

Insights

JOINT MEDIATION PROTOCOL BRIDGING SINGAPORE AND JAPAN

Sep 29, 2020

SUMMARY

On 12 September 2020, the Singapore International Mediation Centre (“**SIMC**”) and the Japan International Mediation Center (“**JIMC**”) signed a Memorandum of Understanding on the operation of a joint protocol (the “**Protocol**”) which allows cross-border disputes to be resolved through expedited, economical and effective mediation procedures.

The Protocol, together with the Singapore Convention on Mediation which came into force on the same day, seek further to advance mediation as a useful way of resolving disputes efficiently and economically.

Background

The Japan International Mediation Center (“**JIMC**”) and the Singapore International Mediation Centre (“**SIMC**”) signed a memorandum of understanding to establish the [JIMC-SIMC Joint Covid-19 Protocol](#) (the “**Protocol**”) on 12 September 2020, the same day that the Singapore Convention on Mediation (the “**Convention**”) came into effect. The Joint Protocol is expected to be launched formally on 20 November 2020 at an event marking JIMC’s second-year anniversary. The expiry date of the Protocol is 11 September 2021.

What hinders the development of mediation so far?

Mediation is seen increasingly as an efficient, non-adversarial way to settle a dispute without having to experience the stress and financial strain of going to court. However, mediation has been a less preferred manner for resolving international disputes because of (i) the lack of guarantee on reaching a settlement, and (ii) the difficulty of enforcing a settlement agreement in a cross-border setting.

How does the Singapore Convention on Mediation help?

The Convention, which also became effective on 12 September 2020, targets to solve the problematic cross-border enforcement issues. Before the Convention, settlement agreements made in one country cannot be enforced simply in another country, forcing parties to commence contentious, costly and time-consuming legal proceedings in the local courts of that other country in order to be compensated.

Under the Convention, parties may seek enforcement of the settlement agreement in other countries which have signed and ratified the Convention. To date, 53 countries have signed the treaty, including Singapore, China, India, South Korea, Malaysia, Philippines, Qatar and the United States of America. To date, six of the 53 have ratified the Convention.

Will the Protocol further promote mediation?

Any outcome in mediation is determined largely by the will of the parties. Through the discovery of underlying interests in mediation, parties are encouraged to build up mutual understanding, and hence, are more likely to reach a mutually beneficial, or at least acceptable, resolution.

Experience has been, however, that there are various features in international disputes that might militate against amicable resolutions being reached.

Very often, parties in international mediation come from diverse cultural backgrounds. In addition to the disputes that have brought parties to the table, there may be other problems thrown up that relate to the people at the table, who possess different value assumptions and approaches. Physical, cultural and legal differences between parties can present further complexities and challenges to reaching common ground. Consequently, parties might fail to appreciate the difficulties faced by the other side and therefore refuse to compromise. These hurdles have proven to be even higher during the COVID-19 pandemic period when people cannot meet face-to-face.

A typical example is language. Parties in international mediation may not be native in the same language. Speaking a second language in mediation may affect the flow of understanding, or even worse, exacerbate the conflict.

The Protocol jointly created by SIMC and JIMC seeks to address and respond to various inter-cultural barriers in mediation, with an aim to enhance the prospect of successful settlement of disputes during the current pandemic. The Protocol claims to be the first joint mediation collaboration between two international dispute resolution centres. It creates a synergy for businesses operating in the region, in particular along the Japan-Singapore corridor.

SIMC has announced that it is working with other partners on similar protocols, that will be customised to the needs of specific jurisdictions.

Japan and Singapore are tied closely in trade and commerce. In 2018, Japan was Singapore's eighth largest trading partner and third largest investor, while Singapore was Japan's top Asian and

fourth largest foreign direct investor. It is hoped that the Protocol will be a powerful tool for Japan-Singapore businesses to drive commercial solutions and restore business relationship amidst the growing economic uncertainty.

Keys mediation procedures under the Protocol

1. Scope of application: The protocol applies to all disputes, whether or not the disputes have been caused by the pandemic or by legislation relating to the pandemic.
2. Initiation of the mediation process: A party must submit an online mediation request form (a) on JIMC's website for JIMC rules to apply or (b) on SIMC's website for SIMC rules to apply.
3. Application filing fee: The filing fee is JPY 20,000 or SGD 250 [approximately US\$185].
4. Consent to mediate: Where there is no mutual agreement between parties on the use of mediation, JIMC or SIMC may assist the filing party to seek consent of all parties.
5. Commencement date of mediation: The date of written confirmation to the parties upon the existence of an agreement to mediate
6. Number of mediator(s): Generally, two co-mediators. Parties may agree to a sole mediator.
7. Appointment of co-mediator(s): Each of JIMC and SIMC will select and appoint one mediator.

It is recognised that a co-mediation arrangement facilitates the appointment of mediators who fully understand the unique cultural features of businesses from different jurisdictions. For example, where a Japanese company is involved, one of the mediators may be selected from JIMC's established panels of mediators, with Japanese-speaking skills and who is conversant with Japanese culture and laws.

Alternatively, the parties may select their own mediators and ask the JIMC and SIMC to appoint them. If the parties do this, then the mediators will charge at their normal commercial rates and the special fee arrangements set out in item 8 below will not apply.

8. Special fee arrangements:

The Protocol offers reduced fee arrangements, including all administration fees and co-mediators' fees:

- (a) For mediation requests made to JIMC:

Dispute value	Total fee payable per party
Below JPY 100 million	JPY 500,000 [approximately US\$4,750]
Between JPY 100 million - JPY 500 million	0.5% of the dispute value, subject to a cap of JPY 1 million [approximately US\$9,500]
Above JPY 500 million	0.2% of the dispute value, subject to a cap of JPY 1.25 million [approximately US\$11,800]

(b) For mediation requests made to SIMC:

Dispute value	Total fee payable per party
Below SGD 1.3 million	SGD 6,500 [approximately US\$4,750]
Between SGD 1.3 million - SGD 6.5 million	0.5% of the dispute value, subject to a cap of SGD 13,000 [approximately US\$9,500]
Above SGD 6.5 million	0.2% of the dispute value, subject to a cap of SGD 16,000 [approximately US\$11,800]

Please note that these special fee arrangements are subject to certain conditions. For example: (i) there are two parties in the mediation; (ii) two mediators are selected and appointed by JIMC and SIMC; (iii) the mediation is conducted online; (iv) the mediation requires a total of eight hours for each mediator for pre-mediation preparation and the mediation, excluding overtime, weekend and public holiday charges.

For any mediation which does not satisfy any of these conditions, JIMC and SIMC will determine the fee chargeable in consultation with the parties.

9. Expedited organisation timeframe: JIMC and SIMC will use their best efforts to organise the mediation, including the appointment of mediators, within ten business days of the commencement date of mediation

10. Conduction of mediation: To be conducted online to overcome the existing limitations on travel.

RELATED PRACTICE AREAS

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- Construction Disputes
- Litigation & Dispute Resolution
- M&A Disputes

- Real Estate Disputes
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- International Arbitration
- Food & Agribusiness
- Sports & Entertainment

MEET THE TEAM



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