

Practice Note

DEVELOPMENTS IN INTERNATIONAL COMMERCIAL MEDIATION: US, UK, ASIA, INDIA AND EU

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ABSTRACT

This paper will explore some of the major new developments in international mediation beginning with the “home” of modern mediation the US, then covering the UK and EU before moving East to discuss the progress of mediation in Australia, India, China, Hong Kong and Singapore. It will be noted that although worldwide, mediation is now firmly embedded in the consciousness of nearly all legal practitioners involved in dispute resolution; its use is not welcomed in all jurisdictions, as could be seen recently from the adverse reaction of Italian lawyers to the introduction of legislation making mediation mandatory in Italy.

Although initiatives like the EU Mediation Directive demonstrate the increasing focus on mediation in Europe it may be fair to say that the really new ideas are emerging from Asia. It is rarely stated openly but is acknowledged privately, that Hong Kong and Singapore are both competing and striving to become the acknowledged premier hub for legal and ADR services in Asia, which is helping to drive the impetus for mediation to push forward into new territory. This has led to Hong Kong and Singapore investing considerable time and

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energy into the creation of new institutions, rules and infrastructure to support mediation in the region.

This is also an important time for modern mediation in China as new organisations catering to commercial mediation have emerged over the last few years and are starting to form industry bodies to cooperate in promoting the use of mediation in mainland China. India has made significant progress in the use of mediation both within and outside the court system. Like China, India is faced with the challenges of size, distance and diverse local conditions which make creating a cohesive countrywide mediation programme difficult. These conditions impact on mediator regulation, mediation training and unified rules. Many Asian countries have traditional mediation practices, for example, the panchayat system in India, coexisting with the relatively recent arrival of modern commercial mediation. This is both a challenge and opportunity for the growth of mediation, since whilst traditional mediation can often act as a good platform for modern mediation practice, because modern and traditional mediation models are often very different this has the potential to adversely impact the take up of mediation in the commercial area.

Unlike arbitration, globally mediation is not supported by a New York Convention also when creating mediation rules most countries have not substantially borrowed from UNCITRAL's Model Law on International Commercial Conciliation, the mediation equivalent of the Model Law on International Commercial Arbitration. This laissez faire, dynamic and ad hoc approach to the growth of mediation has now created a push in many jurisdictions towards regulation and the creation of more cohesion within the mediation field. This paper will highlight the variety of approaches that different countries have recently taken to achieve these goals. It should be noted that opinions differ as to how heavy handed the regulation of mediation should be. Some commentators suggest that the potential for over regulation could destroy the flexible nature of mediation and result in mediation becoming simply another process undertaken before litigation. This topic will be discussed and a brief look at emerging trends in mediation development will also be covered.

KEYWORDS: *Access to Justice Report 1998 UK, Alternative Dispute Resolution ADR, Recognised Mediation Accreditation Bodies (RMAB) Australia, Beijing Mediation Alliance, Commercial Mediation Alliance between Guangdong, Hong Kong and Macao Regions, Conflict Prevention Resolution (CPR), CEDR 2014 Mediation Audit UK, Civil Justice Reforms (CJR) Hong Kong, Civil Procedure Rules, Code of Civil Procedure, 1908, India, EU Mediation Practice Directive, Hong Kong Mediation Practice Direction 31, International Chamber of Commerce ICC Paris, Lok Adalat ("People's Court")*

India, Mediator Standards Body (MSB) Australia, National Mediator Accreditation System (NMA) Australia, Singapore Academy of Law (SAL), Singapore International Arbitration Centre (SIAC), Singapore International Commercial Court (SICC), Singapore International Mediation Centre (SIMC), Singapore Mediation Centre (SMC), Uniform Mediation Act UMA US