



The Future of Med-Arb Clauses in Singapore

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Multi-tiered or escalation Alternative Dispute Resolution (“ADR”) clauses have gained increased popularity amongst parties seeking a flexible resolution process. They allow parties to tailor the resolution process according to their specific needs.

One type of ADR clause is the mediation-arbitration (“**med-arb**”) clause. The validity and operability of med-arb clauses was examined by the Singapore courts in a recent decision, *Heartronics Corporation v EPI Life Pte Ltd and Others* [2017] SGHCR 17.

The clause in question provided that all disputes were to be resolved “by med-arb in accordance with the SMC-SIAC Med-Arb Procedure”.

Prior to the commencement of the legal proceedings, the Plaintiff had invited the Defendants to mediate in the Singapore Mediation Centre (“**SMC**”). However, no steps were forthcoming from the Defendants. The Defendants’ failure to submit to the prescribed SMC-SIAC Med-Arb Procedure was evidenced by their delays and their non-payment of the required SMC fees.

Accordingly, the Plaintiff commenced legal proceedings, which the Defendants sought to stay in favour of ADR, pursuant to the International Arbitration Act (Cap 143A, 2002 Rev Ed, the “**IAA**”).

The Court considered two key issues:

- (1) The nature of med-arb clauses; and
- (2) Whether there was a breach of the ADR clauses attracting legal proceedings.

I. Nature of Med-Arb Clauses

- The Court considered whether such complex clauses constituted a single dispute resolution mechanism for alternative dispute resolution or if there were two distinct and separate components governing mediation and arbitration procedures.
- The Court found that since the mediation and arbitration proceedings commenced pursuant to the SMC-SIAC Med-Arb Procedure are so “closely intertwined”, they ought to be interpreted as a singular mechanism “culminating in arbitration”.
- Accordingly, the obligations to mediate and arbitrate could not be severed and viewed as two distinct agreements.

II. Repudiatory Breach of ADR Clauses

- The Court then addressed the issue of whether an ADR clause can be rendered inoperable as a result of breach by one of the parties refusing to participate in the prescribed ADR procedure.
- The Court found that the first Defendant’s conduct fell short of the obligation to participate in good faith imposed by the ADR clause and ran afoul of the commercial standards of fair dealing. This amounted to a repudiatory breach of the ADR agreement.
- The application for stay of proceedings under the IAA was dismissed accordingly.

III. Conclusion

- Parties should exercise caution when drafting multi-tiered ADR clauses, paying attention to the consequences of each permutation.

- With the increased certainty in the law relating to ADR, parties are able to foresee the consequence of non-compliance with the prescribed ADR procedure even at an early stage of their commercial dealings.
- There has since been developments in the ADR landscape in Singapore. Notably, in 2014, the Singapore International Arbitration Centre ("**SIAC**") and the Singapore International Mediation Centre ("**SIMC**") adopted the SIAC-SIMC Arb-Med-Arb Protocol, providing an alternative ADR procedure. Under the SIAC-SIMC Arb-Med-Arb process, the parties agree to refer their disputes to arbitration before mediation is attempted. If parties are still unable to resolve their disputes by mediation, they may then continue with arbitration.

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