Kluwer Mediation Blog

Singapore Developments – Supreme Court Practice Directions

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The year 2016 has so far been a significant one for Singapore in the area of ADR. The opening of the Singapore Legal Year saw the Chief Justice of Singapore, Mr. Sundaresh Menon introducing various ADR-related initiatives in family justice cases and medical malpractice matters. This has been explored in a previous blog entry here.

March 2016 also saw the inaugural Global Pound Conference Series beginning in Singapore. The Global Pound Conference seeks to revisit the field of dispute resolution 40 years after the original Pound Conference and to consider the future of dispute resolution and its continuing development. The inaugural conference was well-attended with an international audience and set the tone well for the series which will culminate in London in 2017.

In the hustle and bustle of these 2 events, another development occurred quietly. In January 2016, amendments were made to the practice directions of the Supreme Court that related to, inter alia, Alternative Dispute Resolution. This entry seeks to look at these amendments and provide some observations.

There are 3 broad aspects to these amendments. The first aspect is the amendment to Para 35B which provides an overview of the use of ADR for civil cases in the High Court and Court of Appeal. In these amendments, the directions make clear that:

– It is the professional duty of advocates and solicitors to advise their clients about the different ways their disputes may be resolved using an appropriate form of ADR
– ADR should be considered as early as possible to facilitate the just, expeditious and economical disposal of civil cases. This is especially where ADR may save costs, achieve a quicker resolution and provide a surer way of meeting the client's needs.
– The attention of advocates, solicitors and parties is also drawn to the cost sanctions provided by Order 59, Rule 5(c) of the Rules of Court. Essentially, when exercising its discretion as to costs, the court can take in account the parties' conduct in relation to any attempt at resolving the cause or matter by mediation or any other means of dispute resolution. Specifically, clients should be advised about potential adverse costs orders for any unreasonable refusal to engage in ADR.

The second aspect is an amendment to the form for responding to an ADR offer. This form requires parties and their counsel to fill in detailed reasons for being unwilling to engage in ADR or the proposals for resolving the matter by ADR that one party is willing to accept or counter proposals for resolving the matter by ADR. This form requires parties to certify that their counsel has advised them about the availability of ADR options, the benefits of settling matters via ADR and that unreasonable refusal to engage in ADR can attract cost sanctions.

The third aspect is the inclusion of a new Appendix 1 which provides guidelines for advocates and solicitors when advising clients about ADR. Appendix 1 provides guidelines on choosing the most appropriate process between Neutral Evaluation, Expert Determination, Conciliation and Mediation. Interestingly, there is particular focus on mediation where the appendix provides examples of the sorts of disputes which are ideal for resolution through mediation. It even provides reminders to counsel about the appropriate time to mediate and to consider how counsel and parties can best assist the mediator. Finally, Appendix 1 provides a table that highlights the essential differences between Litigation and Mediation as a means to resolve commercial disputes.

There are three observations that can be made about these amendments.

First, it is clear that the court is clearly supportive of ADR as a means of resolving commercial disputes. From the perspective of some jurisdictions, it might seem odd that the court is such a strong proponent of ADR. However, this writer has stated before elsewhere and maintains the position that in Singapore, the support of the courts is a key reason why ADR and in particular mediation has taken root so quickly. This support is in line with the Singapore court's view that the justice system must provide a whole suite of dispute resolution services, as opposed to only litigation. The issue then is for counsel to assist their parties to identify the most appropriate form of dispute resolution for their dispute.

Secondly, there is clearly a particular focus on promoting mediation. This comes out clearly in Appendix 1 where more than two-thirds is devoted to mediation. It is also interesting that it is emphasized that all disputes, regardless of the basis for them, are capable of resolution through mediation provided all disputants are willing to seek resolution if they can. This comes out clearly in the section which considers the type of cases suitable for mediation. The appendix singles out three types of cases; fraud, test cases and "matter of principle" cases. In each of these cases, the idea that that mediation would not be suitable is debunked.

Finally, it is clear that these amendments are part of a bigger plan, not just to provide a whole suite of dispute resolution services but to facilitate a change in the legal culture of Singapore's advocates and solicitors. These amendments make it very difficult for counsel to ignore the existence of ADR. Information is provided so that they can no longer claim ignorance and the form for responding to an ADR offer ensures that parties are actually informed about the ADR option. Cost sanctions provide the stick to the advantages of the ADR carrot.

Of course, there is no guarantee that these amendments will lead to a culture change

in the legal profession and even if it does, how quickly this will occur. However, what is clear is that these amendments in combination with all the other measures taken in Singapore to promote ADR, is certainly a significant step towards that cultural change.

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