Towards a Harmonised Approach to Mediation Legislation in Asia?

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Nadja Alexander (Editor) (Singapore International Dispute Resolution Academy)

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In the past few years Singapore has been busy revising, refining and extending its dispute resolution offerings in cross-border litigation, arbitration and mediation. In 2017 Singapore offers international parties a full suite of dispute resolution services for commercial cross-border disputes.
The Singapore International Arbitration Centre (SIAC) is well-established, having been founded in 1991, and Singapore has been consistently ranked as the number one seat of ICC arbitration in Asia for the last 5 years and in the top five most preferred seats of ICC Arbitration in the world for the last 10 years. In 2017, Parliament passed the Civil Law Amendment Bill to allow third-party funding to finance international commercial arbitration. It was also announced that 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 Commercial Court is designed to deal with transnational commercial disputes and offers litigants the option of having their disputes adjudicated by a panel of specialist commercial judges from Singapore and international judges from both civil law and 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, this Blog has already covered the establishment of a number of institutions to complement the work of the long-standing 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 SIDRA 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. Joel Lee has presented an excellent overview 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 codifying aspects of the common law position and, in part, creating new law. In addition the Act indirectly addresses the issue of professional standards and quality assurance by providing enforcement options for mediated settlement agreements that result from mediations 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 some similarities with the Hong Kong Mediation Ordinance of 2013. In particular, the comprehensive definition of mediation in section 3 of the Singapore legislation seems to be drawn from Hong Kong as do the provisions on application to mediations conducted partly outside of Singapore, definition of mediation agreements, confidentiality, admissibility of mediation communications as evidence in court proceedings. 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 understanding what is required for a robust regulatory framework for

mediation. Moreover it also signals a move towards regional harmonisation of mediation law – something very important for the development of cross-border mediation.

However the Singapore Mediation Act does not stop there. In section 12, it goes further and expressly deals with the enforceability of iMSAs in private mediations, that is mediations where court proceedings have not been initiated. It permits parties to agree to apply to the court to record a written and signed mediated settlement agreement as an order of court if the mediation has been (a) administered by a designated mediation service provider and (b) conducted by a certified mediator. These two requirements are focussed on ensuring the quality of the mediation process. As Joel Lee points out in his blog post, it is anticipated that designated mediation service providers will include SIMC and certified mediators will include those international and local mediators accredited by SIMI.

So in short, where you have:
• an appropriately accredited international, non-Singaporean mediator
• conducting a mediation of a cross-border dispute for which no litigation proceedings have commenced, and
• the mediation is held partly in Singapore, partly outside of Singapore and partly on Skype, and
• the mediation results in a settlement agreement,
the parties may agree that the mediated settlement agreement be recorded as a court order.

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