



Arbitration preferred choice for dispute resolution: Ministry of Law study

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When it comes to users' satisfaction with cost and speed, however, mediation fared best.

The study's authors and industry practitioners say these results indicate that the use of mediation as a "real alternative" could pick up when the Singapore Convention on Mediation comes into force in September, which provides a process for mediated settlement agreements to be enforced, even across borders.

The study spearheaded by the Singapore International Dispute Resolution Academy looked at 304 responses from client users (corporate executives and in-house counsel) as well as legal users (lawyers and legal advisers) from 46 countries. The results were released last week.

Respondents considered enforceability, neutrality/impartiality and cost the top three factors influencing their choice of dispute resolution mechanism.

They were also surveyed on other factors, such as speed, confidentiality, flexibility and transparency, of the process.

Sixty-five per cent of arbitration users also said they were satisfied with enforceability and finality of the mechanism, compared to between 54 and 56 per cent for users of litigation and mediation.

The study's authors - which include law professor and SIDRA director Nadja Alexander, and research associates Vakhtang Giorgadze (based in Georgia) and Allison Goh - pointed out that users' lower satisfaction levels in relation to the finality of mediation and litigation may have been influenced by mediation procedures that did not result in settlement, as well as court outcomes that were the subject of appeal.

When it comes to users' satisfaction with cost and speed, however, mediation fared best - 65 per cent of mediation users considered the approach cost-effective, compared to 25 per cent and 48 per cent for arbitration and litigation users, respectively.

Sixty-eight per cent of mediation users are also more satisfied with its speed, compared to 30 per cent and 45 per cent for arbitration and litigation users, respectively.

Dispute resolution lawyers say the enforcement regime under the Singapore Convention, along with structural pressures due to the ongoing Covid-19 pandemic, can enhance the preference for mediation.

With mediation users recording higher satisfaction in aspects such as cost and speed, the study's authors noted that the Singapore Convention, when it comes into force on Sept 12, and as more jurisdictions commit to it, will offer up mediation as a "real alternative" to current users of litigation and arbitration who consider enforceability a significant factor in their choice of dispute resolution mechanism.

Up until now, mediation has had limited scope in cross-border disputes because settlement agreements can only be enforced in the same way as any other contract - through commencing a claim for failure to fulfil it and trying to enforce any award or judgment obtained. In an international context, this can cause much time and money.

The Singapore Convention will give teeth to mediated agreements in their own right across borders, allowing parties which have ratified the convention to apply directly to courts in the jurisdiction where the assets are

located for enforcement, without needing to initiate new proceedings.

Daryl Chew, a partner at the international arbitration practice of Shearman and Sterling, added: "As the survey demonstrates, protracted adversarial proceedings such as litigation and arbitration can take its toll on all sides."

"Particularly in the wake of the economic and other structural pressures associated with the Covid-19 pandemic, businesses today have an increased appetite for more creative, efficient and less confrontational forms of dispute resolution, including mediation, or neutral evaluation."

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