of six Malaysia's Islamic banking institutions.

World Intellectual Property Organization ('WIPO') Model

It will be a remiss if the WIPO IP disputes services specific to Fintech is not discussed in this chapter. Notably, the WIPO Arbitration and Mediation Center (see: https://www.wipo.int/) provides procedural advice and case administration to help parties resolve disputes arising in the area of financial technology ('Fintech') without the need for court litigation. It is stated that the 'WIPO International Alternative Dispute Resolution services enable parties to resolve IP disputes outside the courts, in a single neutral forum, saving significant time and money.'

Arbitration and Mediation

In so far as arbitration and mediation are concerned, 'WIPO fast, flexible and cost-effective services for settling IP and technology disputes outside the courts offers':

- Mediation where an impartial mediator helps two or more parties in dispute reach a mutually acceptable agreement between themselves.
- Arbitration where the parties agree to submit their dispute to an arbitrator, who then makes a final, binding decision (award).
- Expert determination where the parties agree to submit a specific issue (such as a technical question, or the valuation of an IP asset, or royalty rates) to one or more experts who make a determination on the matter.'

Arguably, the WIPO model represents and offers unique hybrid arb-med model to cater for IP and technology disputes (discussion on this

subject is beyond the scope of this chapter although attempts will be made in the latter part of the chapter to highlight the Islamic ADR model using this concept). What we have seen from the foregoing paragraphs are but examples of existing ADR models ready to be used as alternative dispute resolution processes outside court.

A pertinent question that demands an answer is—what alternatives would the Islamic Shari'ah I-fintech judicial framework offer?

A Reformed Model: Arbitration in Islamic Law—A Traditional Perspective

A cursory look at the traditional application of Muslim laws reveals the existence of well-structured system of dispute resolution amongst many Islamic/Muslim countries.

For instance, OP Malhotra (2002) wrote that in India, where all Muslims were once governed by the Shari'ah, a compilation of Islamic laws and commentaries known as Hedaya, by Imam Abu Hanifa and his disciples Abu Yusof and Imam Mohammad, revealed the existence of provisions on arbitration for parties where the word used for arbitration is *Tahkeem* and the word used for arbitrator is *Hakam*. In Turkey and under the rule of the Ottoman caliphate, the *Mejella,* stood out as the first codified corpus of laws including those regulating Islamic financial transactions.

In Malaysia, N. Khalidah Dahlan (2018) observed that peaceful settlement of disputes has been practised widely since the era of the Melaka sultanate much in conformity with principles of *musyawarah*.

In addition to the litigation-based advocacy, the principles of *sulh* is widely practiced not only in family courts in Malaysia but also in civil disputes. Section 99 of the Syariah Court Civil Procedure (Federal Territories) Act 1998 (Act 585) states: 'The parties at any stage of the proceedings, hold sulh to settle their disputes in accordance with such rules as may be prescribed or, in the absence of such rules, in accordance with Hukum Syarak.'

The Malaysian Regulatory Regime

From the preceding paragraphs, the writer has argued that in addition to the two traditional main planks of legal framework governing disputes in Islamic banking, that is, litigation before the civil courts and arbitration, there are in existence parallel models represented by the ombudsman, tribunal and mediation.

It would also be pertinent to note that in the case of the in *JRI Resources Sdn Bhd v Kuwait Finance House (Malaysia) Berhad* [2019] MLJU 275 the Malaysian Federal Court held that findings on Islamic finance by Bank Negara Malaysia's Shariah Advisory Council (SAC) is binding on civil courts.

The SAC was set up in May 1997 as the highest Shariah authority in Islamic finance in Malaysia. Under the Central Bank of Malaysia Act 2009, the role and functions of the SAC was further reinforced—it was accorded the status of the sole authoritative body on shariah matters pertaining to Islamic banking, takaful and Islamic finance.

Section 56 of Central Bank Act 2009 vests an important jurisdiction to *Shari'ah* Advisory Council to refer to *Shari'ah* Advisory Council for ruling from court or arbitrator. It provides:

> *(1) Where in any proceedings relating to Islamic financial business before any court or arbitrator any question arises concerning a Shari'ah matter, the court or the arbitrator, as the case may be, shall-*
>
> *(a) Take into consideration any published rulings of the SAC; or*
> *(b) Refer such question to the SAC for its ruling*

A nine-member panel of judges, in a narrow majority 5-4 decision, however also ruled that the ascertainment of Islamic law by the SAC does not amount to a judicial decision.

The majority also held that the rulings by the SAC constitute an expert opinion in the matters of Islamic finance. 'The SAC members are highly qualified in the fields of shariah economics, banking, law and finance,' says Justice Zawawi, who wrote the majority judgement.

In the light of the earlier given judgement, the function and importance of SAC now cannot be over emphasized as the main point of binding-authoritative reference on issues relating to Islamic finance and it is submitted that it is a role that can be extended not only to disputes canvased before the courts and arbitration but also in all other ADR models.

However, in light of this case, it is important to observe that as the Federal Court's decision only binds lower courts, the only caveat to bear in mind is the binding effect of SAC on other ADR forums (in the absence of prior agreement of its binding nature upon referral) any SAC ruling on other ADR forum may be treated as of persuasive nature.

Some Key Shari'ah ADR Models

As can be seen in the foregoing discussions, by way of iterations, besides the court litigation procedures, the ADR models involving not only mediation and arbitration but also tribunal or ombudsman are often used in resolving financial disputes. And these models are not unlike existing and prevalent ADR models practiced in Shari'ah contexts which are discussed here:

(a) Tahkeem or arbitration

In the context of Shari'ah resolution of disputes models, it is noteworthy to observe that *tahkeem* or arbitration is a well-entrenched practice. Hence, it is noteworthy to observe that Samir Saleh (1984) wrote '[A]rbitration is a common and preferred method of settling commercial disputes in Islamic countries.' In fact, arguably, Abdul Hamid el-Ahbab (1987) cited that one of the most famous use of arbitration model was the arbitration agreement between Saidina Ali ibn Abi Talib (a.s.) and Muawiyah ibn Abi Sufian, the Governor of Syam over the succession of Caliphate, when two arbitrators were chosen to settle the dispute.

(b) *Sulh* or good faith negotiation

Another key dispute resolution mechanism is *sulh* or good faith negotiation. Aida Othman (2005) noted that 'in classical Islamic thought and tradition, sulh means the amicable settlement of disputes through good faith negotiation, conciliation/mediation, peacemaking, and even extends to compromise of action. This is an institutionalized method of dispute resolution recognized and prescribed by the primary sources of Shari'ah.'

(c) Mediation and Arbitration ('Med-Arb')

The Med-ARB model is a synthesis of both *sulh* (mediation) and *tahkim* (arbitration) models. The mechanism of Med-Arb in the context of Islamic law is succinctly explained by Umar A. Oseni (2009) thus:

> The Med-Arb process is a mechanism for dispute resolution enmeshed within the general framework of *Sulh* (amicable settlement) in Islamic jurisprudence…In most cases during the *Tahkim* proceedings, both *sulh* and *tahkim* are combined to facilitate the process of dispute resolution. (p. 19)

Hence, parties may still opt for mediation and reconciliation rather than continues to achieve an arbitral award even when proceedings are in place.

(d) *Muhtasib* or ombudsman

The institution of *Muhtasib* or ombudsman has existed in Islamic legal and political history. Athar Murtuza (2004) argues that one of the main general functions of a muhtasib is to 'regulate commercial activity within the state by protecting the interest of the consumers and the entrepreneurs alike, and guard public interest with much emphasis on administrative justice.'

(e) Fatāwa of Muftīs

In the modern context, Umar A. Oseni (2009, pp. 19–20) finds that this is best described as determination of experts or 'of a Muslim jurist[s] [which] represents three evaluative assessment of a dispute which may involve evaluative mediation, mini-trial or expert determination' and 'though the verdict or evaluation given by an expert is of persuasive nature and not considered binding, the significance of it is mostly felt in the area of dispute avoidance.'

It is submitted that determination of experts either persuasive or binding is extremely useful in dispute resolution in particular where the status of such determination is founded upon contractual undertakings or legislative sanctions.

The Way Forward: A Reformed Model(s)

Hybrid ADR Process

Umar A. Oseni (2009) proposed two hybrid ADR processes for the settlement of Islamic banking disputes which would and could be incorporated and institutionalized as 'Regional Sulh Centre for Islamic Banking and Finance.'

> The first is an amalgam of the triad consisting of mediation (sulh), expert determination (fatāwā) and ultimately, arbitration (tahkīm). On the other hand, parties may opt for the Med-Muh hybrid procedure which is more appropriate for the settlement of disputes between a customer and his/her financial service provider. (pp. 19–20)

The writer submits and associates himself to these two propositions and posits further that the schemes are equally valid and would apply to I-fintech judicial framework ecosystem. Both models are discussed in the foregoing paragraphs.

Mediation–Expert–Arbitration

Umar A. Oseni (2009) describes the process thus:

> the process starts with sulh and if such is not successful within a reasonable time, the dispute should proceed for binding Expert determination. This will be carried out by such expert who is learned in Islamic banking and financial services and has the requisite training-cum-expertise of dispute resolution. The same panel can conduct the sulh phase of the process and thereafter proceeds to Expert Determination. After an objective evaluation of the case, the experts give their opinion which is considered binding because the whole process will be based on a contractual agreement ab initio. Such expert opinion may assist in nipping the conflict in the bud. However, if the any of the parties to the dispute refuses to be guided by the opinion of the expert by accepting the decision, there is always the need for an enforceable procedure in form of tahkīm. (p. 20)

As alluded to earlier, the Malaysian Federal Court in *JRI Resources Sdn Bhd v Kuwait Finance House (Malaysia) Berhad (supra) in a majority decision* held that findings on Islamic finance by SAC is binding on civil courts. It is in this context, the writer submits that the SAC fulfils the functions of expert whose rulings constitute 'determination' which is binding both on the court and on arbitration.

The writer would posit further that in addition to court and arbitration, such a determination by SAC may be made binding on other ADR forums with parties' prior agreement of its binding nature upon referral.

Mediation–Muhtasib (Med–Muh)

On this model, Umar A. Oseni (2009) posits:

> Med-Muh is a mixture of mediation (sulh) and muhtasib. This amalgam is more relevant in the resolution of administrative-cum-financial disputes, claims or complaints which generally arise out of bank-customer relation-

> ship. As a preliminary step, such a hybrid process will begin by utilizing the sulh process before proceeding to the institution of ombudsman (muhtasib).

Further, he added:

> If the dispute, complaint or claim is not resolved or any of the parties is not satisfied, then, the muhtasib will decide the matter based on his assessment and applying the relevant laws from the Islamic perspective. The decision of the muhtasib is binding on the parties and no appeal can be made against such a decision. (pp. 19–20)

It is submitted that these descriptions aptly fit into the OFS, Consumers Tribunal and SIDREC models described and alluded to herein.

Conclusion

Clearly an institutionalized Shari'ah—Islamic I-fintech judicial framework is consistent and comparable with existing modern legal dispute resolution legal frameworks and technological demands. As was argued earlier, both these two hybrid models may be considered by I-fintech stakeholders including Bank Negara Malaysia, Securities Commission and Fintech Association of Malaysia, as newly reformed judicial ADR models, underpinning the perfect case of alternative judicial legal framework to cater to the needs and demands of any present and future I-fintech disputes.

Whilst any attempt to introduce and render binding submission to Mediation–Expert–Arbitration model may just require mere contractual arrangements and undertakings, attempts and efforts to have Med-Muh model as described earlier to be applicable would require legislative interventions as these models' legitimacy and application rests on legislative justifications. The introduction and application would inevitably require not only political will but also legislative interventions in order to carry through the proposed Mediation–Expert–Arbitration model into reality.

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