

BRIEFING NOTE

International Mediation – How the Pandemic & the Singapore Mediation Convention are Encouraging the use of Mediation in International Disputes

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Introduction

Recently, there have been discussions as to the adoption of mediation as a preferred procedure for the resolution of commercial disputes. Mediation is often touted as a cost and time efficient solution that preserves the commercial relationship of the disputing parties. But despite its advantages, mediation is not often adopted to resolve international commercial disputes.

In this briefing note, we explore how the COVID-19 pandemic and the United Nations Convention on International Settlement Agreements Resulting from Mediation (the “**Singapore Mediation Convention**”) may encourage the wider use of international mediation.

Dual-Push Factors Encouraging International Mediation

The pandemic will reduce the budgets of most legal departments. Whilst commercial parties may have considered arbitration or litigation proceedings previously, the more restricted global economy may cause them to be more circumspect now. For the time being, commercial parties may be inclined to turn to mediation, which in requiring brief submissions and only one to two days in the mediation, is less time-consuming and less taxing on the legal budget.

The Singapore Mediation Convention has encouraged the interest in mediation (especially international mediation). The Singapore Mediation Convention was put together to promote international dispute resolution through mediation. Thus far, Singapore, Fiji, Qatar and Saudi Arabia have ratified the Singapore Mediation Convention (which will come into force on 12 September 2020). More are expected to ratify the Singapore Mediation Convention. In the meantime, commercial parties, especially those with assets in Singapore and the Middle East, may opt for international mediation to fully and finally resolve their differences.

Dispute Resolution through International Mediation

Whilst mediation may be a straightforward process in most domestic contexts, there is an added element of complexity in the international context. Most pertinently, there is the question of enforcing mediated settlements internationally.

As a first step, commercial parties are encouraged to work with legal experts to determine whether or not a mediated settlement of their dispute would be enforceable against the other

party outside of the jurisdiction where the mediation is to take place. Enforcement of international mediated settlements is permitted only where:

- the matter referred to mediation relates to a commercial dispute;
- the dispute is international in nature (for e.g., parties have places of business in different countries or the obligation is to be performed in a different country from the parties' places of business); and
- the mediated settlement is recorded in writing (signed by the parties and the mediator).

Even if the abovementioned criteria are satisfied and enforcement is permitted, the courts within the jurisdiction where the mediated settlement is to be enforced may refuse enforcement on the basis of impropriety relating to the mediation process or the mediated settlement. For example, the former includes questions over the mediator's impartiality or issues over the mediator's observance of applicable standards of conduct; the latter involves poorly drafted or contradictory terms in the mediated settlement.

Concluding Remarks

As mediation gains popularity amongst international commercial parties, parties are reminded of the strict guidelines for enforcing international mediated settlements. It would be frustrating for commercial parties to arrive at a mediated settlement only to learn of enforcement issues outside of the jurisdiction where the mediation was conducted.

At Sharpe & Jagger LLC, we are dispute resolution specialists. We regularly assist commercial parties with arbitration and mediation proceedings domestically and internationally. We pride ourselves with providing top-quality and international-standard advice at reasonable rates. Please do not hesitate to contact us to learn how we may be of assistance to you.

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