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International Mediation and Covid-19 – the new normal?

Nadja Alexander (Editor) (Singapore International Dispute Resolution Academy)/May 21, 2020

What is the SIMC COVID-19 Protocol?

The Singapore International Mediation Centre (SIMC) has just launched the **SIMC COVID-19 Protocol** to provide businesses with an expedited, economical and effective route to resolve any international commercial disputes during the COVID-19 pandemic period.

SIMC's Covid-19 protocol is a great example of a leading mediation service provider reaching out to a market severely disrupted by Covid-19. The option for Singaporean and international parties to mediate online means for a highly accessible, time and cost effective path to resolve disputes that have emerged in the wake of Covid-19.

Some key aspects of the Protocol are set out here:

1. Parties may refer their disputes for mediation under the Protocol by submitting a request form at SIMC's website and paying a S\$250 filing fee.
2. SIMC will organise the mediation within 10 working days.
3. Parties will enjoy reduced fees based on dispute amount. For example, for disputes of less than \$1M, each party pays \$3,000, mediator's fees included. SIMC will exercise flexibility in appropriate cases.
4. Cases will be matched with experienced mediators to facilitate settlement.
5. Mediation may be conducted online.
6. The Protocol will remain in force until 31 Dec 2020.

Another important point is that SIMC's Covid-19 protocol neatly complements Singapore's **COVID-19 (Temporary Measures) Act**. As the Act provides temporary (and not permanent) relief from legal action, parties should make best use of the temporary reprieve to mediate a commercial solution that is sustainable for both parties in the longer term. At the same time, when parties apply under the Act for relief, any assessor that may be appointed will strive to find just and equitable outcomes. SIMC's Covid-19 protocol can be seen as a natural extension of the assessment process under the Act, where the focus is not so much on strict legal rights, but fairness, reasonableness and balance.

Who will benefit from the SIMC Protocol?

Given that many people will find their business arrangements have been disrupted

through no fault of either business partner but rather because of a worldwide health crisis beyond their control, the Protocol will certainly benefit parties who desire to preserve their business relationships and avoid further disruption to business through lengthy court or arbitral proceedings.

What about the online option?

The optional use of online mediation in the Protocol speaks to current international circumstances. While there has been a steadily growing interest in online mediation, the world-wide pandemic and associated movement restrictions have fast-forwarded us at least five years in terms of the market's willingness to mediate online. Certainly, there is more online mediation happening today than a couple of months ago. As dispute parties discover the convenience of online dispute resolution, they are likely to continue to make use of it even after international travel has opened up again.

Will the Protocol fast-track the growth of international mediation?

The SIDRA International Dispute Resolution Survey shows that mediation is occupying an increasingly prominent role in the international dispute resolution space for commercial disputes, both as a standalone mechanism and as part of hybrid dispute resolution mechanisms. Where preservation of the business relationship is important, mediation is a popular choice among users as a flexible and cost-effective process. Further, hybrid mechanisms are rising in popularity due to their ability to combine the advantages of both mechanisms. For instance, Arb-Med-Arb (a combination of arbitration and mediation), allows for users to enjoy the flexibility and efficiency of mediation, and the finality and enforceability of arbitration.

Certainly the Protocol will introduce more international parties to mediation and draw attention to its business-friendly characteristics.

Mediation: the new normal?

We have all been jolted out of our comfort zones and regular ways of doing things. Although mediation has been available for a long time, it is still the new kid on the block in terms of international dispute resolution. The pandemic has disrupted business and social environments in ways we could not have imagined. Mediation is the best dispute resolution forum we have to deal with the relational and commercial aspects of the many conflicts that are now emerging. We can expect mediation to become the 'new normal' for many cases – in both its online and offline forms.