

Why Your Experience Is Important In International Dispute Resolution Reform

Kluwer Mediation Blog
April 29, 2019

Nadja Alexander (Editor), Matthew Coghlan, Aziah Hussin (Singapore International Dispute Resolution Academy)

Please refer to this post as: Nadja Alexander (Editor), Matthew Coghlan, Aziah Hussin, 'Why Your Experience Is Important In International Dispute Resolution Reform', Kluwer Mediation Blog, April 29 2019, <http://mediationblog.kluwerarbitration.com/2019/04/29/why-your-experience-is-important-in-international-dispute-resolution-reform/>

Whether we are talking about arbitration, mediation or litigation, it seems that international dispute resolution systems are evolving rapidly. Think of the recent emergence of international commercial courts in ascendant global cities like Dubai and Singapore, the new UNCITRAL spotlight on reforming of investment arbitration, the United Nation's adoption of the Singapore Convention on Mediation last December, and, of course, the advancement of technology to support online dispute resolution. Indeed, wherever we look, change is happening or on the horizon.

But how do we know what changes to IDR systems are necessary to improve dispute resolution? Are we only interested in improving existing system efficiency, or do we want to create new mechanism options? How do we design either of these types of changes so that they are effective? Will the improved efficiencies or new options be valuable to and used by IDR stakeholders? What will the experiences of the companies and lawyers be if they use them?

There are many actors involved in IDR system design and practice: politicians and policymakers call for and set up dispute resolution mechanisms to fill gaps and meet needs in local judicial systems; commercial parties come into conflict in delivering goods and services and seek dispute resolution assistance if their negotiations fail to resolve it; courts and alternative dispute resolution service providers receive, manage and facilitate or decide party complaints; legal practitioners represent parties and advise them on their options and strategies for resolution; courts and judicial officers might be needed to enforce orders to finalise dispute resolution.

Moreover, every country has its own legal systems and cultures that might feature the standard dispute resolutions mechanisms of arbitration, mediation and litigation, yet these mechanisms will be influenced by each country's distinctive norms and practices.

At the international level in the last couple of years, several prominent studies have been conducted that have aimed to generate relevant new information on IDR systems. These studies have used different methodologies – for instance, in the research tools that they employed and respondent targets they selected – to produce data:

- The Queen Mary University of London and White & Case LLP International Arbitration Survey targets international arbitration lawyers and centres to understand their perceptions of key issues and indicators in international arbitration; and,
- The Global Pound Conference Series Data and Reports examined what dispute resolution users want from IDR systems and what gaps need to be filled to meet their needs by speaking with the parties to disputes and academics specialising in dispute resolution.

The results from studies like Queen Mary and Global Pound can then be used by policy-makers and legislators to understand the strengths and weaknesses of their own and other country IDR systems, and to develop and propose policy changes and legal reforms to replicate other system's strengths and mitigate their own system's weaknesses. This comparative and competitive process thus helps to identify and establish global benchmarks and best practices from country-level dispute resolution structures and institutions, and procedures and practices.

To this same end, the Singapore International Dispute Resolution Academy (SIDRA) has launched Singapore's first International Dispute Resolution Survey with Singapore Ministry of Law assistance. The IDR Survey seeks to put together a comprehensive and robust understanding of how corporations resolve their cross-border disputes and the reasons for their dispute resolution choices. It will answer important IDR design questions such as why some corporations choose one dispute resolution mechanism over another, and whether these choices vary depending on factors such as the type of transactions, the nature of disputes, the industries or sectors involved, and the countries or regions of operation.

In comparison to the two important studies mentioned above, the new IDR survey will differ in a number of significant ways:

1. Cover international mediation and litigation in addition to arbitration;
2. Gather responses from corporate executives and corporate counsel (that is, the dispute resolution users) and dispute lawyers (the dispute service providers);
3. Examine actual usage rather than just preferences, which will provide clearer insights into corporation and law firm decision-making for resolution of disputes; and,
4. Achieve a geographical spread of companies and lawyers to represent users and providers of the major regions.

The survey is available in English, Chinese, Arabic, Russian, French and Spanish languages.

If you are a corporate executive, corporate counsel or dispute lawyer who has been involved in IDR in the last three years, SIDRA welcomes your participation in the survey. Please click on the following link and send the email that pops-up to participate: [Mailto:sidra.survey.sg@sg.pwc.com?subject=%20request%20to%20participate%20in%20the%20SIDRA%20IDR%20Survey](mailto:sidra.survey.sg@sg.pwc.com?subject=%20request%20to%20participate%20in%20the%20SIDRA%20IDR%20Survey). You will receive a copy of the survey results once they have been published.