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THE EDITORIAL

Dr RAJESH SHARMA
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Words From The Chief Editor

It is the aim of ADR World to bring the new information and development in the field of ADR. In this issue, we are particularly happy to report three new rules: SIAC Rules, KCAB Rules and Companies (Mediation and Conciliation Rules), which have recently become effective. In addition to that we are also reporting you about the Cross-Boarder Enforcement of Settlement Agreements. This is now being deliberated in Vienna at the time of writing. I had an opportunity to read and comment upon the new draft of the instrument prepared by UNCITRAL for the discussion in the Vienna congress. I have submitted extensive comments with my other two colleagues on the current draft instrument. In the next issue we will give you a report on the new developments on this instrument.

We are very pleased to announce that the virtual home of our ADR World is now ready. We have already uploaded our last two issues and the current one will be uploaded there too. You can access the website at http://www.adrassociation.org/magazine.html. This website is also suitable for mobile and tablet. It also has a system of blog writings which will host discussions and inform readers about new developments. Having all issues of ADR World at one place, it will be easy for our readers to access and search information in the future.

Our website will now pave the way for getting our ISSN for ADR World. We are now one step away from receiving it as we were required to host ADR World on a home website. Of course, we have to complete the application process. We hope our next issue will come to you with its own ISSN.

IN THIS ISSUE

Indian Talks

By Anil Xavier

Vice President IIADRA
Advocate, Arbitrator &
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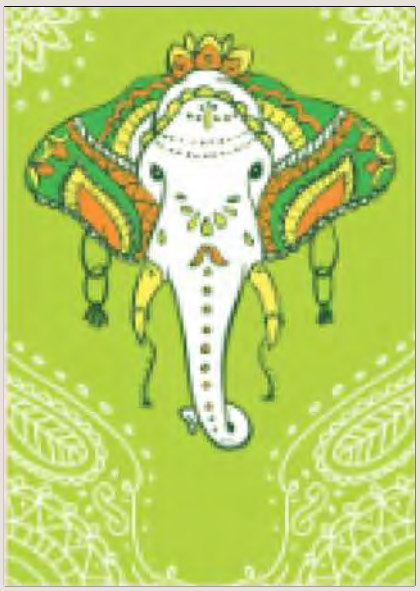

POSTCARD
from
INDIA

TO ADR World

TOPIC India's latest Company (Mediation & Conciliation) Rules, 2016

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The Ministry of Corporate Affairs (MCA), Government of India has notified the "Companies (Mediation and Conciliation) Rules, 2016" on September 9, 2016. With the publication of these Rules, Central Government introduces a structure of setting up of a panel of mediators or conciliators, who will have the role to communicate the view of each party in a dispute, identify issues, reduce misunderstanding, clarify priorities and facilitate voluntary resolution of the dispute on the consent of parties.

These Rules are made to implement the provisions in Section 442 of the Companies Act, 2013. As per the said section, the Central Government has to maintain a panel of experts to be called as the Mediation and Conciliation Panel for mediation between the parties during the pendency of any proceedings before the Central Government or the Tribunal or the Appellate Tribunal under the Companies Act. It provides that any of the parties to the proceedings may, at any time during the proceedings before the Central Government or the Tribunal or the Appellate Tribunal, apply to the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, for referring the matter pertaining to such proceedings to the Mediation and Conciliation Panel. It also makes provision for the Central Government or the Tribunal or the Appellate Tribunal before which any proceeding is pending to *suo motu* refer any matter pertaining to such proceeding to the Mediation and Conciliation Panel.

It makes sense to provide a structure to resolve disputes under the Companies Act by way of mediation, where the parties could take the responsibility of finding a resolution themselves.

The Rules stipulate that the mediation shall be facilitative. Rule 17 says that the Mediator shall attempt to facilitate voluntary resolution of the dispute by the parties, emphasizing that it is the responsibility of the parties to take decision which affect them and the mediator shall not impose any terms of settlement on the parties. Rule 18 also reiterates this mode of mediation, stating that the parties shall be made to understand that the mediator will facilitate the parties in arriving at a resolution and the mediator shall not and cannot impose a settlement or decision on them. This is in tune with the international style and mode of mediation – *viz.*, facilitative mediation.

But when we look at the qualifications prescribed for empanelment as a mediator under the Mediation & Conciliation Panel, which is provided under Rule 4, one may probably think whether the Rule-makers really understood the meaning, mode and style of facilitative mediation and whether they confused the process of mediation with arbitration. As per Rule 4, a person shall not be eligible to be empaneled as a mediator unless he:

- Has been a Member or Registrar of a Tribunal constituted at the National level under any law for the time being in force; or
- Has been an officer in the Indian Corporate Law Service or Indian Legal Service with fifteen years experience; or
- Is a qualified legal practitioner for not less than ten years; or
- Is or has been a professional for at least fifteen years of continuous practice as Chartered Accountant or Cost Accountant or Company Secretary; or
- Has been a member or President of any State Consumer Forum; or
- Is an expert in mediation or conciliation who has successfully undergone training in mediation or conciliation.

Out of the nine eligibility criteria, the first eight are having no formal training in facilitative mediation and would in all probability fail to follow facilitative mediation as prescribed under the Rules. Facilitative mediation is a science and an art and trained mediators would know that it is a highly skilled profession. It would have been better if the Rule-makers understood the science of mediation and made eligibility based on the mediators' quality, skill and efficiency, rather than putting it as a Panel of retired Judicial and Quasi-Judicial officers, who have been trained on adversarial adjudication and not on facilitative amicable resolution. Let us see how effective mediation would be under these Rules.

The Author—

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HOWZAT?

'SUFFERING' DAUGHTERS-IN-LAW TRY DIVINE MEDIATION!

South Africa: Desperate daughters in-law are turning to God to change their "Cruella de MILs" and "monsters-in-law" into "mothers-in-love". They have been dragging their mothers-in-law and even their husbands to a God-based retreat to find a solution to the in-law strife that exists in most marriages.

Makoti and Mamazala Retreats was born out of former insurance account executive Mamanese Mathule's own "hurt and anger" associated with her mother in-law!

Anant Merathia
Advocate (Chennai, India)

NEED OF THE HOUR – (ADR) ALTERNATE DISPUTE RESOLUTION

It is common knowledge that courts in India face a pendency of more than 3 crore cases according to the data as on January, 2016. In the Annual Chief Ministers and Chief Justices Conference 2016, CJI Justice T.S. Thakur lamented that the country had the world's largest backlog of pending court cases with more than 61,000 cases pending in the Supreme Court and about 44.5 lakh cases in the High Courts up till 2015. As per statistics available on the National Judicial Data Grid, there are more than 73 lakh civil cases currently pending in the Indian courts. The situation has turned so daunting that, according to Justice V. V Rao, it would take around 320 years for the Indian Judiciary to clear its current backlog!

Various reasons can be attributed to this, the chief of them being the abysmally low judge-population ratio. Based on a 2011 census and a sanctioned strength of various courts in the country, the judge-population ratio is about 17.72 judges per 1 million people in India. In 2008, the Indian Justice Ministry, acting on a recommendation made by the Law Commission in 1987, owing to the growing pendency in cases, said it would aim to have 50 judges per million people by 2013, a target it failed to reach. Here is where Alternative Dispute Resolution (ADR), in the context of the grinding situation of judicial system, presents itself as "the" solution, a technique of dispute resolution through the intervention of a third party whose decision may or may not be legally binding on the parties. Among ADR, Mediation and Conciliation have been recently caught much attention in India, considering its growing success rates across the country. Court annexed mediations have developed across India and the judiciary has never before supported consensual methods such as mediation and conciliation in the manner that it doing now. Owing to the benefits that mediation presents, two mediation centers (Delhi and Bangalore) have gained much popularity in India having a success rate of 63%. According to the statistics available, more than 60% of all cases referred to the Bangalore Mediation Centre are resolved out of court.

The following piece is a compilation of various statistics of India's current court-annexed mediation practice –

General statistics for Bangalore Mediation Centre from 2007-2014

TOTAL CASES REFERRED FOR MEDIATION	35,784
Total cases mediated	27,915
Total cases not mediated and returned	5,864
Total cases mediated and settled	20,534
Cases pending for mediation	2,005

General statistics for Delhi Mediation Centre from 2005-2016

TOTAL NO. OF CASES REFERRED FOR MEDIATION:-	68,350
No. of cases which were not fit for mediation:	7,171 (10.49%)
No. of Balance Cases:	61,179
No. of cases pending for mediation:	938
No. of Disposed Cases:	60,241
No. of cases settled :	37,458 (62.18%)
No. of cases not settled	22,783 (37.82%)
No. of connected cases settled:	9,912

Tis Hazari Courts (From 22/08/2005 to 31/05/2016)

TOTAL NO. OF CASES REFERRED FOR MEDIATION:	24,370
No. of cases which were not fit for mediation:	4,207 (17.26%)
No. of Balance Cases:	20,163
No. of cases pending for mediation:	260
No. of Disposed Cases:	19,903
No. of cases settled :	14,834 (74.53%)
No. of cases not settled :	5,069 (25.47%)
No. of connected cases settled:	2,829

In Dwarka Courts (From 05/07/2009 to 30/04/2016)

TOTAL NO. OF CASES REFERRED FOR MEDIATION:	33,390
No. of cases which were not fit for mediation:	4,764 (14.27%)
No. of Balance Cases:	28,626
No. of cases pending for mediation:	301
No. of Disposed Cases:	28,325
No. of cases settled :	21,456 (75.75%)
No. of cases not settled :	6,869 (24.25%)
No. of connected cases settled:	8,652

In Karkardooma courts (From 01/12/2005 to 30/04/2016)

Total no. of cases referred for mediation:	11,364
No. of cases which were not fit for mediation:	1,737 (15.29%)
No. of Balance Cases:	9,627
No. of cases pending for mediation:	324
No. of Disposed Cases:	9,303
No. of cases settled :	5,892 (63.33%)
No. of cases not settled :	3,411 (36.67%)
No. of connected cases settled:	1,444

In Saket Court (From 30/04/2014 to 31/05/2016)

Total no. of cases referred for mediation:	26,224
No. of cases which were not fit for mediation:	4,732 (18.04%)
No. of Balance Cases:	21,492
No. of cases pending for mediation:	337
No. of Disposed Cases:	21,155
No. of cases settled :	13,153 (62.17)
No. of cases not settled :	8,001 (37.82)
No. of connected cases settled:	3,878

In Rohini Courts (From 02/02/2009 to 03/04/2016)

Conciliation

By a study conducted in two Central Government Industrial Tribunal cum Labour Courts ("CGIT"), namely Mumbai and Delhi between 2008-2011, 203 labour disputes were registered with New Delhi CGIT. Out of 203 disputes, 69% (142 disputes) of disputes were successfully concluded in the conciliation process and 31% (65 disputes) of disputes were tried in the labour court . Whereas, in the Mumbai CGIT, out of 234 disputes registered, 139 disputes were successfully settled by conciliation and 85 disputes were referred to the Labour Courts . Therefore, the role of conciliation process in resolving labour conflicts is indeed proving to be an efficient method as compared to success rate of adjudication in labour courts.

CONCLUSION

ADR has been a massive success worldwide. For instance, in the USA, ADR has a success rate of 71%; i.e. 71% of cases being resolved by ADR (as on 25 February 2016) . In Australia and UK, it is 84% and 85% respectively. On an average, throughout the world, mediation has a success rate of 85% .

Therefore, as can be seen, where there exists an appropriate alternative dispute resolution mechanism which is capable of resolving a dispute more economically and efficiently than court proceedings, the parties should be encouraged to use the same. Moreover, cost and time savings might be just the tip of the iceberg. This would also ensure that only those cases which truly call for and require formal adjudication utilize the limited resources available to the justice system which will result in bringing about a silent revolution in our judicial system.

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POINTS TO PONDER

Investor-State Mediation/ Conciliation in India?

The Investor-State Dispute Settlement (ISDS) mechanism is the avenue where an increasing number of investor-State disputes are being settled through international arbitration. It is seen that mostly the large amounts of some resulting arbitration awards, the cost to host countries of the arbitral process, and the constraints imposed thereby on the ability of governments to regulate enterprises in their territories have raised questions as to whether means other than arbitration and litigation can be found to resolve treaty-based, investor-State disputes. In short, are there supplementary mechanisms other than international arbitration to resolve at least some investor-State disputes? Can mediation and conciliation be the supplement to investor-State arbitrations?

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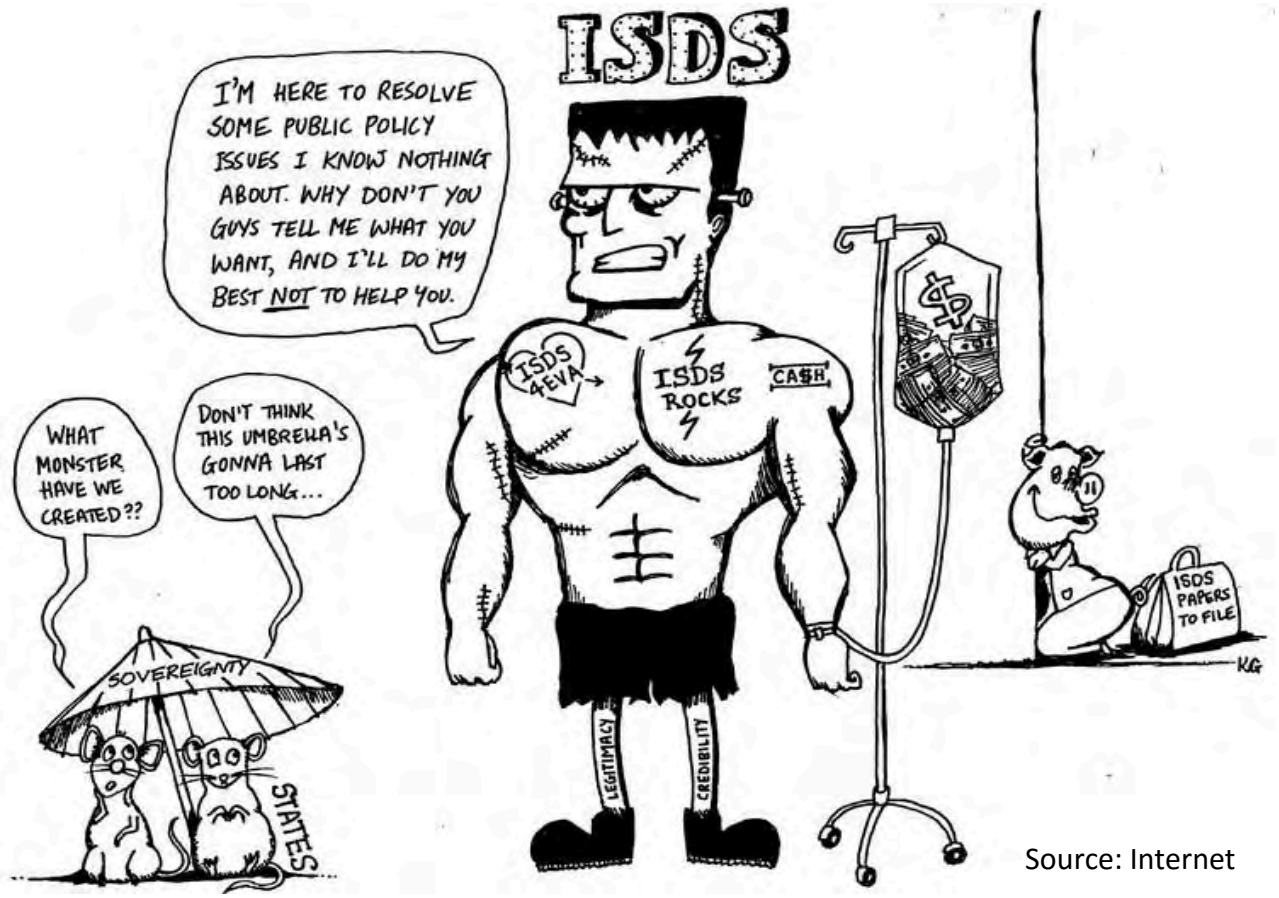

Source: Internet

Žiga Perović

The Second Edition of the IBA – VIAC Mediation and Negotiation Competition CDRC Vienna

One year ago, the International Bar Association (IBA), the Vienna International Arbitral Centre (VIAC), and the European Law Students' Association (ELSA) launched the first edition of the Consensual Dispute Resolution Competition (CDRC) Vienna. The inaugural success and the enthusiastic feedback and support for the competition's new concept quickly caught international attention and led to a second edition in 2016. From 28 June to 2 July 2016 Vienna witnessed, for the second time, the next generation of dispute resolution practitioners paving the way towards consensual methods of settling the business disputes of the future.

At CDRC Vienna students compete against each other by negotiating a series of real world commercial-legal problems based on the case of the Willem C. Vis Moot. The competition is focused on the participants' ability to use negotiation and mediation skills to successfully negotiate or mediate a settlement that best serves the needs of the parties. All of this converges towards one single idea – the Alternative Dispute Resolution of a new generation is consensual. Mediation and Negotiation are the processes of the future that give parties full control and decisive power over their disputes.

The fresh approach of showing the connection between arbitration, mediation and negotiation by using a major arbitration case that has been stayed, supplementing it with new confidential instructions in each round and having students negotiate and mediate the case drew 230 successful applicants to the 2016 edition of the competition. 30 university teams were selected by competitive qualification and skill based assessment, bringing students from countries around the world such as Australia, Brazil, India, Kenya, Lebanon, the US, the UK, Russia, and many more. All of them were coached, supported and assessed by some of the leading experts in the field of international Mediation and Negotiation. A total of over 90 experts, trainers and coaches from 30+ countries worked with the students for their preparation and during the competition.

The week started with a day of mediation and negotiation workshops, led by leading practitioners and trainers such as Michael Mcilwrath (Global Chief Litigation Counsel, GE Oil and Gas) and Tom Valenti (Mediator and Trainer, Chicago), a tour and welcome reception at the United Nations and a panel discussion of the UNCITRAL's work on enforceability of mediated agreements with renown practitioners such as Nadja Alexander (Australia) and Paul Mason (Brazil).

Evening highlights included the "Wines of Vienna" wine tasting with the premiere of the competition wine "Diamond Mata Weltin" organized by Brazilian headline sponsor CAM CCBC and the Special Award Ceremony at the premises of headline sponsor Freshfields Bruckhaus Deringer.

The Final Award Ceremony honored 1st Prize Negotiation (Sofia University St Kliment Ohridski), 2nd Prize Negotiation (SUNY Buffalo Law School), 3rd Prize Negotiation (Saint Joseph University Beirut), 1st Prize Mediation (National Law University Delhi, Pritika Malhotra) and 2nd Prize Mediation (Charles University Prague, Pavlína Krausová) at the City Hall of Vienna on the final Saturday.

Preliminary Round Special Awards in 5 Categories were given for Best Negotiation Strategy - Strathmore University (Anne Mwangi, Christopher Ndegwa, Irene Otieno, Mercy Teko), Best Advocacy - SOAS, University of London (Jenny Marie Driver, Maria Vittoria Salvatori, Muzhgan Wahaj), Best Teamwork in Negotiation - National Law School of India University, Bangalore (Sharwari Pandit, Gaganjyot Singh), Most Effective Opening Address - New Jersey City University (Leman Kaifa, Paola Leguizamo) and Best Mediation Management -University of São Paulo (Daniel Mendes Bioza).

A special thank you goes to the headline sponsors CAM-CCBC and Freshfields Bruckhaus Deringer, all the experts and working groups members that have brought their knowledge and experience to share with the participants, the coaches, teams, cooperating institutions and the big organizer and volunteer team whose commitment to the development of the next generation of Consensual Dispute Resolution have made an event like this possible.

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VOICES & VIEWS

ADR, As they see it....

Ojasvita Srivastava

Senior Manager – Legal, at
Reliance Communications

India has the second largest legal system in the world with an estimated 600,000 lawyers practicing in 500 practice areas. The total worth of the Indian Legal system in 2010 was around US$ 1.25 billion. However, the ADR mechanisms in India are not as well developed as in the west. Arbitration is the most popular form of ADR in India and other ADR mechanisms such as mediation and conciliation are not as commonly practiced. Arbitrations in India are a lengthy procedure which more or less defeats the purpose of ADR, especially in cases where business is involved. Besides this, another factor that in my opinion hinders the success of arbitration as an ADR mechanism is the culture of appointing only retired judges as arbitrators rather than subject experts in a particular field relevant to the arbitration. This leads to spending extra time in explaining the case including nuances of business practices besides leading to almost mimicking court procedures in arbitrations.

The amendments to the Arbitration law that came into force on 23rd October 2015 and were passed as an Act with effect from 1st January, 2016 are expected to bring a welcome change. They have reduced the time frame for arbitrations to within a year, reduced the scope of interference by a court under section 9, laid down detailed disclosure requirements thereby reducing the grounds of challenge at a later stage and thus attempted to ensure timely delivery of justice. This streamlining of procedure would definitely go a long way in improving the system of dispute resolution via ADR in India.

However, in my opinion, a major factor likely to play a role in the future of ADR in India is the entry of foreign law firms. The recent 'Report on Draft Bar Council of India Rules for Registration and Regulation of Foreign Lawyers in India' reflects a healthy attitude to this topic. It recommends a phased entry of foreign law firms in India till 2019 which will allow the Indian Legal Industry to come to speed with global work culture. According to me, such a change would not only benefit the ADR process in India but is in fact necessary for the growth of ADR in India. The entry of foreign law firms would ensure better structuring of Indian firms, increased cross border expertise, better talent acquisition and improved opportunities to Indian lawyers as well as increased professionalism. ADR is essential to both the present context and future growth plans of India where industry and business are being encouraged by the government while working towards building India as a world power. The development and standardisation of ADR practices is a sine qua non to realising this dream.

Marcus Lim
Executive Director, SIMI

Alternative Dispute Resolution - A Handbook for In-House Counsel in Asia

— by Rashda Rana SC

Mention the phrase "Alternative Dispute Resolution" ("ADR") and most people would immediately think of either arbitration or mediation. While these are indeed two of the most popularly used forms of ADR, there do exist other forms such as expert determination, private minitrials, neutral evaluation, dispute boards and adjudication. In recent times, we have also seen the rise of ADR platforms that combine one or more existing forms, such as Med-Arb or Arb-Med clauses, as well as multitiered dispute resolution clauses. For many legal counsel, navigating an unfamiliar field of ADR can be a daunting task. It is perhaps in response to this that the author, Rashda Rana SC, has taken time and effort to put together, as the book's blurb puts it, a work that functions as a "first look and preliminary guidance to navigate the different types of dispute resolution methods" targeted at "corporate counsel based all around Asia who are dealing with disputes based in Singapore". It is with regard to the above purported scope of coverage and target audience that this review will be concerned with.

As the name suggests, a handbook should contain information concise enough to be held in the palm of one's hand. From this reviewer's point of view, a handbook need not be the last word on a topic although it should provide sufficient context for readers to find more information if they wish to. On this basis, the author has certainly delivered. This is evident even from the introductory chapter that looks at the historical development of ADR at a global scale. The chapter is replete with references to seminal speeches as well as other primary and secondary documents that this reviewer found useful for further reading. Special attention is also given to the latest developments on ADR in Singapore, Malaysia, Hong Kong and China – jurisdictions that would be of prime interest to the book's target audience. For instance, the section on Singapore makes references to the establishment of the Singapore International Mediation Institute and the Singapore International Mediation Centre, both recent additions to the Singapore mediation landscape, having only been incorporated in 2014.

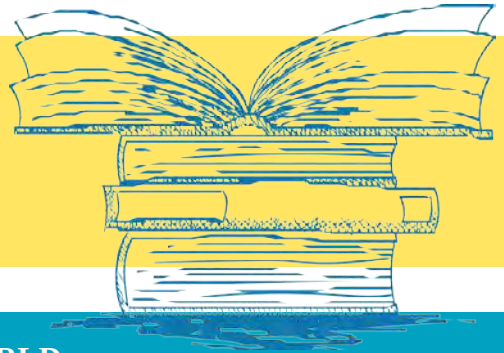
With regard to the actual ADR forms, the author has adopted what this reviewer found to be a rather unique approach. Rather than devote specific chapters to every single ADR form, the author groups them into three, broad categories: (1) minimal requirements of due process and natural justice; (2) processes with direct involvement of and most control by the parties; and (3) process driven forms of ADR. Under this framework, "expert determination" falls under the first category, mediation under the second and Med-Arb the third. To this reviewer's mind, it was difficult initially to appreciate this approach. After all, placing mediation under category (2) of "processes with direct involvement of and most control by the parties" seemed to suggest that it was not a "process driven form of ADR" – category (3).

However, it soon became clear that the categorisation was done mainly to facilitate a neater presentation of information and was not intended to polarise each form along the category headings. The author herself comments that while arbitration and adjudication would fall under category (3), these two forms are dealt with in separate chapters because of their perceived separate sphere of influence from other forms of ADR. Subsequently, this reviewer did find the categorisation framework helpful as a starting point in explaining the differences between various ADR forms to others less well-versed in the field.

Within each chapter that explores the ADR forms in more detail, the author provides not only a summarised history of each ADR form but also excerpts and analysis of cases where legal issues have arisen from the use of such ADR clauses. These lend themselves well both to readers who wish to identify potential areas of concern in using such ADR forms as well as researchers who seek case precedents. There are numerous references to cases and legislation from across the Asia-Pacific region, which would be particularly helpful for readers who undertake cross border work. For example, the section on early neutral evaluation draws on material from the Building Disputes Tribunal in New Zealand, while a discussion on the role of good faith under common law covers cases from Australia, England and Singapore

Those in practice may find the chapter on multi-tiered dispute resolution clauses particularly insightful especially if such clauses are prevalent in their line of work. Such clauses are not only complicated from a risk-management perspective but may also raise novel points of law such as enforceability. The inclusion of a comparative study of some of the latest cases from countries such as Singapore, Australia and England helped this reviewer greatly in appreciating the different legal positions and issues that have arisen recently on such multi-tiered dispute resolution clauses.

This leads to areas that this reviewer would like to see incorporated in a future edition of the work. Aside from more personal experiences or case studies, it may also be helpful to have drafting tips placed at the end of the chapter, section or group for each ADR form. This may make the reference process more efficient for a reader who wishes to quickly draft or review a specific ADR form, instead of having to flip between chapters to look at issues specific to the ADR form and issues on drafting. Last, this reviewer is concerned that the decision to place arbitration and adjudication in separate chapters from other ADR forms may lead readers to conclude erroneously that the former forms are preferred. One suggestion would be to avoid categorising the ADR forms entirely. This would shift the focus to looking at each ADR form on its own merits and uses, which in this reviewer's view, would be consistent with the author's own position of encouraging drafters to adopt a bespoke drafting approach for dispute resolution clauses. 8 Nevertheless, given the ever-evolving nature of the ADR field, the author's work in successfully collating and providing concise analysis on so many different forms of ADR remains an impressive feat. While there may certainly be other publications that go into much more detail on specific issues, the coverage provided here is perfectly suitable for a handbook, particularly one targeted at in-house counsel dealing with disputes based in Singapore.



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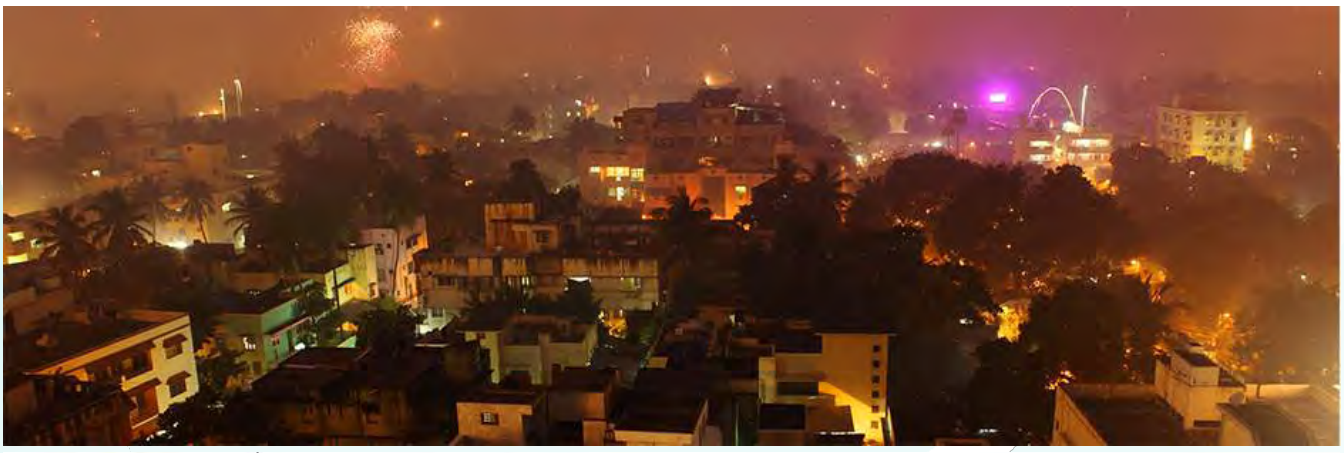
The Happenings



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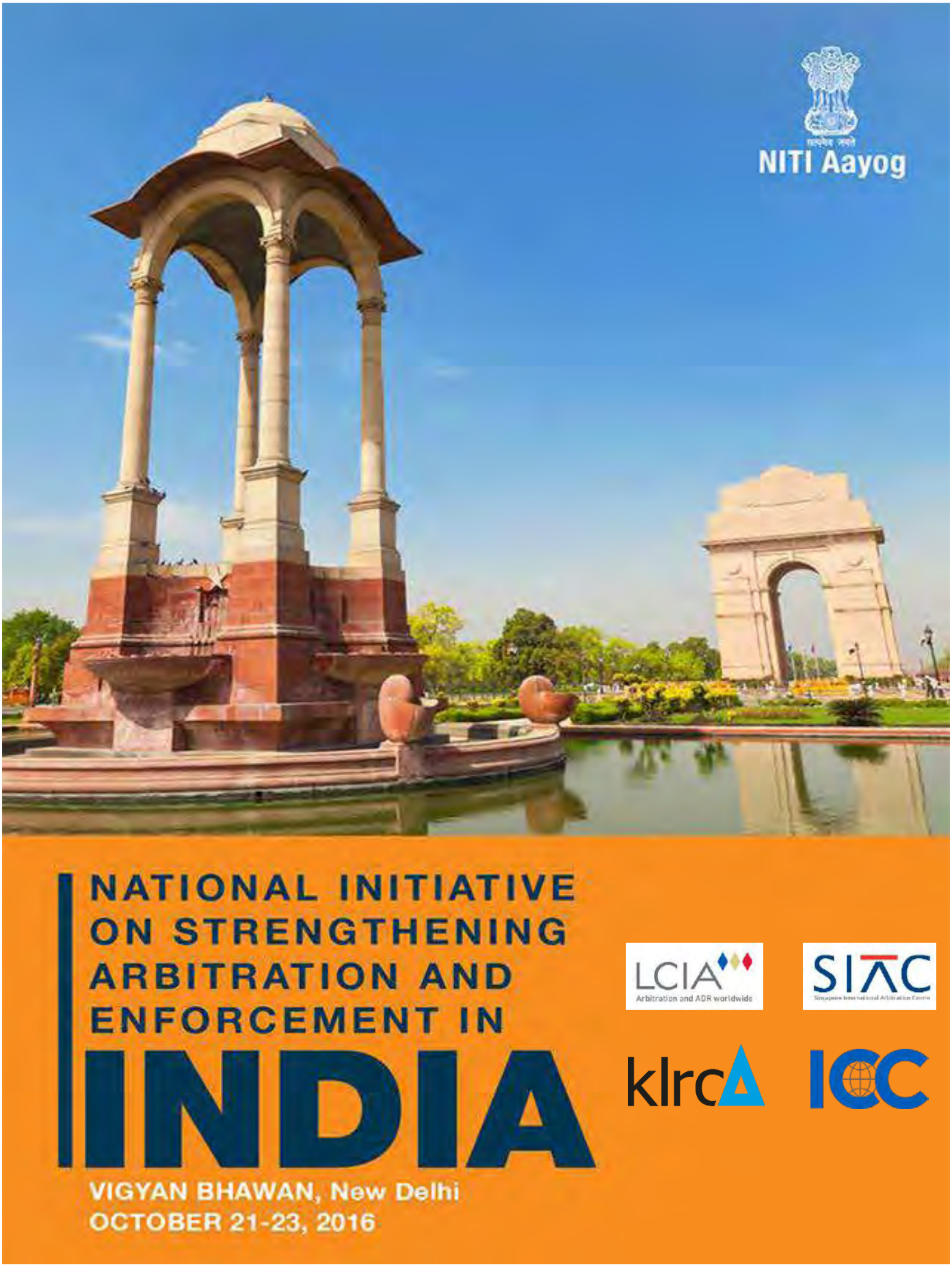
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Young Mediators Initiative

YMI BLOG

By Virginia Vilches Such

From Emotional Intelligence to Emotional Competence – A key issue for professional development for Young Mediators

I was twenty-five years old when I joined Young Mediators' Initiative (YMI) and first participated at the Andalusian System for Labour Conflict Resolution (S.E.R.C.L.A) as an official mediator. At SERCLA, we normally have an average of ten people at the mediation table. Sometimes, not only am I by far the youngest person in the mediation table, but sometimes I am also the only woman. Having just turned twenty-eight years old, I still mediate at SERCLA and I still believe I can consider myself a young mediator, both in age and in experience. When the YMI Team invited me to contribute to this blog, I thought of what I would like to read about.

Two questions came to my mind:

"***How to manage emotions during my first experiences as a young mediator?" and, "what makes mediators improve and achieve professional excellence*?"**

Well, to me the answers to these two questions go together and the key is emotional intelligence.

Independent from the length of our trainings, I believe that first experiences as mediators are unique, that you have to go through them in order to see what emotions actually arise within you, at that very moment, and learn how to handle them. In this regard, I believe that it is interesting for young mediators to have an idea of what emotions are more common and how to handle them.

Here, I share my list of the 5 most important emotions that I identified during my first mediations and how I have learned to manage them:

1. **Shyness.** Especially during your first interventions, being shy can be an obstacle for intervening in mediations with multiple actors.

What can we do to overcome this? Work on your public speaking skills. In conflict situations, parties rely on the security and positivism that mediators bring, so you want to be confident and secure in your interventions.

2. Fear. Mediators have a lot of responsibility in the process: parties share their most important conflicts

and trust us to guide them towards a solution. This sense of responsibility may also trigger some fears, such as the fear of not getting to agreement, fear of making the wrong intervention in the wrong moment, and fear of creating a weird situation or losing face before your colleagues.

How to deal with this? Even if we are professionals committed to excellence in our work, we should not forget that we are all human and that failing is part of the process of growing as a person and improving as mediators.

I built these three basic rules for my own career as a mediator:

(I) Be brave enough to act when you truly believe that case needs it, even at risk of failing;
(II) Be intelligent enough to identify your mistakes; and
(III) Be humble enough to admit your mistakes, so you can learn from them.

3. Frustration. The majority of the mediators I have met share a common vision; they believe that conflicts are also an opportunity to learn and grow and that there is a constructive way to deal with them. But, outside our small (but growing) community of positive and enthusiastic mediators, most of the people will respond to us by saying things like: "That is too Utopian" or the more diplomatic may say "mediation may work, but not here, not now, not in this case, not in this country, not in this culture,…". Facing such negative and sceptical responses over and over again is not easy. So I believe, we need to do a lot of personal work to not let all these negative emotions take over.

What can one do in these situations? First, acknowledging the limits of the system is important. Even if mediation has great potential, the truth is that not everyone and every situation is prepared for it. Second, especially at the beginning, it is extremely important to work on yourself. Save your energy for when you actually have the power to influence, and make your effort sustainable over time. This profession is a marathon, not a sprint, and you need to keep your balance in order to be able to stay firm in your values, and positive in the most difficult situations. Thus, we will prevent frustration from burning us out.

4. Impatience. Patience is crucial for mediators, especially in early stages of the process. When mediators who are young in experience start developing their analytical skills and ability to assess conflicts, we learn to identify the key issues in conflicts. However, this does not necessarily mean that parties are prepared to see it.

What can one do in this situation? Be mindful not to push parties towards what we think is the solution when they are not yet ready. Work on developing your patience, in order to see the point where parties stand at each part of the process, and guide them step by step.

5. Sympathy/antipathy. Sometimes we may feel an aversion or dislike for one of the parties, or a special tenderness or affection for the other. Despite this being a natural human response, it may affect our ability to mediate with neutrality, so we shall pay special attention to these tendencies

How do I manage this? Most of these emotions are triggered by a judgment (either positive or negative), so paying attention to our judgmental thoughts is a basic. Identifying these feelings is the key to preventing them from affecting our job, or maybe, declining to intervene if we consider that appropriate. Since I believe these kinds of situations are recurrent, despite the time of experience of mediators, I think we should pay constant attention to our judgmental thoughts and sympathetic/antipathetic feelings.

That having being said, is emotional intelligence enough to become an excellent professional in mediation? Reading *Daniel Goleman´s book Emotional Intelligence* gave me the answer. No, it is not enough. Emotional intelligence is very important indeed, but it should be translated to developing several competences that we shall apply to our job as mediators. This is to say, emotional intelligence is the foundation, but starting from here we shall develop further competences.

At the University of Seville, I collaborate in research about a catalogue for mediators' competences. According to this catalogue, the most important competences for mediators that have their foundations in emotional intelligence are:

1. Ability to control and transform negative emotions into positive ones.
2. Ability to bring hope and positivism to mediation.
3. Ability to build a climate of safety and trust during the mediation.
4. Ability to build trust with clients.
5. Ability to face emotional dissonance (this happens when we feel in a certain way but we want to show something different), for instance – dealing with difficult clients.
6. Ability to keep neutrality when we feel certain kind of aversion or preference for one party.

In my short experience as mediator, I believe that developing emotional competences is the key for professional excellence in mediation. First, I think we should start by building strong emotional intelligence through reflection and personal work. Then, we should work to transform them into emotional competences as professional mediators. I hope this reflection is helpful for practitioners in this field. And I invite (both young and veteran mediators) to reflect on your experience and to share it.

What is YMI?

An initiative that supports young mediators in their quest to gain experience, run on a voluntary basis by five highly motivated young mediators who are eager to make mediation mainstream.

Together we connect – we encourage – we facilitate

The YMI was established under the umbrella of the International Mediation Institute (IMI) in 2010.

Our mission and vision:

Encourage and support Young Mediators, such as you, worldwide.

The Author –

Virginia Vilches Such
Mediator, SERCLA
International Team Member of Ecuador Proyect,
Mediators Beyond Borders

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Link: http://goo.gl/OV7uqC

United Nations
UNCITRAL

UNCITRAL VIEWS

By Joao Ribeiro

Mandate given to UNCITRAL on Enforceability of Mediated Settlement Agreements

In July 2014, UNCITRAL, in the course of sitting for its forty-seventh session, received a proposal from the United States of America. The U.S. Government's request was two-fold but clear: a multilateral convention concerning the enforceability of international commercial settlement agreements reached through conciliation should be developed, and the task should go to UNCITRAL's Arbitration and Conciliation Working Group, otherwise known as Working Group II ('WGII'). Ultimately, the proposal sought to bring about a significant outcome: that mediated settlement agreements would be put on the same footing as arbitral awards in terms of enforceability.

One of the first venues in the region where the matter was openly discussed was during the Asia Pacific International Mediation Summit, held in New Delhi, in February 2015, and hosted by the American Bar Association with the Association of Indian Mediators, the CPR Institute, the Singapore International Mediation Centre and the UNCITRAL Regional Centre for Asia and the Pacific (UNCITRAL-RCAP).

Numerous reasons supported the movement to establish such a text. Amongst the direct reasons were the burdensome and time-consuming nature of enforcing settlement agreements under the present framework, and the need for a text to promote the growth of conciliation in the same way the New York Convention had facilitated the growth of arbitration. It came as no surprise when it was decided WGII would undertake the proposed exercise of considering the feasibility of work on enforcement of international commercial settlement agreements reached through conciliation, and would report its findings on the matter at the Commission in 2015, at its forty-eighth session. In February 2015, WGII held meetings in New York to consider such feasibility.

Decisions made in the forty-eighth meeting of the Commission: the mandate

In July 2015, UNCITRAL noted WGII's findings, summaries, and recommendations, and in turn provided it with a mandate to commence work on the topic. It is well worth noting that WGII was provided with a broad mandate to address the matter of enforcement of settlement agreements, rather than being limited to strictly producing a conciliation settlement focused version of the New York Convention, as some would be led to believe.

Elaborating on the mandate provided to WGII, the forty-eighth session saw the Commission request WGII to undertake a broad scope of work, which allows for the consideration of various instruments, including: (i) a guidance text, (ii) model legislative provisions, and/or (iii) a convention.

Working Group II's progress thus far and its key legal discussions

Discussions to date have brought about a number of key legal points that remain to be discussed in their entirety. These further discussions are due to take place in September 2016, as part of WGII's sixty-fifth session. The working paper provided illustrates a number of developments on the matter. Notably, WGII has drafted provisions that are able to be included in a possible instrument on enforcement of settlement agreements resulting from conciliation, and these provisions have been prepared without prejudice to the final form of the proposed instrument. **The working assumption at the moment is that the final instrument could be a stand-alone legislative text, akin to a convention or a model law.** Working Group II has also provided for the possibility of the drafted provisions to be adjusted accordingly in the event the provisions are to complement the UNCITRAL Model Law on International Commercial Conciliation, for example, or other such scenarios.

The key legal on-going discussions concerning the provisions are namely: (i) the scope of application; (ii) key definitions; (iii) relevant exclusions; (iv) form requirements of settlement agreements; (v) direct enforcement and application for recognition and enforcement; (vi) defences to recognition and enforcement; (vii) the form of the instrument; and (ix) other aspects such as confidentiality and the enforcement process, relationship of the enforcement process with judicial or arbitral proceedings, and the parties' choice in application of the proposed instrument.

Developments within the Asian region

There is clearly a positive trend of developing conciliation laws within Asia in recent times, thus placing further relevance on the importance of such a proposed instrument as that which WGII is currently developing. For example, Malaysia's conciliation laws, as enacted in 2009, were recently recognised by UNCITRAL as being an enactment of the 2002 Model Law on International Commercial Conciliation. Singapore has recently concluded a Public Consultation on the Draft Mediation Bill. Further, the UNCITRAL Regional Centre for Asia and the Pacific has recently organised a workshop in Bhutan on dispute settlement – in that context, Bhutan's 2013 law on mediation was also recognized as an enactment of the UNCITRAL Model Law. Lastly, Viet Nam is considering new legislation on mediation/conciliation, which takes the Model Law into consideration.

UNCITRAL is the core United Nations body in the field of commercial law. For five decades, it has been committed to providing a legal environment that fosters international trade and commerce. The UN General Assembly has repeatedly acknowledged and reaffirmed UNCITRAL's impact on development, peace, and stability in the world through harmonization and modernization of international trade law. Over the years, UNCITRAL and its Working Groups have developed highly effective working methods and a negotiation culture that is both efficient and inclusive. The work **on enforceability of mediated settlement agreements** is just one additional example of UNCITRAL's ability to shape the needs of the global business community into legal norms that make international commercial law more efficient and predictable, without losing sight of a fundamental principle: access to justice.

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KCAB International Arbitration Rules 2016 – The Latest from Korean Arbitration Revolution

The Korean Commercial Arbitration Board(KCAB) is pleased to announce that the new KCAB International Arbitration Rules(the "2016 KCAB Rules") has been published and will come into force on 1 June of 2016.

Reflecting the recent trend and modern practice in international commercial arbitration, the KCAB has revised and included some innovative features in its international arbitration rules in response to users' growing demand. The newly revised KCAB International Arbitration Rules now provide users with a more comprehensive framework of arbitration that facilitates effective dispute settlement for parties involved. The revision focuses on enhancing the reliability of arbitral tribunal, increasing efficiency and reducing the duration of tribunal procedures.

Highlights of the key changes to KCAB International Arbitration Rules(the "2016 KCAB Rules")

Confirmation on the Appointment of Tribunal

In order to ensure the quality, impartiality and independence of the arbitral tribunal, the revised 2016 KCAB Rules introduced the confirmation procedure for parties' tribunal appointment. According to Article 13 of the 2016 KCAB Rules, the Secretariat is now allowed to screen the nominated arbitrator before confirming the appointment of the arbitral tribunal.

After the nomination of arbitrator by both parties, the Secretariat will confirm the final appointment of arbitrator. Then the arbitrator is required to sign a "statement of impartiality and independence" to ensure the arbitrator's duty of disclosure.

The confirmation procedure is essential because the tribunal has the discretion to confirm or, at situations where the Secretariat determines that the nomination is inappropriate, reject the nomination of arbitrator. If the nomination is not confirmed by the Secretariat, the nominating party or arbitrators shall nominate another arbitrator within the period of time as fixed by the Secretariat.

Joinder of Parties/ Consolidation of Claims

The newly revised 2016 KCAB Rules have strengthened the ability of the KCAB and the tribunal appointed to handle multi-party and multi-contract disputes. Article 21 of the revised rules provides that an additional party can now join the arbitration after the constitution of tribunal at the request of a party upon written agreement of all the parties to the arbitration, or with written agreement of the additional party if all the claims are made under the same arbitration agreement.

Korean Commercial Arbitration Board
대 한 상 사 중 재 원

Also, Article 23 provides that after considering the nature of t he dispute, the tribunal may permit a new claim to be merged with the existing arbitration if the parties to the new claim are the same as those to the existing arbitration.

Emergency Arbitrator System

The 2016 KCAB Rules provide Emergency Measures by Emergency Arbitrator in Appendix 3. The newly i ntroduced emergency arbitrator system now provides parties with interim relief prior to the constitutio n of the arbitral tribunal. The interim relief can be enforced through a motion filed by party in request f or an emergency arbitrator concurrently with or after the filing of arbitration proceedings.

The emergency arbitrator can be appointed by the Secretariat within two working days after it receives the Request for Arbitration. The arbitrator will then have 15days to decide whether an emergency mea sure is deemed appropriate and necessary. The newly revised 2016 KCAB Rules provide short deadlines for the appointment of an emergency arbitrator and the decision on the emergency relief application, t hus securing parties' interest and serving users' needs to a large extent.

The completion of new KCAB International Arbitration Rules could have been done thanks to the partic ipation and contribution of the following members of the Rules Committee. Their contributions are sin cerely appreciated and gratefully acknowledged:

• Byung-Chol (B.C.) Yoon (Chair)	Kim & Chang
• Young Seok Lee	Yulchon
• Sean (Sungwoo) Lim	Lee & Ko
• Hong Sik Chung	Chung Ang University Law School
• Liz Kyo-Hwa Chung	Kim & Chang
• Sunkyung Riley Shin	Shin & Kim
• Hong Joong Kim	Bae, Kim & Lee LLC
• Jeong Hye Ahn	Yulchon

The revised KCAB International Arbitration Rules are available on the KCAB website from 1 June 2016. F or more information, please visit; http://www.kcab.or.kr/jsp/kcab_eng/law/law_02_ex.jsp .

About the Korean Commercial Arbitration Board

The KCAB was established on 22nd March 1966, and is the only authorized institution of its kind in Korea, statutorily empowered to settle commercial disputes under the Korean Arbitration Act. The Board provides services such as arbitration, mediation, and other forms of dispute resolution.

To learn more about the KCAB, please visit http://www.kcab.or.kr/jsp/kcab_eng/index.jsp.

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the studio

After all of Judith's mediator tricks had failed to break the negotiation deadlock, she turned to tug-of-war.

Charles Fincher – LawComix.BlogSpot.com

At first people believe that a strange new thing can be done, then they begin to hope it can be done, then they see it can be done – then it is done and all the world wonders why it was not done centuries ago

- Frances Burnett,
The Secret Garden

As a litigant I should dread a law suit beyond almost anything else short of sickness or death

- Billings Learned Hand

The Editorial Board

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