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Mediation goes global in Singapore

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Mediation Goes Global in Singapore



GEORGE LIM SC



EUNICE CHUA

Singapore has positioned itself as an international dispute resolution hub in Asia by providing a complete suite of services for international arbitration, Singapore International Arbitration Centre (“SIAC”), the Singapore International Commercial Court (“SICC”) and the Singapore International Mediation Centre (“SIMC”). SICC and SIMC build on Singapore’s reputation for quality legal services, including its status as the most preferred seat of arbitration in Asia and the third most preferred seat of arbitration in the world. They bring more options to parties facing cross-border disputes who need tailored solutions that meet their needs.

Mediation, in particular, is a key component of Singapore’s ambitions as it complements both arbitration and litigation by offering an avenue for parties to amicably solve their problems with the aid of a professional facilitator. It can help parties fast-track their way to obtaining an enforceable arbitral award or order of court if used in conjunction with other modes of dispute resolution. How did Singapore embark on this journey and what does this mean for India?

FOCUSING ON INTERNATIONAL MEDIATION

Recognising the potential to grow the international mediation space in Singapore, in April 2013, a Working Group, comprising local and international experts and co-chaired by Mr. Edwin Glasgow CBE QC and Mr. George Lim SC, was set up by the Chief Justice of Singapore Sundaresh Menon and the Ministry of Law to assess and make recommendations on how to develop Singapore as a centre for international commercial mediation.

In its report submitted later the same year, the Working Group recognised the need for

enhanced and sophisticated dispute resolution services for cross-border disputes to support the rise in trade and investment in Asia. The Working Group made various recommendations, including: (a) the establishment of an international mediation service provider offering a panel of international med mediation and experts as well as user-centric products and services; (b) the establishment of a professional mediation standards body; and (c) the enactment of a Mediation Act to strengthen the legal framework for mediation.

These recommendations were welcomed by the Singapore Government and resulted in the establishment of SIMC and the Singapore International Mediation Institute (“SIMI”), which were both officially launched on November 2014. The Mediation Act is still a work in progress but will be designed to address issues of confidentiality of mediation communications and enforceability of mediated settlement agreements.

SIMC AND SIMI

SIMC and SIMI complement each other as SIMC is the mediation service provider and SIMI the vanguard for professional mediation standards. SIMC maintains a panel of

over 65 international mediators from 14 jurisdictions who are experienced in cross-border dispute resolution, including four mediators from India – Sriram Panchu, Ashok Panikkar,



Prathamesh Popat and Anil Xavier. SIMC mediators are required to be independently certified by SIMI, an independent professional body that requires its certified mediators to have competency in dealing with cross-cultural mediation and to publish a digest of feedback gathered from recent mediations.

SIMI is associated with the Institute (“IMI”), a non-profit drive transparency and high mediation practice across all SIMI certification will be certification. By requiring SIMI, SIMC is able to mediation service providers

their own mediators and can offer to potential users an objectively determined high quality panel who are capable of facilitating complex cross-border dispute resolution.



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International Mediation public interest initiative to competency standards into fields, worldwide. Obtaining equivalent to obtaining IMI independent certification by distinguish itself from other who also train and accredit

SIMC also has a panel of technical experts, comprising independent consultants and key personnel of well-established companies from diverse sectors of industry, to assist in mediations which deal with complex technical issues. It is generally expected that the expert will not act as an adjudicator or a co-mediator, but may assist in providing a neutral and objective perspective to assist the mediator in the conduct of mediation. The SIMC can, in consultation with the mediator, provide assistance to the parties in their choice and appointment of a suitable technical expert.

SIMC is staffed by a professional secretariat that provides administrative and case management support services in accordance with the SIMC Mediation Rules. The SIMC Mediation Rules provide a framework for the initiation and conduct of the mediation and enables SIMC to assist parties to arrive at an agreement to mediate, appoint a suitable mediator where parties are unable to or do not wish to jointly agree on a mediator, and arrange pre-mediation meetings or conferences.

THE SIAC-SIMC ARB-MED-ARB SERVICE



In order to meet the needs of users looking for quicker and cheaper hybrid dispute resolution options, SIAC and SIMC collaborated to offer an arbitration-mediation-arbitration (“arb-med-arb”) service. It is an innovation that deals with issues arising out of combining mediation and arbitration, including enforceability of mediated settlement agreements and maintaining the integrity of the mediation and arbitration process.

Using this service, parties first refer their dispute to arbitration at the SIAC. After the exchange of the Notice of Arbitration and Response to the Notice of Arbitration, as well as the appointment of the arbitral tribunal, the arbitration is held in abeyance so that parties can attempt mediation. If the parties enter into a settlement agreement during mediation, they have the option to request the tribunal to record the settlement agreement as a consent award. If the parties fail to resolve their dispute through mediation, they may continue with the arbitration proceedings.

The SIAC-SIMC Arb-Med-Arb Service is governed by an Arb-Med-Arb Protocol, which provides a clear framework for the smooth conduct of the Arb-Med-Arb process, including stipulating an 8-week maximum timeframe within which mediation must be completed. The Arb-Med-Arb Protocol aims to enhance process integrity and enforceability of the mediated settlement agreement by enabling its conversion into an

arbitral award whilst providing control mechanisms to ensure efficient and effective dispute resolution. Parties wishing to avail themselves of the Arb-Med-Arb Protocol may insert a model Singapore Arb-Med-Arb clause in their contracts or subsequently agree to adopt the Protocol after the commencement of arbitration proceedings.

SIMC AND INDIA

India is a key market for Singapore dispute resolution services due to strong Singapore-India bilateral relations whether on a political, cultural, or economic level. Singapore is India's largest trade and investment partner in ASEAN and the seventh largest trade partner globally. The India-Singapore Comprehensive Economic Cooperation Agreement ("CECA") has helped to boost investment flows into Singapore, with foreign direct investment from India growing from S\$1.3 billion in 2005 to S\$20 billion in 2012. Trade between India and Singapore rose to S\$25.5 billion in 2013 from S\$16.6 billion in 2005 when the CECA came into force. About 6,000 registered "Indian" companies are estimated to be present in Singapore and nine Indian banks operate in the Republic – Bank of India, Indian Overseas Bank, UCO Bank, Indian Bank, Axis Bank, and State Bank of India, ICICI, EXIM Bank and Bank of Baroda.

The need in India for international commercial dispute resolution services available in Singapore is further evident from SIAC's case statistics, which show India as the leading source of new cases in terms of nationality of all parties – with 85 new cases in 2013 – and China following behind with 41 new cases. This was a dramatic increase from the 42 new cases in 2012 and 24 new cases in 2011 with Indian parties.

Recognising the demand by Indian parties for quality international dispute resolution services based in Asia, SIMC has made two forays into India to promote international commercial mediation and its benefits.

From 9-13 January 2015, SIMC participated in the 7th Vibrant Gujarat Global Summit alongside a Business Mission to Gujarat organised by the Singapore Business Federation. The Vibrant Gujarat Summit and business mission presented an excellent opportunity to speak with international businesses about how mediation could support them by providing quick, effective and cost-efficient solutions to disputes that may arise. SIMC also met with various Indian government officials and business leaders through networking seminars and roundtable discussions.

Just a month later from 12-15 February 2015, the Asia-Pacific International Mediation Summit, organised by the American Bar Association Dispute Resolution Section and the UNCITRAL-RCAP in collaboration with other International ADR Leaders, including SIMC, was held in New Delhi. Reflecting how far India has come in receiving and practising mediation, the Summit attracted over 120 participants and covered a wide range of topics including developing sustainable mediation programs, mediation models in Asia, culture and mediation, enforceability of mediation agreements, commercial cross-border mediation, overcoming barriers to mediation, structuring effective commercial mediation programs, best practices and many others.



SIMC made its third trip to Delhi, Mumbai and Bangalore in September 2015. In Delhi and Mumbai, SIMC was joined by SIAC, SICC and the Singapore Law Society in events on 7 and 9 September. On 10 September in Bangalore, SIMC partnered with the Indian Institute of Arbitration and Mediation (“IIAM”) and the Centre for Advanced Mediation Practice (“CAMP”) to organise a seminar targeted at general counsel and corporate leaders that will help create awareness about the benefits of mediation and how it can be a crucial part of business strategy both domestic and international. SIMC will further be entering into a memorandum of understanding with IIAM to provide a platform for collaboration in the promotion of mediation as well as to enhance the ease of mediating between Indian and Singapore parties. IIAM and Meta-Culture are the only two organisations in India who run Qualifying Assessment Programs for IMI Certification.

CONCLUSION

Although it is often said that mediation has deep roots in Asia, it has yet to fully blossom and grow in its modern form and as a means of resolving commercial disputes whether domestic or international in nature. It is hoped that the SIMC can make a small contribution to the revival of the culture of mediation in Asia through its outreach efforts in the region and partnerships with other like-minded organisations.

The Authors—

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