The Singapore International Mediation Centre and the new AMA-Procedure – finally what users have always wanted?

Singapore enhances its status as a leading hub for international dispute resolution with the recent launch of the Singapore International Mediation Centre ("SIMC"). Aside from regular mediation services, SIMC has entered into an Arb-Med-Arb Protocol with the Singapore International Arbitration Centre ("SIAC"), which may finally provide the users of alternative dispute resolution with the system they have always been longing for.

1 INTRODUCTION
Multi-tiered dispute resolution mechanisms have become common practice over the past decades. Parties to international commercial contracts regularly provide for two or more tiers for settling their disputes, hoping that a settlement at an early stage of the dispute will save them the time and cost of having to go to arbitration or state court litigation. Besides techniques and methods such as higher management negotiations, conciliation, adjudication, mini-trials and dispute boards, commercial mediation has become one commonly applied dispute resolution method, often followed by arbitration.

Mediation, however, comes with its downsides, as do many other pre-tier techniques. For one, depending on how the parties and their counsel seek to conduct the mediation process, it can become almost as time and cost-consuming as full-fledged litigation or arbitration. For another, even if successful, the parties will "only" end up with a settlement agreement that is contractually binding, not however enforceable like an arbitral award or a court judgment. Hence, if any party for whatever reason refuses to comply with the settlement agreement, it needs to be (re-)litigated or arbitrated. And if the mediation is unsuccessful, the claimant will also often feel to have wasted valuable time and money going through the formal mediation process only to then have to start from scratch by commencing separate litigation or arbitration proceedings.

In practice, once a dispute between the parties to a contract with a multi-tier dispute resolution clause arises, it is thus not uncommon that the claiming party will seek to skip the mediation stage of the dispute settlement mechanism, arguing that it would be a waste of time and money to go through the formal process if a successful (and enforceable) outcome is unlikely.
These issues have at times been sought to be avoided by means of Med-Arb or Arb-Med techniques, whereby one individual is entrusted to both mediate and arbitrate the parties’ dispute. Such methods are intrinsically linked to substantial skepticism, and many users fear compromising the independence and particularly the impartiality of an arbitrator who has received information in the mediation which a party might not necessarily wish to disclose in the arbitration.

The launch of SIMC on 5 November 2014, along with its Singapore International Mediation Centre Mediation Rules 2014 ("SIMC Rules") and the SIAC-SIMC Arb-Med-Arb Protocol entered into between SIMC and SIAC ("AMA-Protocol") in particular address these practical issues and offer the user of alternative international dispute resolution an interesting option that seeks to dispel the shortcomings of mediation outlined above.

This newsletter sets out in a summary fashion the functioning of SIMC, with a focus on the new Arbitration-Mediation-Arbitration procedure established by the AMA-Protocol, which seeks to provide users with the option to seamlessly transfer between the mediation and arbitration process without the usual loss of time, and guarantees the parties an enforceable consent award in case the mediation ends in settlement.

2 THE SIMC
In April 2013, an International Commercial Mediation Working Group ("Working Group") was appointed by the Singapore Ministry of Law and the Honourable the Chief Justice Sundaresh Menon to come up with recommendations for developing international commercial mediation in Singapore. On 29 November 2013, the Working Group submitted its report to the government of Singapore, containing six key recommendations ("Working Group Recommendations"), one of which was the creation of SIMC.

SIMC is designed for parties who wish to settle a cross-border commercial dispute by way of mediation. In that sense no particular link to Singapore is required.

SIMC offers a particularly well-suited framework to its users. In particular:

- State-of-the-art facilities with SIMC being located at Maxwell Chambers in Singapore, in the same building as SIAC. Maxwell Chambers are considered among the leading dispute resolution facilities worldwide;

- SIMC’s Panel of Mediators comprising [at the time of writing] over 60 experienced mediators from around the world. Panel members have diverse backgrounds and include, among many others, the likes of William Ury, co-founder of Harvard’s Program on Negotiation and best-selling author of Getting to Yes. SIMC Mediators will be accredited by the Singapore International Mediation Institution, the new regulatory body for mediators in Singapore, thereby guaranteeing highest-quality mediation services. Users may also inform themselves on the SIMC Mediators’ preferred mediation technique on their CVs published online, which cover all spectra of mediation from the "facilitative" approach where the mediator refrains from providing an opinion on the merits of the dispute, focusing instead on identifying the parties’ broader commercial interest to the “evaluative” approach where the mediator proactively assesses the strengths and weaknesses of each parties’ case and may suggest different settlement options;

- Comprehensive procedural rules with the SIMC Rules [available for download at http://www.simc.com.sg]. They apply by default to all mediations administered by SIMC, yet the parties may at any time agree to modify the provisions of the SIMC Rules, subject to agreement by the mediator and SIMC. The SIMC Rules provide a framework for the mediation process which is based on the pillars of party autonomy and confidentiality, two of the most important principles of international commercial mediation.

"SIMC offers highest quality commercial mediation services conducted at state-of-the-art facilities to any party to an international commercial contract."

3 THE SIAC-SIMC AMA-PROCEDURE
The most innovative feature that comes along with the introduction of SIMC resides in its new Arbitration-Mediation-Arbitration ("Arb-Med-Arb") services, which it jointly offers with SIAC ("AMA-Procedure"). For this purpose, SIMC and SIAC have entered into the AMA-Protocol, which sets out the procedural framework of the new AMA-Procedure.

Arb-Med-Arb is a 3-step process which involves first the initiation of an arbitration. The arbitration is then held in abeyance when mediation before a separate mediator starts as a second step. Whatever the outcome of the mediation, the parties will usually go back to arbitration as a last step to either have their mediated settlement recorded as a consent award, or if the mediation failed, to resolve their dispute by way of arbitration.

As such, Arb-Med-Arb must be distinguished from two other hybrid mechanisms, “Med-Arb” and “Arb-Med”. In Med-Arb, as mentioned above, the role of mediator and then arbitrator is assumed by the same individual. Arb-Med, in turn, is usually understood as a process by which the arbitrator prepares an award which then remains under seal until the end of the proceedings. The arbitrator then puts on the mediator’s hat and encourages the parties to reach an agreement, failing which the pre-drafted award is issued.

The AMA-Protocol sets out the general framework of the AMA-Procedure. The straight-forward two-page document [also available for download at http://www.simc.com.sg] explains the main steps of the process.

Parties wanting to benefit from the new AMA-Procedure must enter into an agreement to submit their dispute to Arb-Med-Arb under the AMA-Protocol, be it by including the Singapore Arb-Med-Arb Model Clause ("AMA Clause") – or a similar clause – in their contract or by entering into a separate agreement. SIMC has published a standard AMA Clause on its website [see http://simc.com.sg/model-clauses/the-singapore-arb-med-arb-clause/].
In the event of a dispute, the process is initiated by filing with the Registrar of SIAC a notice of arbitration in accordance with either the SIAC Arbitration Rules or the UNCITRAL Arbitration Rules where the parties have agreed that SIAC shall administer such arbitration. SIAC will inform SIMC of the commencement of the arbitration.

“Arb-Med-Arb is a three-step dispute resolution process allowing the parties to mediate their dispute without losing the benefit of an enforceable arbitral award.”

SIAC will then constitute the arbitral tribunal in accordance with the SIAC Rules or the parties’ agreement.

The arbitral tribunal shall, once constituted and after receipt of the Response to the Notice of Arbitration, stay the arbitration and inform SIAC that the case can be submitted for mediation to SIMC.

SIAC then seamlessly turns the case over to SIMC, under whose auspices a mediation is conducted pursuant to the SIMC Mediation Rules. To ensure impartiality and independence at all stages, the mediator(s) will be different from the previously appointed arbitrator(s). Pursuant to the AMA-Protocol, the mediation conducted under the SIMC Mediation Rules shall be completed within 8 weeks from its commencement, unless this deadline is extended by way of exception.

If the parties (wholly or partially) settle their dispute in mediation, they may request the arbitral tribunal to record their settlement in the form of a consent award on the terms agreed to by the parties. That way, the parties are guaranteed that their settlement is enforceable like an arbitral award.

If the mediation fails or the dispute is only partly settled, arbitration will resume before the already appointed arbitral tribunal. The arbitral proceedings will also result in an enforceable arbitral award.

The SIAC-SIMC AMA-Procedure combines the best of both systems, granting the efficiency of mediation and the certainty and enforceability of an arbitral award. The latter would appear to be the key benefit of the system.

Equally as important is that it provides for a seamless transition between the arbitration and the mediation phases of the process, something that is not guaranteed by other combinations of mediation and arbitration, which can lead to considerable time lacks in practice. As such, the AMA-Procedure is to be welcomed as a time efficient multi-tiered dispute resolution process.

The AMA-Procedure is also cost efficient. For one thing, SIMC – just like SIAC – offers very competitive rates, which are published on its website. For another, the AMA-Protocol provides for rules on financial matters coordinating filing fees and advances on costs for the arbitration and the mediation stages of the AMA-Procedure. For instance, a party initiating an AMA-Procedure will only have to file one single case filing fee. And finally, the seamless transfer between the arbitration and the mediation stages can be expected to avoid not only wastes of time, but also a waste of costs, since it is guaranteed that steps already undertaken do not have to be repeated.

4 FUTURE OUTLOOK
In order to further strengthen Singapore’s position as an international centre for commercial mediation, and in accordance with the Working Group Recommendations, a Mediation Act is presently under preparation and is expected to include:

> Provision on the enforcement of mediated settlements as court orders. This will ensure that not only settlements recorded in the form of a consent award – like under the AMA-Procedure – are enforceable, but also other mediation settlements. This will further enforcement of such settlements in Singapore;

> The introduction of statutory provisions to ensure the preservation of confidentiality of information provided in the mediation process among parties to the mediation, between parties to the mediation and third parties and between parties to the mediation and the courts.

Another well-awaited novelty is the creation of the Singapore International Commercial Court (“SICC”), which was launched on 5 January 2015.

The SICC is an adjudicative court process where judges (foreign or Singaporean judges appointed by an international panel) will hear cases presented by Singapore or foreign-qualified counsel making submissions on any law (foreign law or Singaporean law, whatever the case may be).

“The SIAC-SIMC Arb-Med-Arb service is an innovative product designed to provide maximum value at minimum cost.”

SICC, together with SIMC, completes the full-service suite of international dispute resolution services offered in Singapore and is sure to consolidate Singapore’s position as the preeminent hub for international dispute resolution in Asia and one of the premier and most popular centers in the world.

5 CONCLUSION
With the creation of SIMC and particularly the introduction of the combined AMA-Procedure, which allows parties to commence arbitration before SIAC, stay such arbitration and later record any mediated settlement as a SIAC consent award, Singapore has proven once again that it is at the forefront when it comes to innovate dispute resolution solutions. Users are likely to embrace this new procedure, which allows them to benefit from the best of both mediation and arbitration by means of one seamless process which will always end in an enforceable arbitral award.
The content of this Newsletter does not constitute legal or tax advice and may not be relied upon as such. Should you seek advice with regard to your specific circumstances, please contact your Schellenberg Wittmer liaison or any of the following persons:

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