WHY YOU MAY WANT TO CONSIDER MEDIATION

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Introduction

Parliament in January this year passed the Mediation Bill ("**the Bill**"), and this further evidences a push for Mediation to be considered as a real option for the resolution of disputes. The passing of the Bill also follows earlier initiatives in 2014 with the setting up of the Singapore International Mediation Centre (SIMC), to provide world-class services in cross-border commercial disputes, and the Singapore International Mediation Institute (SIMI), a non-profit, independent professional standards body for Mediation which works closely with organisations to promote the use of Mediation and sets competency standards for Mediation professionals.

The Bill seeks to strengthen the enforceability of settlement agreements arising out of Mediation and comes at a time of growth of Alternative Dispute Resolution (ADR), where the use of Mediation, in particular, is gaining traction. Parties are increasingly looking beyond the traditional adversarial court-based model to resolve their disputes. In his speech at the Global Pound Conference in March 2016, the Honourable Chief Justice Sundaresh Menon highlighted three shifts to the global landscape today:

- First, a shift towards increased economic openness and mobility of labour and capital;

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- Second, a shift towards increased cross-cultural convergence in transnational commercial dispute resolution; and
- Third, a shift towards the increased recognition that accesses to justice can take place beyond the courtroom.

The Chief Justice then went on to share some responses to these shifts that will shape the future of dispute resolution. One of the responses is the emphasis on the need to provide appropriate dispute resolution mechanisms. Dispute resolution is certainly not "one size fits all". Mediation, for example, could be better suited to resolving disputes in which parties are amenable to mending their relationship with each other. The key features of the Bill will now be explored.

The Mediation Bill

Scope

The Bill seeks to promote, encourage and facilitate the resolution of disputes by Mediation, and applies to any Mediation conducted under a Mediation Agreement

1. where the Mediation is wholly or partly conducted in Singapore or
2. where the Mediation Agreement states that Singapore law is to apply to the Mediation.

- Enforceability of mediated settlement agreements
  Previously, parties seeking to enforce a mediated settlement agreement had to institute court proceedings to do so, incurring time and costs in the process. Under the Bill, where a mediated settlement agreement has been reached, a party may apply to the Court to record such agreement as an order of the court. However, the Mediation must have been administered by a designated Mediation service provider or conducted by a certified Mediator, and the agreement must be in writing and signed by all parties. The new provision, therefore, crystallises the finality and certainty of the mediated outcome.
- Stay of court proceedings
  The new Bill provides a party with a basis to apply to the court for a stay of any court proceedings pending the mediation. Clause 8(3) of the Bill also gives the court further powers to make interim or supplementary orders as it thinks fit for the purpose of preserving the rights of the parties.
- Confidentiality of mediation communication Parties value the confidentiality that alternative dispute resolution affords them, and the Bill entrenches the confidential nature of the mediation process. Under Clause 9 of the Bill, a person is prohibited from disclosing protected "mediation communication" to a third party who is not a party to the proceedings. Mediation communication is further protected by Clause 10, which provides that such communication may not be admitted in evidence in judicial, arbitral or disciplinary proceedings except with leave of court or an arbitral tribunal.

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Amendments to the Legal Profession Act

Finally, the Legal Profession Act has also been amended to make it clear that under certain circumstances, foreign mediators and foreign-qualified counsel may participate in mediation sessions. These provisions bring the legal framework of mediation in line with that of arbitration and would serve to encourage both foreign businesses and counsel alike to choose Singapore as their preferred jurisdiction for Mediation.

Conclusion

The changes in the Bill highlighted above, are intended to reinforce Singapore's position as an international dispute resolution hub. We have seen the growth of arbitration in Singapore in recent years, and it is hoped that with a new legislative framework, Mediation will be similarly boosted to become a dispute resolution mechanism of choice. Already, the number of mediation cases filed has hit a record high, with the Singapore Mediation Centre handling 499 cases in 2016. Apart from being less costly than litigation, mediation offers parties greater flexibility and control. During the mediation process, parties are encouraged to explore issues extending beyond those that are legal in nature, ventilating their views with each other in confidence. At the end of the day, parties have the opportunity to properly address their claim through the flexibility of mediated settlement agreements that may extend beyond financial redress.

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