In the past few years Singapore has been busy refining and extending its dispute resolution offerings in cross-border litigation, arbitration, and mediation. In 2017, Singapore offered international parties a full suite of dispute resolution services for commercial cross-border disputes. The Singapore International Commercial Court (SICC) was established, having been founded in 2015, and Singapore has been consistently rated as the common law seat of ICC arbitration for the last 6 years. Inspired by the top two most preferred seats of ICC arbitration in the world for the last 10 years, Parliament passed the Civil Law Amendment Bill to allow Singapore's courts to freeze international commercial activities. It was announced that the current size of Maxwell Chambers will be tripled. Seeking to extend its enviable dispute resolution resume to cross-border litigation and mediation, Singapore has introduced a suite of international dispute resolution institutions in the past two and a half years. In relation to litigation, the Singapore International Dispute Resolution Centre is designed to deal with transnational commercial disputes and offers parties the option of having their disputes adjudicated by a panel of specialist international judges from Singapore and international judges from other common law traditions. Moreover, in 2016, Singapore ratified the 2005 Hague Convention on Choice of Court Agreements and Parliament passed the Choice of Court Agreements Act. This Act enhances the enforceability of Singapore judgments abroad and strengthens Singapore's position as a forum for international commercial dispute resolution.

In terms of cross-border mediation, Singapore has already covered the establishment of a number of institutions to complement the work of the Singapore Mediation Centre (SMC). These are the Singapore International Mediation Centre (SIMC) and Singapore International Mediation Institute (SIMI) in 2014. The latest institution in the mediation landscape is the Singapore International Dispute Resolution Academy (SIDRA). But more on that in a subsequent blog posting.

Significantly, in January this year the Mediation Bill was passed into law in Singapore, offering further legislative support for international commercial mediation. It provides for the recognition of certain aspects of its purpose and provisions. I won't go over the same ground. Rather in this post, I will offer a number of additional comments.

The Mediation Act of 2017 deals with mediation generally but is of particular significance in relation to commercial mediation with international parties. This is because it focuses on the rights and obligations of the participants in mediation, in part, clarifying and confining aspects of the common law position, in part, creating a new law. In addition, the Act addresses the issue of professional standards and quality assurance by providing certification schemes for mediated settlement agreements. This means that mediation conducted by "certified mediators" and "designated mediation service providers".

In line with current thinking on best practice legislation for mediation, the Mediation Act does not deal with the internal process elements of mediation, which should remain flexible.

The Singapore Mediation Act of 2017 has taken some inspiration from the Hong Kong Mediation Ordinance of 2014. In particular, the comprehensive definition of mediation in section 2 of the Singapore legislation seems to be drawn from Hong Kong as do the provisions on application to mediations conducted partly outside of Singapore. The Hong Kong provisions are an example of thoughtful and sophisticated drafting. The Singaporean choice to draw on these provisions in their drafting demonstrates a high level of understanding of what is required for a robust compulsory framework for mediation. Meanwhile, it also signals a move towards regional harmonisation of mediation law - something very important for the development of cross-border mediation.

Nevertheless, the Singapore Mediation Act does not stop there. In section 12 it goes further and expressly deals with the enforceability of DAsAs in private mediations, that is, in mediations where court proceedings have not been initiated. It permits parties to agree to apply to the court in writing and signed mediated settlement agreement as an order of court. The mediation has to be administered by a designated mediation service provider and so conducted by a certified mediator. These two requirements are focused on ensuring the quality of the mediator process. In contrast, DAsAs in public mediations, that is, in mediations conducted by "certified mediators", and certifies mediators and include these international and local mediators accredited by SIMI.

It is clear, where you have

* an appropriately accredited international non-Singaporean mediator; or
* a situation where a cross-border dispute arises from an agreement proceeding before commencement, and
* the mediation is held partly in Singapore, partly outside of Singapore and partly on Skype, and
* the parties may agree that the mediated settlement agreement be recorded as a court order.

Given the international framework for recognition and enforcement of foreign judgments and the potential for Singaporean court orders to be recognised in other jurisdictions, it is easy to see how the Singapore court system may offer cross-border mediation a boost.

Please refer to this post as:


Towards a Harmonised Approach to Mediation Legislation in Asia?

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