

THE BEST OF BOTH WORLDS IN ALTERNATIVE DISPUTE RESOLUTION: SINGAPORE'S ARB-MED-ARB PROTOCOL



Dispute resolution clauses: good faith negotiation, mediation and arbitration

A typical dispute resolution clause can provide in some detail for, amongst other things, conditions precedent under which parties have to negotiate in good faith first before commencing arbitration. In our experience there can sometimes be a question of whether such conditions precedent have to be complied with before arbitration is commenced. One worthy clause to consider, where parties are agreeable to consider both arbitration and mediation in Singapore, which offers much more by way of certainty, is the recently introduced Arb-Med-Arb clause (AMA clause), which provides for the application of the Arb-Med-Arb protocol (AMA protocol).

The clause

The standard wording for the AMA clause provides the following:

"All disputes, controversies or differences (dispute) arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in Singapore in accordance with the Arbitration Rules of the Singapore International Arbitration Centre (SIAC) for the time being in force.

The parties further agree that following the commencement of arbitration, they will attempt in good faith to resolve the dispute through mediation at the Singapore International Mediation Centre (SIMC), in accordance with the SIAC-SIMC Arb-Med-Arb protocol for the time being in force. Any settlement reached in the course of the mediation shall be referred to the arbitral tribunal appointed by SIAC and may be made a consent award on agreed terms."

If there is no such clause in the agreement, parties may nevertheless agree to submit their dispute for resolution under AMA protocol.



Steps under the AMA protocol

Broadly, the AMA protocol will take the following steps:

1. A dispute, by way of the usual Notice of Arbitration, is first filed with the SIAC.
2. The SIAC Registrar notifies the SIMC of the commencement of the arbitration.
3. The Tribunal is constituted by the SIAC. After the exchange of the Notice of Arbitration and Response to the Notice of Arbitration, the arbitration proceedings are stayed pending the outcome of mediation at SIMC.
4. Unless the Registrar of the SIAC in consultation with the SIMC extends such time, the mediation will be completed within eight weeks.
5. If a settlement is reached, the parties may request for the terms of the settlement to be recorded by the SIAC Tribunal in the form of a consent award. Such consent award is accepted as an arbitral award and is therefore enforceable as an arbitration award. In the event that the dispute has not been settled, the arbitration proceedings resume.

The SIAC and the SIMC: joint but separate and working together

Located under one roof at the well known Maxwell Chambers in Singapore, the SIMC and SIAC provides a one stop solution for parties who wish to provide in their contracts for a solution which allows for both arbitration and mediation. Singapore is already well established on the international arbitration map, with the SIAC leading the charge with



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a truly international panel. SIMC also now boasts a similarly impressive international panel of mediators, as well as an extensive panel of eminent technical experts in diverse sectors of industry.

The arbitrator and mediator in the AMA proceedings are separate people. This enforces the impartiality of the arbitration and mediation proceedings. AMA protocol, however, does allow the parties to agree on the appointment of one individual to conduct the arbitration and mediation proceedings.

The institutional support from the SIAC and SIMC ensures that the parties are guided through the whole process and in accordance with the rules.

The future

Whether the AMA clause and thus the AMA protocol eventually finds its way into general commercial contracts, in whatever industry, remains to be seen. There however remains no reason why it should not. It provides for a real prospect of commercial settlement before a full blown arbitration, which is what every commercial party aims

for. Even if the dispute is not settled at the mediation stage, the process of mediation can narrow the issue and simplify the dispute, and may well streamline the subsequent arbitration proceedings all in turn reducing the associated costs. There have been notable cases where the interpretation of certain conditions precedent arbitration clauses, which require a period of good faith negotiation, have been subject to disputed interpretations. This is unfortunate considering that these disputes are not relevant to the substantive issues in dispute between the parties. In contrast, AMA protocol should bring some certainty to this process with the added advantage of institutional support.



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