

Why and how users make choices in international dispute resolution: 2020 SIDRA Survey

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The Singapore International Dispute Resolution Academy (SIDRA) released its [International Dispute Resolution Survey: 2020 Final Report](#) ('2020 SIDRA Survey') on 3 July. It is a compendium of the experiences and views of legal and client users from common and civil law jurisdictions on why and how they choose dispute resolution mechanisms to resolve cross-border disputes. The survey was commissioned by the Singapore Ministry of Law and administered by PwC South East Asia Consulting. This is the first of three blog posts exploring the main findings of the Survey relevant to international mediation.

There are five aspects of the SIDRA Survey that make it unique.

First, it is 100% user-centric. All respondents are users and they are identified either as Client Users (corporate executives and in-house counsel) or Legal Users (lawyers and legal advisers) who engage in cross-border commercial dispute resolution. Views of neutrals, academics, institutional providers and other non-user stakeholders are not represented in this survey and so the data really speaks for the users.

Second, the views are based on user experiences and not just preferences. Once respondents indicated that they had used a particular dispute resolution process, they were then asked to respond to a series of specific questions in relation to that mechanism. If they did not have experience with a particular process, the survey directed them to the next process category.

Third, the survey focuses on dispute resolution mechanisms for cross-border disputes only, and not for domestic disputes. International dispute resolution involves different considerations compared to domestic settings and we did not want to confuse the two.

Fourth, the survey has been distributed internationally in all six official UN languages: Arabic, Chinese, English, French, Spanish and Russian, with the help of our partners, PwC South East Asia Consulting. In this way we wanted to reach a more diverse selection of users compared to those who primarily work in English.

Finally, we felt it was necessary to avoid examining any single dispute resolution mechanism in isolation. Dispute resolution developments are increasingly interconnected as the emergence of hybrid dispute resolution and (international) court referrals to mediation show.



In the 2020 Final Report, SIDRA chose the jacaranda tree as its theme because it represents wisdom and ethics. This is consonant with the Survey findings, which reflect the collective wisdom of legal and corporate users who responded to the survey questionnaire. The executive summary of the SIDRA Survey can be accessed [here](#).

In this post, we will explore the key factors that influence users' choice of mediation. Read together with the data on user satisfaction, mediation can be said to be the top choice for users where a swift and economical resolution of the dispute is prioritized.

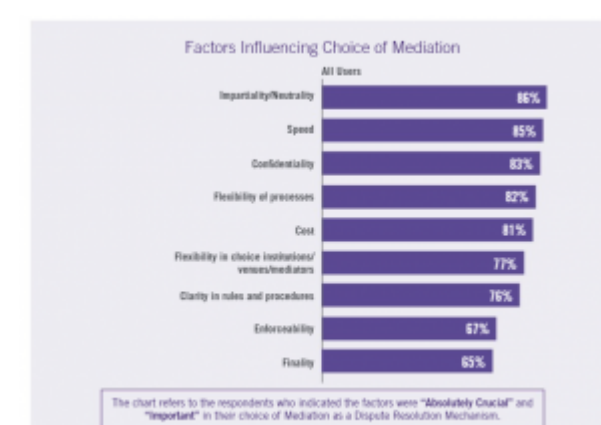
Choice of Dispute Resolution Mechanism

According to the 2020 SIDRA Survey, international commercial arbitration remains the dispute resolution of choice (used by 74% of respondents), followed by litigation (49%), hybrid mechanisms (27%) and mediation (26%) (see Exhibit 4.1.1). Notably, when mediation within hybrid dispute resolution mechanisms is taken into account, the use of mediation increases (53%) and comes closer to litigation in terms of usage, albeit still behind arbitration.

While enforceability, impartiality, finality, speed and cost were relevant to the selection of all dispute resolution mechanisms surveyed, there were some notable differences. For example, fewer mediation users (67%) ranked enforceability of outcome as an absolutely crucial or important factor, compared to arbitration (87%) and litigation users (85%) (see 2020 SIDRA Survey: Exhibit 4.2.1). This likely reflects the fact that mediation is more likely to be selected where users form the view that there will be a high chance of compliance with a dispute resolution outcome. Conversely, where possible non-compliance with the outcome of a dispute resolution process is a concern and enforcement mechanisms are therefore a priority, mediation is less likely to be selected. It follows that the new Singapore Convention on Mediation (the 'Singapore Convention') may influence user selection of dispute resolution processes in the coming years.

The comparison of satisfaction levels across the dispute resolution mechanisms shows differences according to that specific dispute resolution mechanism, especially in relation to speed and cost. Mediation enjoys more favorable reviews (68% of users were satisfied with the speed of mediation and 65% with its cost) as compared to litigation (speed 45%; cost 48%) and arbitration (speed 30%; cost 25%) cost (see 2020 SIDRA Survey: Exhibit 4.2.2). In particular, 72% of Client Users indicated being 'very satisfied' or 'somewhat satisfied' with costs in mediation (see 2020 SIDRA Survey: Exhibit 4.2.3). Therefore, it appears that mediation is by far the leading choice of dispute resolution in respect of speed and costs, especially for Client Users.

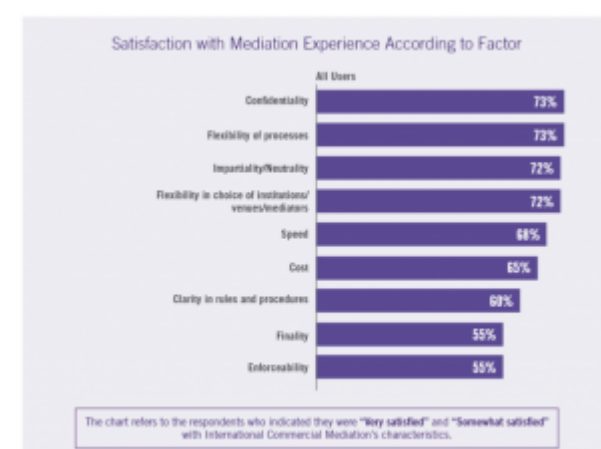
Factors Influencing Choice of Mediation



Source: 2020 SIDRA Survey, Exhibit 7.1.1

In selecting mediation, users indicated impartiality/neutrality (86%), speed (85%), and confidentiality (83%), followed closely by flexibility of processes (82%) and cost (81%). Flexibility in choice of institutions/venues/mediators as well as clarity in rules and procedures found middle ground with 77% and 76% of users respectively. Users ranked enforceability (67%) and finality (65%) as their least important considerations in selection of mediation as a dispute resolution mechanism.

Satisfaction with Mediation Experience According to Factor



Source: 2020 SIDRA Survey, Exhibit 7.1.3

More than 70% of respondents stated that they were 'very satisfied' or 'somewhat satisfied' with confidentiality (73%), flexibility of processes (73%), impartiality/neutrality (72%) and flexibility in choice of institutions/venues/mediators (72%). The findings on user satisfaction are usefully read together with those indicating the level of importance users placed upon these factors. For example, finality (65%) and enforceability (67%) were considered important by the lowest percentage of respondents in their choice of mediation - in other words, users were least influenced by these two factors. There is therefore some congruency in the finding that fewest respondents (55%) were satisfied with these characteristics.

Overall, more Client Users than Legal Users were satisfied with the various aspects of mediation. This is so in relation to impartiality/neutrality, confidentiality, speed, clarity in procedures, flexibility in choice of institutions/venues/arbitrators, and flexibility of processes, ranked as 'very satisfied' or 'somewhat satisfied' by at least 76% of Client Users (see 2020 SIDRA Survey, Exhibit 7.1.4).

Next time, we will explore what users said about mediators and mediation institutions.