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INTERNATIONAL ARBITRATION AND MEDIATION IN ADDRESSING TRANS-BOUNDARY COMMERCIAL DISPUTES: SINGAPORE'S EXPERIENCE AND ITS EMERGING DIGITAL DIMENSION

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Abstract: The article analyses the digital support that Singapore's international arbitration and mediation bodies – mostly, the Singapore International Arbitration Center (SIAC) and the Singapore international mediation center (SIMC) – give their trans-boundary commercial dispute resolution practices. On summarizing salient features of international arbitration and mediation, the paper explores the activity of SIAC and SIMC (as well as of the Singapore International Mediation Institute – SIMI and the Singapore International Dispute Resolution Academy – SIDRA) to finally turn to revealing instruments of their digital support. The latter focus is especially important, as routine procedural tasks may be performed by digital, mostly, AI-enabled, instruments that are being integrated into legal practices for streamlining supplementary processes. The author argues, however, that the digital transformation of Singaporean commercial arbitration and mediation bodies may well become a double-edge sword. As a globally renowned international center of legal excellence, Singapore may find it problematic to resort to AI-enabled practices, since the human factor has mostly been behind the success stories of its legal venues. The paper assesses these issues from a regional studies perspective, as the legal dimension is beyond its analytical focus. As the topic has not been a focus of scholarly attention in Russia and in other countries, the research has obvious relevance, originality and academic novelty.

Keywords: *International arbitration and mediation, commercial disputes, SIAC, SIMC, SIMI, SIDRA, digital instruments, Artificial Intelligence*

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Научная статья. Политические науки

МЕЖДУНАРОДНЫЙ АРБИТРАЖ И МЕДИАЦИЯ В РАЗРЕШЕНИИ ТРАНСГРАНИЧНЫХ КОММЕРЧЕСКИХ СПОРОВ: ОПЫТ СИНГАПУРА И ЕГО ЗАРОЖДАЮЩЕЕСЯ ЦИФРОВОЕ ИЗМЕРЕНИЕ

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Аннотация: Статья анализирует цифровую поддержку, которую оказывают сингапурские площадки международного арбитража и медиации – главным образом, Международный арбитражный центр в Сингапуре (СИАК) и Международный центр медиации в Сингапуре (СИМК) – своим практикам урегулирования трансграничных коммерческих споров. Систематизированы основные черты международного арбитража и медиации, проанализирована деятельность СИАК и СИМК (равно как Международного института медиации в Сингапуре – СИМИ и Международной академии разрешения споров в Сингапуре – СИДРА), рассмотрены инструменты их цифровой поддержки. Последнее направление особенно важно, поскольку рутинные процессуальные задачи могут выполняться цифровыми инструментами, относящимися, главным образом, к искусственному интеллекту, которые интегрируются в юридические практики для оптимизации вспомогательных процессов. Вместе с тем, автор утверждает, что цифровая трансформация сингапурских площадок коммерческого арбитража и медиации может привести к неоднозначным последствиям. Будучи всемирно известным правовым «центром превосходства», при использовании инструментов искусственного интеллекта Сингапур может столкнуться с проблемами, поскольку истории успеха его правовых площадок основаны на человеческом факторе. Эти вопросы рассматриваются в работе сквозь призму регионоведения, поскольку их правовое измерение выходит за рамки исследования. Поскольку данная тема не была объектом внимания российских и зарубежных ученых, работа обладает несомненной актуальностью, оригинальностью и научной новизной.

Ключевые слова: международный арбитраж и медиация, коммерческие споры, СИАК, СИМК, СИМИ, СИДРА, цифровые инструменты, искусственный интеллект

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Over the course of its history, Singapore has paid much attention to its technological competitiveness. At present, it extends to all Singapore's policy practices, as new realities need cutting-edge solutions. Generalizing from Singapore's example, it is possible not only to trace the uppermost limits of ASEAN multilateral projects, but also to make predictions about major regional developments in a short-term and a mid-term perspective.

At the same time, however, although Singapore has been and remains a remarkable success story, Artificial Intelligence (AI) may weaken rather than strengthen its positions concerning international commercial arbitration and mediation. Arguably, Singapore's efforts may run counter to its hard-won achievements. In light of this, to trace these challenges and their implications for Singapore's international commercial arbitration and mediation practices is a timely and relevant exercise.

The analysis is carried out from a regional studies rather than a legal perspective. By tracing issues relevant to Singapore's experience of developing international commercial arbitration and mediation bodies, as well as of undertaking their digital transformation, the study aims to contribute to better understanding of trans-boundary commercial landscape in Southeast Asia before the establishment of ASEAN Community 2025.

Why Arbitration and Mediation?

International arbitration and mediation as processes that are held outside the public court system are gaining widespread popularity. There are ample reasons for this assessment.

Concerning arbitration, several points warrant consideration. Arbitration is flexible and relatively quick, as disputes are settled mostly within several months (while litigation may take years). More to the point, the parties in dispute can select arbitrators, an arbitration venue etc. Specifically, the parties can choose arbitrators who are proficient in specific areas. The parties can select an arbitrator together, or, in case of three arbitrators, either party selects one arbitrator, while the third arbitrator is selected by a neutral authority.

In arbitration, procedures and paper turnover can be relatively quick, as discovery, taking and answering interrogatories, deposition etc. can be prepared within a short time period.

Another notable feature of arbitration is confidentiality, as parties can keep their contradictions, as well as sensitive information, in secret. Public figures, including top politicians and business captains, find it convenient.

But most importantly, arbitration decisions are final. They cannot be appealed, and the parties have to accept them. In the present-day circumstances, this factor is advantageous to the corporate sector, since finality brings certainty and, by extension, predictability.

Apart from advantages, arbitration has obvious shortcomings. Confidentiality may easily become a disadvantage, as biased decisions cannot be excluded. The other side of finality is prohibition on appeal: in case a party feels that the decision is not fair, it can do nothing about it. Lastly but importantly, arbitration includes high costs, as the parties must cover not only the fees and expenses of the arbitrators, but also those of arbitral institutions.

Mediation of trans-national commercial disputes is another remarkable instrument. Summing up most salient features of mediation, several points are noteworthy.

Like arbitration, mediation has the advantage of confidentiality, since the parties can speak freely and openly, as well as choose a mediator. This person does not necessarily need to be a lawyer: rather, he or she must be skilled enough and have supreme professional or moral authority to perform facilitating functions and overcome “deadlocks” in communication. Notwithstanding this factor, a mediator has no right to impose his or her decisions upon the parties in dispute.

The “no-principle” approach upon which mediation is premised allows the parties not to worry that information obtained during the mediation process can be evidence in legal proceedings.

As far as attorney fees, court costs and other expenses are concerned, mediation is more cost-effective than arbitration and litigation. As mediation requires less time and fewer formalities, fees are significantly reduced. Micro-, small and medium-sized enterprises find it very attractive.

Arguably, the most important mediation-related advantage is its focus on preserving good business relationships. Mediation aims to arrive at a mutually acceptable solution with prospects for future cooperation rather than win the case. For companies that aim to maintain healthy and long-standing relationships, mediation is a good option.

Arbitration and mediation have points of similarity and difference. In the former respect, both are alternatives to traditional litigation and appeal to a neutral third party. Even more importantly, they both give binding awards. In the latter, they use different methods. While arbitration is an adversarial process, as the parties file submissions and present their evidence, mediation prioritizes a win-win settlement by assisting the parties to arrive at a compromise solution. More than that, while the arbitrator is em-

powered to make a final decision, the mediator just facilitates the negotiation processes. Finally, in arbitration a disputing party may be dissatisfied with the arbitration verdict, while in mediation, an agreement may not be achieved at all.

Historically, international commercial arbitration has loomed large in the priorities of Asia-Pacific corporate sector. Revealingly, a plethora of international commercial arbitration centers has been established since Japan Commercial Arbitration Association (JCAA) was set up in 1950. Examples include, but are not limited to, Korean Commercial Arbitration Board (1970), BANI (Badan Arbitrase Nasional Indonesia) Arbitration Center (1977), Australian Center for International Commercial Arbitration (1986), Kuala Lumpur Regional Center for Arbitration (1987) and others. Since the United Nations Convention on International Settlement Agreements Resulting from Mediation (the Singapore Convention on Mediation or Singapore Mediation Convention – SMC) was signed and came into force, interest in exploring the potential of international commercial mediation has been conspicuous.

Importantly, China is trying to develop a seamless approach to legal support of its mega-strategy the Belt and Road Initiative, mostly by integrating international commercial arbitration, mediation and litigation. Specifically, China established special courts to focus upon the Maritime Silk Road of the 21st Century (in Shenzhen) and the Silk Road Economic Belt (in Xi'an). Additionally, China aims to strengthen Hong Kong International Arbitration Center (HKIAC) as a dispute resolution venue, encourages ad-hoc arbitration in free trade zones, and makes steps to establish rules of international investment disputes. Concerning the latter, it is noteworthy that China International Economic and Trade Arbitration Commission (CIETAC) published CIETAC Investment Arbitration Rules in 2017, while Beijing Arbitration Commission published its investment arbitration rules two years later. Besides that, China implements various initiatives with its BRI partners, as China Council for the Promotion of International Trade (CCPIT) launched several centers focusing specifically on BRI disputes. Examples include the Mainland-Hong Kong Joint Mediation Center, the Malaysia-China Business Mediation Center and other venues.

Notably, China aims to explore the potential of international commercial mediation presented by the Singapore Mediation Convention. More specifically, China counts upon the enforceability factor, as the SMC provides direct enforcement of cross-border agreements. No less importantly, mediation is cheaper than arbitration and litigation, and is flexible enough to use in various countries. Lastly, mediation allows China to encourage

MSME to get involved in trans-boundary exchanges owing to the cost and time factor.

Driven by these considerations, the PRC established the International Commercial Mediation Center for the Belt and Road (BNRMC)¹, International Commercial Dispute Prevention and Settlement Organization (ICDPASO)² and other venues. Their services include commercial mediation, arbitration and investment arbitration, to mention just a few examples.

International commercial arbitration and mediation are popular in the Asia-Pacific region. Asia-Pacific businessmen prefer regional rather than Western arbitration centers. The more so since many regional centers offer the practice known as Arb-Med-Arb (a shift from arbitration to mediation and then, if necessary, to arbitration again). It stands in contrast with the Western tradition that considers arbitration and mediation as different and uncoordinated tracks.

Current trends suggest that digital support for arbitration and mediation of trans-boundary disputes increases in both relevance and significance. According to available estimates, AI can reduce paper-related workload by 44%³. There are many spheres where it is possible and appropriate. Technology-assisted review (TAR) and AI-enabled review can facilitate data collection and processing. These tasks can be performed by AI tools like, for instance, Casetext, NexLaw, Harvey AI, LexMachina and Casemark⁴. Personalized predictive analytics, summaries of briefs, previews of major obstacles, preparing preliminary drafts of case outcomes, a translation of documents from and into many languages, as well as online speech-to-text translations, are just few examples of AI usage. Besides, AI tools can improve understanding of context that relates to specific disputes, by, for instance, searching through social media or summarizing TV and radio discussions. Lastly, AI can be a good assistant in upgrading professional skills, in case an arbitrator or a mediator asks a prompt about his progress in comparison with previous cases. Overall, digital instruments are undoubtedly much more efficient than manual methods for processing of extensive data, especially in the pre-arbitration or the pre-mediation period.

At the same time, digitalization-related shortcomings are also evident. Specifically, the AI-focused regulation remains at an incipient stage, as even basic parameters relevant to AI application are not defined. More specifically, the appointment of arbitrators, as well as choosing mediators, by means of AI is full of contradictory nuances. For instance, who will bear legal responsibility in case an erroneous decision is made (which is likely due to the AI hallucination factor)? No less importantly, training AI models may be expensive, as they have to overcome lack of cognitive thinking:

their verdicts are based on statistically likely scenarios and do not take into account individual circumstances. Data privacy and confidentiality may be lost, as the system constantly learns and shares new information. Cybersecurity-related challenges strongly matter, as system breaches are a common occurrence. All in all, many technical shortcomings are still in place, while public sentiments on AI in arbitration and mediation remain ambiguous.

Asia-Pacific legal institutions follow global trends related to international arbitration and mediation. Among representative examples, Singapore International Arbitration Center (SIAC) and mediation institutions are of special relevance.

International Commercial Arbitration and Its Digital Support: a SIAC Perspective

The Republic of Singapore is a unique area on the Asia-Pacific corporate map. It enjoys the advantage of proximity to the corporate activity in Southeast Asia, South Asia and the South Pacific. Singapore is an unofficial capital of ethnic Chinese both in and beyond Southeast Asia. Singapore is famous for its business-friendly environment and hosts the headquarters of globally renowned companies. Last but not least in significance, Singapore positions itself as a convenient venue for resolution of commercial disputes, as it offers Singapore International Arbitration Center for arbitration, Singapore International Mediation Center for mediation and Singapore International Commercial Court for litigation. All afore-mentioned venues and practices respond to global best standards, while legal costs are not so high as, for instance, in London and New York.

Concerning international arbitration, Singapore has multiple advantages. It has its own centers of international excellence – the Singapore Chamber of Maritime Arbitration (SCMA) and the Singapore International Arbitration Center (SIAC). More to the point, world leading international arbitral institutions, including International Center for Dispute resolution (a division of American Arbitration Association), ICC International Court of Arbitration, ICSID and WIPO Arbitration and Mediation Center, have their branches in Singapore. Various tax exemptions and other incentives relevant to arbitration and arbitrators are provided by Singapore's leadership.

Characterizing Singapore International Arbitration Center (established in 1991), several points are noteworthy. SIAC has a global reach, as it has five overseas offices: in Mumbai, Gujarat International Finance Tec-City (GIFT), Seoul, Shanghai and New York⁵. This factor not only facilitates dispute settlement in different parts of the world, but allows SIAC trace advanced arbitration practices more closely. Apart from it, SIAC arbi-

trators deal with disputes of all sorts, including construction and engineering, intellectual property, media and broadcasting etc. Lastly, SIAC offers a service that facilitates dispute settlement and simultaneously strengthens SIAC reputation as a globally renowned dispute resolution venue: Arbitration-Mediation-Arbitration (Arb-Med-Arb) in cooperation with Singapore International Mediation Center (SIMC). The parties in dispute can resort to mediation after they started arbitration proceedings. In case an agreement is not reached by mediation, they can return to arbitration.

More broadly, SIAC was a pathfinder in Asia to offer the Emergency Arbitrator procedure in July 2010. Since then, SIAC has received 152 applications for such appointments⁶. Arguably, many disputing parties find this option attractive, as it allows them to obtain interim relief. In addition, SIAC uses the Expedited Procedure as an instrument to expand its set of offered services and increase their quality⁷. In 2023, SIAC received 94 Expedited Procedure requests (41 of them were accepted), while the overall number of applications has been 896 (514 of them have been accepted) since 2010⁸.

Lastly, SIAC can boast of highly proficient staff, as its Senior Management team, the SIAC Secretariat and the SIAC Strategy and Development Group meet top professional standards. The SIAC Board of Directors consists of internationally renowned arbitrators and leading arbitration practitioners⁹.

With those factors in view, it is hardly surprising that SIAC is a leading global center of legal excellence. As of 2023, SIAC handled 359 cases, behind London Maritime Arbitrators Association (LMAA) and International Chamber of Commerce (ICC, it has its own International Court of Arbitration), but far ahead of London Court of International Arbitration (LCIA), Hong Kong International Arbitration Center (HKIAC) and Stockholm Chamber of Commerce (SCC, it has its own Arbitration Institute)¹⁰.

At present, SIAC develops digital instruments to support its activity. Among illustrative examples, the SIAC Gateway, a case management platform that was launched in September 2024, is of special relevance. The platform is an aggregator to streamline the document turnover, organize online payments, verify the claimant's address, serve as a single access point etc. Additionally, the SIAC Gateway provides communication with the arbitration tribunal and the Secretariat. Confidential information is not disclosed on the platform, and cannot be accessed from mobile devices. Overall, SIAC Gateway allows increasing transparency of the arbitration process, enhancing convenience for clients and obtaining their feedback.

According to expert assessments, the platform is a valuable tool, first and foremost, for emergency arbitration¹¹.

Remarkably, SIAC published a draft of the seventh edition of its rules. It includes, among other provisions, an outline of possibilities to conduct hearings online. Besides that, adapting AI tools to legal practices of Singapore and, by extension, SIAC, is an important priority for Singapore's legal authorities, despite questions that are likely to remain complicated in the years to come¹².

In sum, SIAC is increasingly focusing on digital instruments to make its services more efficient and to substantiate its position as a globally renowned center of professional excellence. As Singapore has traditionally paid close attention to technologically advanced solutions, this practice is likely to continue.

International Commercial Mediation: Singapore's Practices and Their Digital Aspects

International commercial mediation is another priority for Singapore. Suffice it to say that the United Nations Convention on International Settlement Agreements Resulting from Mediation was signed in Singapore (therefore, its name is Singapore Mediation Convention – SMC). The SMC is a powerful tool to promote international mediation around the world as a key mechanism to settle cross-border commercial disputes, the role the New York Convention plays in international arbitration. As of August 2024, the SMC was signed and ratified by 57 and 14 countries respectively¹³.

In Singapore, mediation is seen as a practice that resonates well with Asian traditions and mentality. Instrumentally, Singapore offers a wide range of options, in case disputing parties choose mediation in Singapore.

Singapore's high rank in international mediation is substantiated by the fact that globally renowned mediation providers have their offices in Singapore. Among them, the WIPO Arbitration and Mediation Center and the ICC International Center for Alternative Dispute Resolution are notable examples. Tax exemptions and other incentives for non-resident mediators further demonstrate that Singapore attaches much importance to its status as a global mediation provider.

Singapore's attention to international mediation dates back to early 2010s. In 2013, a Working Group to Develop Singapore into a Center for International Mediation was established. Later on, it presented a report with recommendations focusing mostly on technical and procedural issues. Specifically, the latter included provisions on tax exemptions for foreign arbi-

trators and mediators, innovative solutions in international mediation-related services, professional standards and accreditation procedures etc.

These efforts contributed to the establishment of the Singapore International Mediation Center (SIMC), the Singapore International Mediation Institute (SIMI) and the Singapore International Dispute Resolution Academy (SIDRA).

SIMC was launched in 2014. Its founding members were SIAC, Singapore Academy of Law and Singapore Business Federation. SIMC cooperates with SIAC, mostly, in offering and upgrading the Arb-Med-Arb protocol. Arbitration may start at SIAC and then shift to mediation at SIMC. Importantly, SIMC publishes detailed information, including video interviews, about its mediators, in order to make its activity as transparent as possible. By August 2024, SIMC had mediated more than 430 cases worth nearly \$ 18 billion¹⁴. Its special point of pride accounts for the resolution of the dispute between the American FuelCell Energy and South Korean Posco Energy in 2021, after the dispute had gone through five arbitrations during seven years¹⁵.

SIMC realizes that in order to remain competitive, it must provide its services with firm digital support. Among major examples, Mediation AI Assistant (MAIA) is of special note. Specifically, MAIA organizes mediation process, summarizes points of similarity and difference in the positions of parties in dispute, streamlines document turnover etc. More specifically, this tool can prepare interim drafts for case resolutions.

In the years to come, SIMC is likely to further develop its digital tools. As disputes relating to crypto assets become widespread, instruments to address and resolve them quickly, as well as necessary competences, are in growing demand. Like in other spheres, parties involved in cryptocurrency-related disputes appreciate possibilities to maintain good business relations. Having established a working group that focuses on crypto asset disputes, SIMC mediated eight such cases from early 2022 to August 2024¹⁶.

SIMI, launched also in 2014, concentrates on developing a sophisticated accreditation and certification system. The objective is to help Singaporean and foreign mediators in performing their functions in settling domestic and trans-boundary disputes. In April 2021, the Alliance of Organizations for Mediation Standards (AMS) was formed, while in March 2022, AMS Cross-Recognition Scheme was launched. In July 2023, the SIMI Competency Framework for Mediators that summarizes necessary professional skills, ethics and other relevant issues was published¹⁷. Besides that, SIMI supports publications on mediation-related issues. As of 2024, there

are 561 SIMI-accredited mediators and 18 SIMI partners, as well as numerous mentorship programs, including the afore-mentioned SIMI Competency Framework for Mediators, Pilot Mentorship Programme (Reboot) and others¹⁸.

Lastly but importantly, in 2016, the government established the Singapore International Dispute Resolution Academy (SIDRA) to focus on relevant research. Specifically, SIDRA conducts research with a practical impact on industries along three tracks: appropriate dispute resolution empirical research, international mediation and the SMC, and next generation of dispute resolution¹⁹. The International Mediation and the Singapore Convention on Mediation Program is a research track that discloses details on how the SMC is organized to deal with international mediated settlement agreements²⁰.

Apart from the afore-presented developments, Singapore organizes regular mediation-focused events. Among them, an annual Singapore Convention Week and Singapore Mediation Lecture, both aiming to increase awareness of specifics of international dispute resolution, are most notable. Legal experts, practitioners and policy makers discuss issues relating to dispute resolution, arbitration, mediation and litigation²¹. Remarkably, 2024 Singapore Convention Week was themed “Separating Disruptions from Distractions in an Evolving World”, within which innovative technological instruments were recognized as an important priority²².

In sum, Singapore’s legal authorities and practitioners seem to fully realize that digital support of trans-boundary mediation is a demand of time. Even more importantly, SIMC, SIMI and SIDRA are ready to substantiate this awareness by effective and firm practical actions.

Conclusion

The analysis of international commercial arbitration and mediation developments in Singapore reveals a complex picture. On the one hand, due to multiple factors, Asia-Pacific trans-boundary commercial practices are likely to increasingly embrace digitalization, mostly, Artificial Intelligence. Ample evidence suggests that Singapore’s arbitration and mediation venues will follow this trend. The more so since the digital transformation of commercial practices across Southeast Asia will inevitably gain momentum in a short-term and mid-term perspective.

Notwithstanding these processes, however, an increasing embrace of digital instruments may weaken rather than strengthen Singapore’s legal institutions. SIAC enjoys the status of the top international center of legal excellence after decades of great effort. As AI has many shortcomings its

negative implications for SIAC, as well as for SIMC, SIMI and SIDRA, cannot be completely excluded.

At the same time, international commercial arbitration and mediation are increasingly digitalizing around the world. In Southeast Asia, the digital transformation of trans-boundary economic and business practices is on the rise. In Singapore, the Smart Nation programme is a reliable indicator for how serious the country's leadership is about developing cutting-edge innovative solutions. All mentioned above suggests that Singapore is likely to further develop digital tools for arbitrating and mediating trans-boundary disputes.

Historically, Singapore has had, and has been able, to resolve challenging tasks. From the perspective of providing its international commercial arbitration and mediation practices with digital support, Singapore is encountering a similar challenge. It is intriguing to see how Singapore will cope with it.

ИНФОРМАЦИЯ ОБ АВТОРЕ

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