Arb-Med-Arb Protocol at the Singapore International Mediation Centre

- Did Singapore Build a Bridge or a Raft?

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Preface:

“Persuade your neighbours to compromise whenever you can. Point out to them how the nominal winner is often a real loser — in fees, expenses, and waste of time. As a peacemaker the lawyer has a superior opportunity of being a good man. There will still be business enough.”

(Abraham Lincoln)

Abraham Lincoln encourages upon a brief example to be a peacemaker rather than a nominal winner. Shortly, but very appositely, he recognizes the benefits of an amicable resolution of a dispute. Moreover, he emphasises the uniqueness of an opportunity for lawyers to be a ‘good man’ over the fear of losing currently profitable business.

Without any naivety or idealism, the author of this thesis is aware that a profit is, undoubtedly, one of the main goals of every business. Nevertheless, the spirit of the quote aptly coincides with the one in the thesis. Prioritizing an amicable means over the classical dispute resolution process primarily seeking a winner and a looser, which is currently well functioning business, is the cornerstone of this paper.
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<td>alternative dispute resolutions</td>
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<td>UNCITRAL</td>
<td>United Nations Commission on International Trade Law</td>
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Introduction:

General idea of the master’s thesis

The scope of the thesis resulted from my personal interest in Alternative dispute resolution (ADR), especially in mediation. Furthermore, I intended to produce a quality legal research in international commercial law with practical applicability. The theme thus emerged from current issues of international commercial mediation, particularly when used in multi-tiered dispute resolution processes. In reaction to various articles addressing this topic, my attention was attracted by the SIAC-SIMC Arb-Med-Arb Protocol (AMA Protocol).

The AMA Protocol is an ADR method provided by the Singapore International Mediation Centre (SIMC) in conjunction with the Singapore International Arbitration Centre (SIAC). Particularly, as a pre-established set of rules, it regulates the ADR process in an arbitration-mediation-arbitration scheme. The preconception I obtained during the initial research can be aptly described by the title of one of the articles:


The general idea of this thesis is thus an assessment of the potential of the AMA Protocol. The means of the conduct of the paper are presented hereon.

Applied methods

Being aware of a relatively short period of time since the AMA Protocol together with the SIMC was launched on 5 November 2014, I was not expecting a large amount of credibly assessable data about the concept to be made public. Therefore, I contacted directly the SIMC with a kind request for cooperation. This effort resulted in a fruitful interview with the Deputy CEO of the SIMC, Mr Aloysius Goh, and mutual correspondence. This helped me to understand the topic from a better perspective and to obtain the most relevant and up-to-date information concerning the AMA Protocol and the launch of the SIMC.

The first part of the research is focused on an analysis of arbitration, mediation, and various alternatives of these two ADRs. The emphasis is put on localisation and assessment of features, both advantages and disadvantages, which have connection with possible assessment of the AMA Protocol.

The study proceeds with an analysis of the AMA Protocol, its most distinguishing features, and comparison with the previously analysed alternatives of ADR. The aim is to reveal practical advantages and disadvantages of the AMA Protocol while confronting them with the most preferred alternatives of international commercial ADR.

A short case study is conducted subsequently with an intention to examine previous findings upon an illustrative international commercial dispute between two parties under the AMA Protocol.

To complement the study of the potential of the AMA Protocol, the last chapter contains an inquiry of its prospects in the context of other alternatives in the field of international commercial ADR and current trends in this field.

**Overview of the used sources**

Multiple sources and methods were used during the process of gathering the data. Except the previously mentioned interview with the Deputy CEO of the SIMC, my sources included international conventions and other relevant sources of international commercial law, various procedural rules of international institutions providing ADR services and several soft law standards, documents of the United Nations Commission on International Trade (UNCITRAL), publications of leading authors in the field in question, articles discussing the issues arising from the scope of the thesis, empirical studies conducted by respected institutions or legal scholars and as an additional source webpages with information not obtainable by other means.

**Potential audience and the contribution of the master’s thesis**

Considering the here-above stated, the conclusions of the research is aimed towards practical users of ADR, particularly, lawyers practising in the field of international commercial law and legal scholars with interest in international commercial ADR.
**Research questions**

1. What is the added value of the AMA Protocol, from which users of international commercial ADR could benefit?

2. What are the advantages and disadvantages of the AMA Protocol when confronted with arbitration, mediation and the most preferred combinations of them (Arb-Med, Med-Arb and Arb-Med-Arb)?

3. What are the current and future prospects of the AMA Protocol in the context of other alternatives of international commercial ADR?
1 **International commercial arbitration and mediation**

1.1 **International commercial arbitration**

1.1.1 Golden summer of arbitration

International commercial arbitration\(^2\) has in the last fifty years experienced significant growth in popularity. Members of international community involved in cross-border commerce have gradually started to prefer arbitration over litigation when choosing a method for resolving their disputes. As a result, arbitration has become the most frequently used dispute resolution means in the trans-national commercial context.\(^3\) G. B. Born in the course of the NYIAC’s first Judith S. Kaye lecture in 2016 highlighted that international arbitration has enjoyed:\(^4\)

‘*a long summer where everything went right.*’

The reason for the shift of preferences was a natural reaction to strict rules of litigation, to lengthiness and high costs of court proceedings and to the lack of knowledge of national judges and lack of experience of national courts with complicated trans-national disputes. As noted by G. B. Born, conventional wisdom finds arbitration in the field of international commercial disputes superior to litigation. He recognises three main reasons for this phenomenon:\(^5\)

- better possibility of parties to adjust the procedural rules and to choose applicable law;
- higher standard of neutrality and;
- possibility to pick the decision maker according to his specialization and skills.

Becoming aware of these benefits, parties increasingly started to choose arbitration for international disputes. According to the results of the 2015 International Arbitration Survey: Improvements and Innovations in International Arbitration conducted by the Queen Mary University of London

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\(^2\) Pursuant to the scope of the thesis focused on the field of international commercial law, the terms arbitration, international arbitration, commercial arbitration, international commercial arbitration, *mutatis mutandis* mediation, are being used during the course of the thesis interchangeably, if not otherwise stated.

\(^3\) Born, *INTERNATIONAL COMMERCIAL ARBITRATION*, 93.

\(^4\) Newsham, “Winter is Coming’ For Commercial Arbitration, Born Says.”

\(^5\) Born, supra note 3, 73.
90% of the respondents indicated international arbitration as their preferred dispute resolution mechanism.\(^7\)

The choice to arbitrate may be realized either as \textit{ad hoc} or institutional arbitration. \textit{Ad hoc} arbitration brings a great extent of flexibility but with no institutional support. To avoid difficulties with designing the entire arbitration process,\(^8\) parties may choose already pre-established rules. Commonly used for this purpose are rules adopted in 1976 by the United Nations Commission on Trade Law (UNCITRAL) in order to harmonize arbitration rules used by parties and to promote arbitration itself, the UNCITRAL Arbitration Rules.\(^9\) They cover all aspects of the arbitration proceedings and even provide a model arbitration clause.

Another possibility for the parties is to subject the arbitration to one of arbitration institutions.\(^10\) In this case, the arbitration is conducted pursuant to the rules of the particular institution and by using its infrastructure, possibly including a panel of arbitrators. Auspices of an institution brings to arbitration certainty of the procedure and trustworthiness of the arbitrators who are usually trained or certified, thereby providing a certain guarantee of predictability, expertise and better complex services for both parties. According to a survey by the QMUL in 2015, 79% of international arbitrations were institutional rather than \textit{ad hoc}.\(^11\) The most preferred institutions according to the study’s participants were the International Chamber of Commerce International Court of Arbitration (ICC) with 68% respondents choosing it as one of the three most preferred, followed by the London Court of International Arbitration (LCIA) with 37%, the Hong Kong International Arbitration Centre (HKIAC) with 28% and the Singapore International Arbitration Centre (SIAC) with 21%.\(^12\)

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\(^6\) QMUL, \textit{2015 International Arbitration Survey}.
\(^7\) Ibid., 2.
\(^8\) Cordero-Moss, \textit{International Commercial Contracts}, 213.
\(^9\) UNCITRAL, \textit{UNCITRAL Arbitration Rules}.
\(^10\) The currently world’s leading arbitration institutions for commercial disputes: the International Chamber of Commerce International Court of Arbitration (ICC), the London Court of International Arbitration (LCIA), the Honk Kong International Arbitration Centre (HKIAC), the Singapore International Arbitration Centre (SIAC), the Stockholm Chamber of Commerce Arbitration Institute (SCC) and the International Centre for Dispute Resolution (ICDR).
\(^11\) QMUL, supra note 6, 17.
\(^12\) Ibid.
The ground-breaking instrument, which enabled the ‘golden summer’ of international commercial arbitration, is the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention).\textsuperscript{13} It was adopted in 1958, and it regulates three main areas.\textsuperscript{14}

- the duty of the member states to recognize and enforce foreign arbitral awards;
- the duty of the member states to recognize the validity of arbitration agreements and;
- it refers parties to arbitration when they have entered into a valid agreement to arbitrate that is subject to the New York Convention.

With currently 157 members, the New York Convention is one of the most widespread conventions. It is universally considered the most successful commercial treaty in the world.\textsuperscript{15} It has set international commercial arbitration on the current course and until now has been the cornerstone of its current legal framework. Primarily, the New York Convention has been the inspiration to the UNCITRAL Model Law.\textsuperscript{16}

The UNCITRAL Model Law was adopted in 1985 for law makers in national governments, who can adopt it as a part of their national legislation.\textsuperscript{17} It has been a key element of the UN efforts to harmonize and unify legal standards of states on the field of international arbitration, and so far it has been adopted by 76 states in a total of 107 jurisdictions.\textsuperscript{18}

One of the general principles of the international arbitration law\textsuperscript{19} upon which rests the uniqueness and success of international arbitration is the ‘separability doctrine’, or more precisely, as G. B. Born comments, the ‘separability presumption.’\textsuperscript{20} It establishes autonomy and juridical independence of the arbitration clause from the rest of the contract and the necessity to treat the clause as severable from the contract.\textsuperscript{21} Consequentially:

- the arbitration agreement may be governed by different laws or substantive legal regulations and;

\textsuperscript{13} UNCITRAL, Convention on the Recognition and Enforcement of Foreign Arbitral Awards.
\textsuperscript{14} Born, International Arbitration, 18-19.
\textsuperscript{15} UNCITRAL, “Status: Convention on the Recognition and Enforcement of Foreign Arbitral Awards.”
\textsuperscript{16} UNCITRAL, UNCITRAL Model Law.
\textsuperscript{17} UNCITRAL, “Status: UNCITRAL Model Law.”
\textsuperscript{18} Ibid.
\textsuperscript{19} Born, supra note 3, 354.
\textsuperscript{20} Ibid., 350.
\textsuperscript{21} Ibid.
the validity of an arbitration agreement is not bound and dependent on the validity/invalidity
existence/non-existence or legality/illegality of the underlying contract and vice versa.

Thus, efficacy and efficiency of the international arbitration process is ensured.\textsuperscript{22}

Closely bound with the ‘separability presumption’, however not dependent on or derived from as
frequently inferred,\textsuperscript{23} is the ‘competence-competence’ doctrine, also referred to as the ‘Komptenez-
Kompetenz’. As a consequence of its almost universal acceptance by national legislations, judicial
decisions, arbitration conventions, institutional rules as well as international arbitration awards, it is
also recognised as one of the general principles of international arbitration law.\textsuperscript{24} Contrary to the
‘separability presumption’, there are some differences in approaches to the applicability of the
‘competence-competence’ doctrine, which, nevertheless, will not be discussed in greater detail.\textsuperscript{25}
However, the base of the ‘competence-competence’ doctrine is widely recognized and rests on the
principle that an international arbitral tribunal possesses the power to consider and decide disputes
about its own jurisdiction.\textsuperscript{26}

Both of the above-mentioned doctrines address, in various extent, autonomy and independence of
arbitration on domestic jurisdictions. The granted independence of arbitration becomes even more
emphasized by a principal of judicial non-interference in international arbitration proceedings.\textsuperscript{27} For
instance, Article 5 of the UNCITRAL Model Law provides:\textsuperscript{28}

\emph{‘in matters governed by this Law, no court shall intervene except where so provided in this Law.’}

Even though there are several exceptions, an interlocutory judicial review or supervision of
procedural decisions is unacceptable. In addition, according to one of the bedrock principles of
arbitration international law, substantive judicial review of an arbitral tribunal’s decision on merits is
also inadmissible.\textsuperscript{29}

\textsuperscript{22} Ibid., 401.
\textsuperscript{23} Ibid., 1071.
\textsuperscript{24} Ibid., 1051.
\textsuperscript{25} In more detail: Born, supra note 3, 1046-1252.
\textsuperscript{26} Born, supra note 3, 1048.
\textsuperscript{27} Born, supra note 3, 2189.
\textsuperscript{28} UNCITRAL, \textit{UNCITRAL Model Law}.
\textsuperscript{29} Born, supra note 3, 3339.
The presented ‘pro-arbitration’ and a ‘pro-enforcement’ spirit of the New York Convention, alternatively of the UNCITRAL Model Law, has cleared the way for the success and development of international arbitration. In reaction, numerous private institutions all over the world providing services in this field were launched. Except the six leading arbitration institutions mentioned previously, many others exist with various orientation, scope and utilization rate. Apart from the already mentioned UNCITRAL Arbitration Rules, parties may, moreover, currently choose from numerous other institutional arbitration rules, most suitable to their needs, or agree on application of some soft law standards or guidance.

The widespread use of international arbitration is undisputable. The presented growth, in combination with the manifold scale of options for designing the infrastructure of the arbitration proceedings, only confirms that arbitration has experienced ‘the golden summer.’ Furthermore, some issues, both advantages and disadvantages, of international arbitration closely connected the scope of this paper will be discussed in greater detail hereon.

1.1.2 Enforceability – the crucial advantage of arbitration

Effective enforceability of arbitration awards is generally considered as one of the reasons of prime importance for parties choosing to arbitrate and is arbitration’s most valuable characteristics. It is, first and foremost, ensured by the New York Convention, which establishes clear uniform rules for enforcement. The strict obligation to enforce foreign arbitral awards incorporated in Article III of the New York Convention is limited only by its Article V, which sets forth a limited exclusive list

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30 ICC, LCIA, HKIAC, SIAC, SCC and ICDR.
31 For instance: German Institution of Arbitration (DIS); the Vienna International Arbitration Center (VIAC); the Swiss Chamber’s Arbitration Institution (SCAI); the Permanent Court of Arbitration (PCA); China International Economic and Trade Arbitration Commission (CIETAC); the Cairo Regional Centre for International Commercial Arbitration (CRCICA); the World Intellectual Property Organization (WIPO); the Court of Arbitration for Sport (CAS); the Japanese Commercial Arbitration Association (JCAA); the Australian Centre for International Commercial Arbitration (ACICA); Kuala Lumpur Regional Centre for Arbitration (KLRCA); the Indian Council of Arbitration (ICA); etc.
32 ICC, Rules of Arbitration; LCIA, LCIA Arbitration Rules; HKIAC, Administred Arbitration Rules; SIAC, Arbitration Rules of the Singapore International Arbitration Centre SIAC Rules; etc.
33 American Bar Association (ABA) and American Arbitration Association (AAA), The Code of Ethics for Arbitrators in Commercial Disputes; International Bar Association (IBA), IBA Guidelines on Conflicts of Interest in International Arbitration; International Bar Association (IBA), IBA Rules on the Taking Evidence in International Arbitration; UNCITRAL, UNCITAL Notes on Organizing Arbitral Proceedings.
34 Blackaby et al., Redfern and Hunter on International Arbitration, 28.
35 QMUL, supra note 6, 2.
of grounds for refusal of enforcement of the arbitration award. One of the cardinal consequences of this mechanism is inadmissibility of a substantive judicial review of the arbitral tribunal’s decision on merits.

The simple and effective enforcement mechanism is complemented by an even greater advantage. By having more than 150 member countries, thus covering the majority of the globe, is ensured unanimous worldwide applicability of the New York Convention is ensured,\(^\text{36}\) which is considerably superior to the alternative to attempt enforcement of foreign judgements.\(^\text{37}\) In contrast, with the exception of unified regulation in the European Union,\(^\text{38}\) there are very few regional treaties for enforcement of foreign court decisions and none significant globally.\(^\text{39}\) Therefore, parties must often rely on multilateral or bilateral treaties or local law, which might often be rather difficult, if not impossible.

As N. Andrews points out:\(^\text{40}\)

‘there is a general perception that arbitration awards are more readily enforced in foreign systems than court judgements.’

The character of enforceability as the superior advantage is, last but not least, underlined by its objectiveness. If an arbitration agreement falls under the scope of the New York Convention, the member state in which the enforcement is sought, is obligated to enforce the award in question.\(^\text{41}\) In the words of S. M. Schwebel:\(^\text{42}\)

‘the New York Convention works.’

1.1.3 Is arbitration still perceived as a cost-effective and swift solution?

There is a direct causative link between time and costs of arbitration and separate analysis would be counter-productive. Therefore, they will be discussed together in a mutual context.

\(^{36}\) Supplemented by adoption of the UNCITRAL Model Law, built upon same enforcement mechanisms, by numerous jurisdictions.

\(^{37}\) Blackaby et. al., supra note 34, 615.


\(^{39}\) Born, supra note 3, 79.

\(^{40}\) Andrews, Mediation and Arbitration, 102.

\(^{41}\) If one of the exceptions from the exhaustive list specified in Article V. of the New York Convention does not apply.

For a long time, there has existed an ingrained opinion about greater efficiency, swiftness and lower costs of arbitration proceedings.\(^{43}\) However, simultaneously with the growth of popularity of arbitration, the unambiguous view began to weaken, and instead, the voices demanding more efficient and expeditious arbitration proceedings began to strengthen.\(^{44}\) Currently N. Andrews even compares usage of arbitration to paying an extra charge for business class in air travelling.\(^{45}\)

Nonetheless, if costs and length are ought to be judged, they always need to be evaluated in the context of other circumstances, preferably in an analysis containing an empirically assessment. The inseparable dependence on numerous factors makes costs and lengthiness more relative than absolute features, and, therefore, generalisation would be quite unwise.\(^{46}\)

Parties should be also aware of the fact that their actions cause direct consequences to costs and length of arbitration. If they approach arbitration as litigation by adopting the same procedures as used in the courts, for instance discovery, use of experts and cross-examination of witnesses, the proceedings will consequently attract the drawbacks typical of litigation. Aptly pointed out by W. Von Kumberg.\(^{47}\)

‘International arbitration can be a cost-effective and swift means of resolving commercial disputes. But it takes a concerted amount of effort and focus by all participants in the process.’

Subjectivity and relativity of costs and length of arbitration, nevertheless, do not change concerns about these features currently surrounding arbitration. Well apparent is it from the very recent QMUL’s survey, in which the respondents determined costs and length as the most dissatisfactory characteristics of arbitration.\(^{48}\)

1.1.4 Amicable or adversarial conflict resolution method?

Generally speaking, an amicable solution helps to preserve carefully and long-built business relationships. Together with low costs and fast resolution, it belongs among the most important

\(^{43}\) Born, supra note 3, 86.
\(^{44}\) Blackaby et. al., supra note 34, 36-37.
\(^{45}\) Andrews, supra note 40, 105.
\(^{46}\) Born, supra note 3, 87. (Born deems such generalisations as ‘unwise.’)
\(^{47}\) Von Kumberg, \textit{INTERNATIONAL COMMERCIAL ARBITRATION}, 80.
\(^{48}\) QMUL, supra note 6, 7.
factors for parties when resolving their dispute. Literally described by W. Von Kumberg, the goals of arbitration are: 49

“to reach an acceptable resolution as quickly and as inexpensively as possible, with the least disruption to the business and the business relationships that have been established.”

According to G. B. Born, due to an insufficient amount of objectively comparable data, it is uncertain whether arbitration provides a more systematic way towards settlements between parties than litigation. 50 However, arbitration is undoubtedly better equipped to reach settlement than litigation. In comparison with litigation, arbitration is much more flexible, not public but confidential and arbitral proceedings themselves require at least some cooperation between the parties.

Furthermore, arbitration enables to record the settlement reached by the parties to be recorded in the form of a consent award. 51 Also referred to as an award by consent 52 or an arbitral award on agreed terms. 53 If agreed on, the parties gain a settlement enforceable in compliance with the New York Convention. The power of the arbitrator to issue a consent award follows from the favour conciliationis principle and from the parties’ autonomy. 54

Nonetheless, arbitration is still a judicial procedure. 55 The primary goal of arbitration is not a settlement but establishing the ‘winner’ of the case. To cite N. Blackaby: 56

‘The function of the judge and the arbitrator is not to decide how the problem resulting in the dispute can most readily be resolved so much as to apportion responsibility for that problem.’

In summary, arbitration encourages parties to settle their disputes. Due to a higher degree of flexibility and parties’ autonomy, there is also more room for an opportunity to settle. Nonetheless, settlement is not the primary purpose of arbitration, and it depends upon the parties, whether they are aware of the possibilities, and whether they embrace them.

49 Von Kumberg, supra note 47, 78.
50 Born, supra note 3, 91.
51 E.g. Article 32 of the ICDR International Arbitration Rules; Article 26, Paragraph 26.9 of the LCIA Arbitration Rules
52 E.g. Article 33 of the ICC Arbitration Rules.
53 E.g. Article 36, Paragraph 3. of the UNCITRAL Arbitration Rules.
54 Kryvoj and Davydenko, “Consent Awards in International Arbitration,” 836.
55 Blackaby et. al., supra note 34, 24.
56 Blackaby et. al., supra note 34, 28.
1.2 International commercial mediation

1.2.1 Newly ‘reborn’ mediation

It was already established that arbitration is the most preferred dispute resolution mechanism for international commerce. In regard to dissatisfaction of parties over arbitration becoming more costly and lengthy, they have started to turn to mediation. A study published in 2014 at the Harvard Negotiation Law Review surveyed Fortune 1000 companies with results confirming such trend. The respondents were asked in 1997 and 2011, which ADR they have used in the previous three years, if any. Mediation experienced an eleven percent jump from 87% to 98%. From comparison with arbitration, which grew from 80% in 1997 only to 83% in 2011, it is apparent that the benefits of mediation tempt more and more subjects.

Although it might seem like a novelty, mediation is de facto a newly ‘reborn’ ADR. As commented by N. Alexander:

‘Forms of mediation can be traced back to traditional communities in Asia, Africa, and the Pacific, and to the ancient Greeks and Romans. Traditional mediation has also religious roots in Confucianism, Judaism, Christianity and Islam and was extensively used by colonialists and communists to pacify populations and suppress the public expression of dissent.’

The modern expansion, after some time of recession after World War II, began in the 1970s in the USA, in the 1980s in Australia and the UK, and in the 1990s in the most of the countries of civil law Europe and South Africa. The recent increase of popularity has attracted the attention of the international legal community, private dispute resolution organisations as well as international organisations such as UNCITRAL. Even though mediation misses any multi-lateral international legal instrument that would regulate its cross-border usage worldwide, there are incentives indicating possible change.

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57 QMUL, supra note 6, 2.
60 Ibid.
61 Alexander, Global Trends in Mediation, 1.
62 Ibid, 3.
Shortly after adoption of the UNCITRAL Arbitration Rules adopted in 1980 were adopted Conciliation Rules. The intention of the UNCITRAL was the same. To create a set of unified procedural rules, in this case for conciliation, to which parties might subject disputes arising out of their contracts. At the turn of the 20th and 21st century, in reaction to an increase in settling disputes via conciliation or mediation, new discussion of this topic were initiated again. During the 32nd session, the UNCITRAL Working Group II, began a discussion on enforceability of a settlement reached during a conciliation, specifically, whether it should be enforceable as an arbitral award or similarly. Although the discussions primarily considered a model law, an idea of a treaty was brought up as well.

The efforts of the UNCITRAL Working Group II resulted in adoption of the Model Conciliation Law in 2002. Its objective was to promote the use of conciliation/mediation, strengthen the enforcement of settlement agreements and assist states in establishing a unified international legal framework of conciliations/mediations. In comparison with the UNCITRAL Model Law, with 16 legislations based on or influenced by the Model Conciliation Law, its effect has been substantially smaller.

At its 62nd session the UNCITRAL Working Group II opened the topic concerning conciliation/mediation again. It particularly with focused on the issue of enforcement of settlement agreements resulting from conciliation/mediation. Due to structural, reasons this issue will be addressed further in the Subsection 1.2.4 dedicated to enforceability of settlements reached in mediation.

The UNCITRAL is not the only subject which reacted to the increase of demand to settle disputes amicably by mediation. Most of the leading arbitration institutions provide pre-established procedural rules for mediation, and alternatively mediations clauses.

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66 Conciliation and Mediation was recognized by the Art. 1. par. 1 of the Model Conciliation Law as an interchangeable term.
68 ICC Mediation Rules, LCIA Mediation Rules, HKIAC Mediation Rules, ICDR International Mediation Rules and SCC Mediation Rules.
Some incentives have also been noticed from big player of the international field such as The World Bank, in conjunction with the International Finance Corporation, which are trying to promote international commercial mediation as a more effective and beneficial dispute resolution method.\(^6^9\)

The last, but not the least, significant step on the field of mediations in the territory of Europe was made by the EU. In order to enhance the development of cross-border commercial relations The European Parliament adopted in 2008 the Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters.\(^7^0\) Besides promoting mediation, one of the main goals of the directive was to ensure recognition and enforcement of mediated settlement agreement in one member state if made in another member state. Article 6 of the directive requires member states to provide for enforcement of mediated settlement agreements. However, it should be noted that it is only a regional legal instrument and since it is in the form of directive, certain discrepancies might appear between individual national transpositions.\(^7^1\)

It is clear that mediation brings parties certain benefits. The growth of the demand as well as the continuous actions towards improving the legal framework are very clear pieces of evidence. Which benefits has mediation to offer, i.e. by what motives is the demand driven, or alternatively shortcomings, is the subject of the upcoming subsections.

1.2.2 Even more time- and cost- effective ADR?

One of the benefits most recognized by legal scholars and lawyers is reduction of costs and length of the dispute resolution process when being mediated.\(^7^2\) Together with being a non-adversarial method, it is the most common argument of proponents of mediation. However, costs and time, as relative features, will always vary depending on the circumstances of the dispute. Thus, instead of making generalisations about cost effectiveness and swiftness of mediation the evaluation should be

\(^6^9\) Kryvoj and Davydenko, supra note 54, 830; Strong, “Beyond international commercial arbitration,” 14.


\(^7^1\) A directive is a legislative act of the EU, which defines a goal that must be by all the member states achieved. States perform this goal by transposition of the directive into their national legislation in a certain period of time set by the directive. The means of the transposition is left upon consideration of the member states.

limited to specific circumstances of a dispute or a group of disputes delimited by certain specifics. But in any case, it should be supported by hard data, experience or an analysis.

Comprehensive analyses are very rare in the field of international commercial mediations. The first study focused directly on this scope was presented in the recent article by S. I. Strong published in 2016. The part focused on reasons why to mediate showed that the desire to save costs and time are considered as the two main reasons for using mediation in international commercial disputes. Nonetheless, the study does not contain hard data proving or disproving time- and cost-effectiveness of international commercial mediation.

To obtain at least some hard data analysis, a slightly wider scope needs to be used. In 2010 an EU funded study was conducted, which, among others, analysed costs and time of domestic mediation processes in civil and commercial matters in member states of the EU. When compared to litigating, arbitrating and mediating of a dispute with the value of €200,000, the average length and cost in the whole EU was:

- if litigated 697 days and €25,337;
- if arbitrated 503 days and €34,385;
- if mediated 87 days and €9,488.

The results were so stark, that, even though not directly applicable to international commercial mediation, they are a strong supportive argument for a claim, that mediation under certain circumstances might be a much more time- and cost-effective dispute resolution than litigation and arbitration. Such a conclusion is supported by its constant growing popularity as well as the result of the study of S. I. Strong.

1.2.3 Amicable solution: not about who is right and who is wrong

The most specific feature distinguishes mediation from both litigation and arbitration. Appositely is this feature described by two quotes of M. Kallipetis:

‘Unlike litigation [and arbitration], mediation is not a spectator sport;’\(^76\) and

\(^{73}\) Strong, “Realizing Rationality,” 2031.
\(^{74}\) With awareness of reduced relevancy for international commercial mediation.
\(^{75}\) ADR Center, The Cost of Non ADR, 49.
\(^{76}\) Kallipetis, “Top 5 Things Everyone Should Know About Mediation.”
‘Everything that's dear to the client is excluded in litigation because all you want are the facts to support the case you want to argue. In mediation, it's the reverse: there's always something behind as to why they are fighting each other the way they are, and once you know what that is, you can begin to address it and help them overcome it.’

Unlike arbitration, mediation represents an amicable form of dispute resolution. Its purpose and aim is to establish a settlement between parties and thus can be considered as an objective advantage of mediation. According to T. Gaultier, the efforts put into finding the true problem of the dispute and subsequently a solution acceptable for both parties, instead of giving up on the relationship, might restore the trust of the parties in each other and even strengthen it.

In favour of good impact of mediation on relationship came out some results of the S. I. Strong’s study. The respondents were asked about their opinion on which disputes are the most suitable for mediation. The vast majority of respondents, particularly 73,6% selected ‘disputes involving an ongoing relationship.’ On the other side the desire to preserve an ongoing relationship, by contrast, appeared in the research as the fifth reason why parties mediate.

Finding a consensus is not always achievable and it is neither the most important aim for parties why to choose arbitration. However, mediation is in any case the means of dispute resolution, which is built upon enabling and encouraging parties to reach such a consensus and thus preserve the relationship.

‘[M]ediation is really not about who is right or who is wrong, but rather about how the parties can make things better in the future.’

1.2.4 Enforceability – the crucial disadvantage?

As much is enforceability of arbitration agreements and arbitration awards the most significant benefit of arbitration, it is rather Achilles heel of mediation. As S. I. Strong comments:

77 Huang, “Mediation: solutions that save relationships.”
78 Gaultier, supra note 72, 46.
79 Strong, supra note 73, 2042.
80 Ibid., 2031.
81 Gaultier, supra note 72, 46.
83 Strong, supra note 69, 28.
‘the experience of international commercial arbitration suggests that mediation may be more attractive to parties if international mediation and settlement agreements are easily enforceable as international arbitration agreements and awards.’

The whole issue arises from the difference between arbitration, as well as litigation, as a legally binding judicial dispute resolution. Mediation, on the other hand, is a non-binding consensual means. If a mediation is successful, the parties reach a settlement agreement, which has a form of a regular contract with no specific benefits. Thus, if the party, for which from the settlement agreement arises some obligation, does not comply, the other party has no better possibility than to try to enforce these obligations as a violation of the contract. The same applies to not complying with the agreement to mediate. In case of international commercial mediation and various international elements of those relationships, the enforcement might turn out to be quite difficult.

The study of S. I. Strong, as the most recent study focused particularly on issues connected with enforceability of international commercial mediation and with 221 participants from international legal practice, came with interesting results. One set of questions addressed opinions of participants about the difficultness of enforceability of an agreement to mediate a settlement agreement arising out of.85

A/D - a domestic commercial dispute in the respondent’s home jurisdiction;
B/E - an international commercial dispute in the respondent’s home jurisdiction;
C/F - an international commercial dispute when the mediation was to take place outside the respondent’s home jurisdiction.

<table>
<thead>
<tr>
<th>Enforceability of agreement to mediate</th>
<th>Impossible or very difficult</th>
<th>Somewhat difficult</th>
<th>Easy</th>
<th>Untested</th>
<th>Did not know</th>
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<td>A</td>
<td>14%</td>
<td>26%</td>
<td>39%</td>
<td>12%</td>
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<td>B</td>
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<tr>
<td>C</td>
<td>26%</td>
<td>30%</td>
<td>7%</td>
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84 Alexander, supra note 72, 27.
85 Strong, supra note 73, 2050 – 55.
### Enforceability of settlement agreement

<table>
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<tr>
<th></th>
<th>Impossible or very difficult</th>
<th>Somewhat difficult</th>
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<td>4%</td>
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<td><strong>F</strong></td>
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As apparent from the results, if the dispute has an international element, or elements, the participants considered enforceability more difficult. Such an awareness logically brings negative effect to mediation and might even repel parties from using it more.

The success of enforceability of arbitration, both agreements to mediate as well as awards, is built upon the New York Convention. No similar multi-lateral international binding instrument addresses mediation. The participants of the study of S. I. Strong were subsequently asked if the existence of an international treaty concerning enforcement of settlement agreements arising out of an international commercial mediation would encourage parties to use mediation to a greater extent.\(^\text{86}\)

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>No</th>
<th>Maybe</th>
</tr>
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<tbody>
<tr>
<td>Agreement to mediate</td>
<td>68%</td>
<td>12%</td>
<td>20%</td>
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<tr>
<td>Settlement agreement</td>
<td>74%</td>
<td>8%</td>
<td>18%</td>
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</tbody>
</table>

The majority chose yes for both issues. Furthermore, the participants who answered maybe were given the possibility to explain why. Most answered in a way that an effect of an adoption of such a convention is lengthy and with uncertain results, rather than questioning of the necessity of such a convention. *Ergo*, according to the study, a legal tool that would facilitate enforceability of an agreement to mediate as well as of a settlement agreement, is almost clearly seen as a way to increase usability of mediation.

\(^\text{86}\) Strong, supra note 73, 2055.
Due to the consensual character of mediation, it is obvious that non-compliance with its outcome will occur less likely than in the case of arbitration. Consequently, situations with necessity to enforce a settlement agreement will not be quantitatively that frequent. However, enforceability still seems like a crucial drawback of mediation from a point of view that it aggravates its broader expansion.

1.2.5 Mediation’s limited scope

Another weak side of mediation resides in its incapacity to be used for every possible dispute.\(^{87}\) The consensual character and voluntariness of mediation directly delimits its scope. Therefore, the will of the parties to reach a settlement is absolutely essential. Despite the lack of will, a skilled mediator might change the view of the parties and even participation in mediation may bring some progress to the resolution of the dispute. However, no voluntary consensus can be made without the intention to reach it.\(^{88}\)

The confidential character of mediations causes incapacity to mediate disputes, in which parties seek for an authoritative decision. As T. Cheng comments:\(^{89}\)

‘International mediation is less suited to resolve an international dispute which involves a party who has a business need for a binding decision, especially for a public binding decision.’

Likelihood of an agreement over a dispute about an important principle is also significantly low.

All of these examples of unsuitability result from non-adjudicative and non-authoritative character and, thus, establish an objective disadvantage of mediation.

1.2.6 Importance of the mediator’s qualities

The mediator is the crucial person in the process of a successful mediation. The parties should pay sufficient attention to the mechanism of his appointing or in advance pick a person with the right personal qualities, training and expertise. The impact of his skills are even more emphasized by the fact that mediation is rather a personal process than purely a legal one.\(^{90}\) S. B. Goldberg and M. L. Shaw have conducted a legal study, in which confidence-building attributes\(^{91}\) were selected by the

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\(^{87}\) Strong, supra note 69, 16.

\(^{88}\) Herbert Smith Freehills, “INTERVIEW WITH MS EUNICE CHUA,” 7.


\(^{90}\) Gaultier, supra note 72, 50.

\(^{91}\) Such as friendly, empathic, likable, relates to all, respectful, conveys sense of caring, wants to find solutions.
participants as the most important for a mediator’s success. Success of mediation, therefore, often depends on the mediator’s qualities.

1.2.7 Methods of mediation

Mediation is not a unified process with only one applicable methodology. Doctrine recognises several styles of mediation, from which three are the most common.

During the facilitative mediation, the mediator should be a guide, who leads the discussion and process of the mediation in the course to reach a mutually agreeable resolution. The mediator should stay neutral, not imply his opinions and recommendations and only facilitate the process. The subject matter of the agreement results from the activity of the parties and their mutual understanding of each others interests rather than from incentives of the mediator.

The evaluative approach is based on understanding by each of the parties their objective legal position. The mediator’s role in the evaluative mediation is to analyse the dispute from legal point of view, present to the parties their strengths and weaknesses and help them realize their position. The parties can thus stipulate the agreement according to their real chances as if they faced litigation. Especially in this mediation method, substantial demands on the expertise of the mediator need to be met.

The last most commonly recognised mediation method is the transformative mediation. As in the case of the facilitative mediation, the mediator is supposed to help the parties to develop the discussion rather than influence the parties by an own opinion. However, the true purpose of the transformative mediation, is to help the parties to define their interests, needs and values, and to understand and recognize each other’s. Mutual understanding and recognition is the key to the transformative mediation, which should lead towards fixing the relationship rather than towards a mere agreement.

Despite categorisations of mediations into separate styles, an individual mediation should not be carried out and guided by the mediator in a manner to follow one particular style. Very aptly was this issue addressed by M. Kallipetis, when he was asked about his personal style.

‘I don’t believe in one particular style, I think a mediator, a good mediator, should be able to do whatever is required to help the parties to resolution.’

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93 SIMC, “Michel Kallipetis QC.”
2 Hybrid models of arbitration and mediation

In reaction to tendencies of users of arbitrations to search for less expensive and swifter procedures the use of mediation has increased. The growth, simultaneously with establishing mediation rules by most of the leading institution, has resulted in establishing a solid position for mediation on the field of ADR. Due to the increasing importance of Asia as an arbitral and ADR hub, combinations of these two procedures, which have been commonly used in various regions of Asia, have also started to spread. According to the Harvard Fortune 1000 study, they have experienced the same growth in usage as pure mediation. The usage increased by 11% when comparing data from 1997 and 2011. The thesis discusses three hybrid models, the Med-Arb model, the Arb-Med model and the Arb-Med-Arb model.

Similarly, as in the case of pure forms of arbitration and mediation, a hybrid of arbitration and mediation may be drafted ad hoc or as a pre-established solution offered by dispute resolution institutions.

2.1 Hybrid models under auspices of leading arbitration institutions

Most of the leading arbitration institutions defined in the Section 1.1 dedicated to arbitration have embraced hybrid models of arbitration and mediation and have enabled parties to attend these processes through incorporating pre-established clauses in their contracts. A brief overview of these solutions will be provided hereon.

The ICC offers two possibilities of the Med-Arb model. Either a simultaneous clause, pursuant to which, any time after referring the dispute to a proceeding under the ICC Mediation Rules, can any party commence arbitration proceedings in the same dispute. Such arbitration proceedings is subsequently conducted in parallel with mediation. The second successive clause enables to initiate arbitration if the dispute has not been settled within 45 days following filing of the request for mediation. The time frame is set by default but can certainly be adjusted upon the will of the parties.

94 Stepanovich and Lamare, supra note 59.
95 Ros, supra note 58, 353.
96 Stepanovich and Lamare, supra note 59.
97 The abbreviations are inferred from the order, in which the individual ADR methods are commenced.
98 ICC, LCIA, HKIAC, SCC and ICDR.
99 ICC, Mediation Clauses.
100 ICC, ICC Mediation Rules.
A pre-designed Med-Arb clause is also provided by the LCIA.\textsuperscript{101} It more or less resembles the second mentioned ICC clause, upon which the dispute can be referred to arbitration after a set period of time of the commencement of the mediation. The LCIA does not establish a time frame for the proceedings but rather leaves it upon an \textit{ad hoc} agreement. A similar solution is also offered by the Stockholm Chamber of Commerce Arbitration Institute (SCC).

The third most preferred dispute resolution institution according to the QMUL’s survey,\textsuperscript{102} the HKIAC, offers the Med-Arb model as their primarily suggested mediation clause.\textsuperscript{103} Pursuant to it, the dispute shall be referred to arbitration in case that the mediation conducted at the HKIAC is concluded unresolved without any other requirements or limits. The mediator’s role is regulated very clearly. A mediator, pursuant to the HKIAC Mediation Rules, shall not be appointed as arbitrator and cannot even witness during subsequent arbitration.

The International Centre for Dispute Resolution (ICDR), in its Med-Arb clause, allows arbitration to be initiated after 60 days from service of a written demand for mediation.\textsuperscript{104} Otherwise it is the same Med-Arb model as at the LCIA and the second mentioned ICC clause.

\subsection*{2.2 The Med-Arb model}

In the initiation phase of the Med-Arb model, parties try to resolve their dispute amicably in mediation. In the more fruitful scenario, the parties reach a settlement and thus achieve an amicable and, under certain circumstances, even more time- and cost-effective resolution. Otherwise they proceed to arbitration and can resolve their dispute by involving a decision-making authority with powers to issue widely recognized and enforceable awards.

The role of arbitrator and mediator can be performed either by two individuals or by one neutral. Even though the second solution is generally considered as the traditional form of the Med-Arb model,\textsuperscript{105} most of the leading arbitration institutions do not allow the mediator to act subsequently as the arbitrator,\textsuperscript{106} most probably, due to the substantial criticism of possible bias and breach of

\textsuperscript{101} LCIA, “Recommended Clauses.”
\textsuperscript{102} QMUL, supra note 6, 17.
\textsuperscript{103} HKIAC, \textit{HKIAC Mediation Rules}.
\textsuperscript{104} ICDR, \textit{ICDR Resource Guide for International Conflict Management Strategies}.
\textsuperscript{105} Herbert Smith Freehills. “Use of mediation with arbitration.”
\textsuperscript{106} Article 10, Paragraph 3 of the ICC Mediation Rules, Article 14 of the HKIAC Mediation Rules, Article 7 of the SCC Rules; and Article 5 of the ICDR International Arbitration Rules.
neutrality of the neutral.\textsuperscript{107} Both mediator, but especially arbitrator, as the decision maker, are expected to be impartial and independent. This follows from the principal of due process, as well as widely recognized international standards.\textsuperscript{108} To quote S. B. Goldberg:\textsuperscript{109}

‘the integrity of both mediation and arbitration is placed at risk when the same person serves as both mediator and arbitrator.’

In order to minimize risk of possible challenge of the arbitrator’s bias, the arbitrator should be granted express allowance to participate in the settlement discussions\textsuperscript{110} and the rules of the proceedings require precise provisions concerning confidentiality.\textsuperscript{111}

Nonetheless, even though the parties draft the rules with vigilance to minimise the legal risks, one factual effect of having only one neutral remains. Parties could fear that disclosures they make during the mediation might influence the decision of the neutral, when acting as arbitrator with decision making powers in the subsequent arbitration, and thus are less likely to be candid with the mediator.\textsuperscript{112} Moreover, one of the important tools of mediator for better understanding of the parties, caucuses, are in this model significantly threatened by the possible bias\textsuperscript{113} and might be therefore completely excluded.\textsuperscript{114} The effect of mediation is thus significantly reduced.

In contrast, appointing one neutral might bring some cost savings. Furthermore, if a dispute proceeds into arbitration stage, the arbitrator will be already familiar with the case, and, thus, some time can also be saved.

Even though the Med-Arb model is built upon combining the benefits of mediation and arbitration, the biggest advantages of each of them, simultaneously, exclude themselves. Settlement stipulated in the mediation is unenforceable under the New York Convention, the greatest asset of arbitration.\textsuperscript{115} Obtaining an award enforceable under the New York convention is possible only if the dispute is

\textsuperscript{107} Antona. “Med-Arb: a choice between Scylla and Charybdis,” 108; Goldberg, \textit{Dispute resolution: negotiation, mediation, and other processes}, 423-424; Kryvoj and Davydenko, supra note 54, 845; Ross, supra note 58, 360.
\textsuperscript{109} Goldberg, supra note 107, 424.
\textsuperscript{110} Kryvoj and Davydenko, supra note 54, 845.
\textsuperscript{111} Alexander, “How is med-arb regulated in Hong Kong?”
\textsuperscript{112} Carper, McKinsley, \textit{Understanding the Law}, 174; Goldberg, supra note 107, 423; Kaufmann-Kohler and Kun, “Integrating Mediation into Arbitration,” 491; Kryvoj and Davydenko, supra note 54, 848.
\textsuperscript{113} Kaufmann-Kohler and Kun, supra note 112; Kryvoj and Davydenko, supra note 54, 845.
\textsuperscript{114} E.g. Article 5, Paragraph 2.1 of the CEDR Rules for the Facilitation of Settlement in International Arbitration (CEDR Rules).
\textsuperscript{115} Kryvoj and Davydenko, supra note 54, 866.
resolved in the consequent arbitration, which eliminates all the cost and time savings of mediation, considered its highlight.

The Med-Arb model thus may complement mediation by a guarantee provided by authoritative and final arbitration. Arbitration is provided with a chance to settle the dispute amicably, fast and inexpensive. However, especially if chosen the typical form with one neutral, it should be approached with caution and awareness of the above-delineated issues.

2.3 The Arb-Med model

In case of a dispute governed by the Arb-Med model, parties initiate their resolution activities by commencement of arbitration. They go through some or entire process of the arbitration, which is than stayed. Parties can this way attempt to resolve their dispute by mediation with being roughly familiar with their position in arbitration. Considering, that combining mediation with arbitration is mostly done for the purpose of reducing costs and length of resolution of a potential dispute, it is a question to what extent this is achieved when some part or the entire arbitration is carried out before mediation.

Given the time and costs of arbitration, the disputes suitable for the Arb-Med model, should not require extensive discovery, documentation or evidence. It will rather be convenient for a dispute, in which achieving conclusion of a settlement might be problematic but, above all, is more important than saving time and costs. Thus the initial arbitration phase can be used as leverage or a realistic assessment of current position necessary for reaching the desired resolution by mediation.

The outcome, regardless of whether it comes from the mediation or arbitration phase, will be enforceable under the New York Convention, since, as explained here-above, arbitration is commenced upon a difference between parties in the first place. By using the Arb-Med, since the procedure is initiated by arbitration, a mediation settlement can be recorded into a consent award enforceable under the New York Convention.

Analogously to the Med-Arb model, the Arb-Med arouses the same concerns articulated in the previous Section 2.2 of possible bias and breach of neutrality of the mediator and the arbitrator, if

117 Ross, supra note 58, 353.
118 Herbert Smith Freehills, supra note 116.
119 Kryvoj and Davydenko, supra note 54, 866.
their roles are assumed by one neutral. The fact that none of the leading arbitration institutions provide the Arb-Med model as the pre-established solution, contrary to the Med-Arb model offered by most of them, may indicate less favour for this hybrid model by the international community and users of ADR.

2.4 The Arb-Med-Arb model

2.4.1 What is the Arb-Med-Arb model?

The last discussed model inserts a mediation in the middle of the process of an arbitration, the so-called Arb-Med-Arb model. It reflects the demand expressed by users of international dispute resolutions to include a mediation in the course of an arbitration. According to the QMUL’s study:

‘Encouraging settlement, including the use of mediation during an arbitration,’

was the third most preferable option how arbitration counsels could contribute to decrease costs and time of an arbitration. More broadly, the Arb-Med-Arb model will be discussed heron in the rest of this and the upcoming Chapter 3.

2.4.2 The Arb-Med-Arb model alternatives

The central point of this paper is the SIAC-SIMC Arb-Med-Arb Protocol (AMA Protocol) designed purely upon the Arb-Med-Arb model. It was launched on 5 November 2014 by the Singapore International Mediation Centre (SIMC) in conjunction with the Singapore International Arbitration Centre (SIAC). The AMA Protocol will be addressed in greater detail in the individual Chapter 3.

Several leading arbitration institutions provide various alternatives of the Arb-Med-Arb model as well, and their overview is provided in the upcoming paragraphs. However, pursuant to their particular proceedings rules, all of them only enable parties to design the proceedings into the Arb-Med-Arb model on their own as an alternative to a different set of rules. The AMA Protocol, in contrast, provides a pre-established set of rules specifically designed upon the Arb-Med-Arb model,

120 Antona, supra note 107; Goldberg, supra note 107, 424; Ross, supra note 58, 360.
121 ICC, LCIA, SCC and ICDR.
122 QMUL, supra note 6, 30.
which sets it distinctively apart. When discerning why the Arb-Med-Arb model is not provided as a pre-established rule also by other leading arbitration institutions, the only answer I found was a comment by M. McIlwrath expressed during the official launch of the SIMC that the field of ADR is 'largely conservative.'

The ICC, as well as the other institutions, do not offer a clause based on the Arb-Med-Arb model. Nevertheless, Appendix IV of the ICC Rules of Arbitration mentions case management techniques, by which the arbitral tribunal can control time and costs. Informing the parties by the arbitral tribunal about a possibility to mediate the dispute under the ICC Mediation Rules during the arbitration, is one of them. If parties do not stipulate otherwise, the mediator shall not act or shall not have acted as an arbitrator in the same dispute. Neither the Arbitration or the Mediation are limited by any set time frame. Assessment of enforceability of a potential settlement is associated with Article 33 of the ICC Rules of Arbitration. If a settlement is reached between the parties, the arbitral tribunal can issue an award by consent, but only upon request of the parties and, more importantly, if the arbitral tribunal agrees to do so. Such award is a consent award and would be enforceable pursuant to the New York Convention.

The LCIA Arbitration Rules do not regulate in any way a procedure that would resemble the Arb-Med-Arb model. However, Article 9 of the LCIA Mediation Rules states, that parties can continue any arbitration of the same dispute. Furthermore, the description of mediation provided by the LCIA encourages usage of the LCIA Mediation Rules, among others, in the course of arbitration. The LCIA alternative dispute resolution methods thus enable use of a method analogous to the Arb-Med-Arb model, although only as an ad hoc designed alternative.

A similar possibility is presented in the ICDR International Arbitration Rules. Pursuant to Article 5 of the International Mediation Rules, after delivering notice of the arbitration, the parties can be invited by the ICDR to mediate the dispute according to the International Mediation Rules. Parties can, at any stage of the arbitration proceedings, also agree to mediate. Same as under the ICC Rules of Arbitration, unless parties agree otherwise, the mediation will be conducted concurrently.

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124 SIMC, “PRESS RELEASE; Singapore International Mediation Centre officially launched.”
126 LCIA, LCIA Arbitration Rules.
127 LCIA, LCIA Mediation Rules.
128 ICDR, International Arbitration Rules.
129 ICDR, International Mediation Rules.
with arbitration and the mediator and the arbitrator shall not be the same person. Issues of the actual moment of initiation and time frame, similarly as in the ICC Rules of Arbitration, are not regulated.

The HKIAC is one of the major promoters of the Med-Arb model, which is apparent from including this method in their general mediation clause. However, the Arb-Med-Arb model, or a method resembling it, is not addressed in any of the dispute resolution rules provided by the HKIAC. The same applies to the SCC.

Enforceability of all these variations will always be considered in accordance with the above mentioned rule. Settlements from a mediation cannot be recorded in a consent award enforceable under the New York Convention, if mediation was initiated before arbitration.¹³⁰

¹³⁰ Kryvoj and Davydenko, supra note 54, 866.
3 The SIMC and the AMA Protocol

3.1 Background of establishing the SIMC and the AMA Protocol

Asia has been recipient of a significant amount of foreign direct investments in the recent years. During the period from 2008 to 2013 foreign direct investments to the countries of the Asia-Pacific Economic Cooperation increased from about US$560 billion to US$789 billion. Such a growth has naturally resulted in an increase of international trade. Singapore, with its unique position and other numerous conveniences including sound legal infrastructure, has used this opportunity and established itself as one of the two leading venues for arbitration in Asia. To become and remain a focal point for dispute resolutions in Asia, Singapore’s government began to focus on the capability to provide the entire suite of dispute resolution services for cross-border commercial disputes, such as mediation. The need for including mediation emerged from the rising popularity in connection with mediation being the traditional domestic dispute resolution method in various parts of Asia.

The Ministry of Law of Singapore has in April 2013 established the International Commercial Mediation Working Group (ICMWG) comprising international and local experts. The task given to the ICMWG was:

‘To assess and make recommendations on how to develop Singapore into a centre for international commercial mediation.’

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131 Ministry of Law, Singapore. “Speech by Senior Minister of State for law, Indranee Rajah.”
132 QMUL, supra note 6, 17.
134 1) Professor Nadja Alexander, Mediator and Director of the International Institute of Conflict Resolution, Hong Kong Shue Yan University; Senior ADR Consultant, World Bank Group; 2) Professor Lawrence Boo, Head, The Arbitration Chambers, Singapore; 3) Ms Josephine Hadikusumo, Regional Legal Counsel, Texas Instruments Singapore; Practising mediator, Singapore Mediation Centre; 4) Mr Michael Leathes, Former in-house counsel with international corporations; Director of the International Mediation Institute, The Hague; 5) Associate Professor Joel Lee, Vice-Dean, National University of Singapore Law Facult; mediator and Training Director of Singapore Mediation Centre; 6) Mr Lok Vi Ming SC, President, The Law Society of Singapore; Partner, Rodyk & Davidson LLP; Mediator, Singapore Mediation Centre; 7) Ms Valerie Thean, Deputy Secretary, Ministry of Law; and as a Co-Chairs Mr Edwin Glasgow CBE QC and George Lim SC (According to the: The Ministry of Law, Singapore, Apendix I of the ANNEX A - EXECUTIVE SUMMARY,” 8).
135 The Ministry of Law, Singapore, supra note 134, 8.
The ICMWG introduced a holistic solution encompassing a broad spectrum of measures necessary for steady and effective transformation of Singapore into a widely used mediation hub.\(^{136}\) The specific recommendations brought by the ICMWG addressed:\(^{137}\)

- establishing a professional body providing accreditation for mediators and ensuring quality standards;
- establishing an organisation providing international commercial mediation services with world-wide respected panel of mediators and ‘user-centric’ services;
- adoption of a new mediation act;
- extending tax exemptions applicable to arbitration also to mediation; and
- judicial support of mediation.

The Singapore Government followed the recommendations of the ICMWG, which resulted in launching the SIMC, an organisation providing international commercial mediation services, on 5\(^{th}\) November 2014. They also succeeded with efforts to create a quality panel of international mediators including luminaries like Mr Edwin Glasgow CBE QC and Mr George Lim SC, Dr William Ury, Eileen Carroll QX (Hon), Ting Kwok IU, Nadja Alexander, Hon Robert Fisher QC, Warren Sowerby and Michel Kallipetis QC.

The AMA Protocol, the cornerstone of the SIMC, was also introduced during the opening ceremony.

### 3.2 The AMA Protocol

Regardless of pros and cons, the undisputable characteristic feature of the AMA Protocol is innovation. The AMA Protocol is tailored exclusively for the Arb-Med-Arb model upon the philosophy to create a bridge:\(^{138}\)

- between arbitration and mediation as a dispute resolution means;
- between cultures, which avoid adjudicative resolution of disputes in favour of mediation on one side and cultures rather based on litigation, or arbitration in the case of international commercial disputes, on the other side; and
- between specific parties of every single dispute resolved by and upon the AMA Protocol.

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\(^{136}\) The official report of the ICMWG is not public.

\(^{137}\) Ministry of Law, Singapore, “Commercial Dispute Resolution Services In Singapore Set To Grow.”

\(^{138}\) Edwin Glasgow or Mr Michael Mcilwrath; in (SIMC, supra note 124).
In addition to the idea of a bridge, the AMA Protocol is based on several key features, which, when combined, set the AMA Protocol apart from other Arb-Med-Arb solutions.

3.2.1 Institutional assurance of a pre-established solution

The dispute resolution proceedings under the AMA Protocol is administered by two different institutions, the SIAC and the SIMC. The former specialised in arbitration and the latter in mediation, and both provide procedural rules for each part, the SIAC Arbitration Rules\textsuperscript{139} and the SIMC Mediation Rules.\textsuperscript{140} Thus, in conjunction with the AMA Protocol, a clear pre-established dispute resolution process is provided under the assurance of institutional support by two individual organizations during all its phases.

The efforts of the Singapore government to provide comprehensive institutional support can be demonstrated by the continuation in fulfilling the recommendations of the ICMWG. This was true particularly regarding the launch of the Singapore International Mediation Institute, the professional body for mediation, which acts as the professional standards body for mediation.

The most apparent distinction of the AMA Protocol is involvement of those two institutions itself. Even though the AMA Protocol is a conjunction between arbitration and mediation, the particular processes of the SIMC and SIAC are administered individually by and under the rules of two mutually cooperating professional institutions. The guarantee of independence of the processes and impartiality of the neutrals is thus maximised.

3.2.2 Clarity of the process

Under the AMA Protocol, parties are allowed to refer their dispute to arbitration under the auspices of the SIAC and, consequently, attempt to mediate under the SIMC. The arbitration is commenced by filing the notice of arbitration, of which the SIMC is notified by the SIAC within 4 working days. However, the arbitration, including all subsequent steps, is stayed after filing of the response to the notice of arbitration and constituting the arbitral tribunal. The initiation of mediation is arranged by the SIMC, which sets the mediation commencement date. The whole process of mediation shall be completed within 8 weeks from the mediation commencement date, unless there are special circumstances. If the dispute is not settled by the mediation, or is partially settled, the SIMC informs the SIAC about continuation of the previously started arbitration. The subsequent proceedings shall

\textsuperscript{139} SIAC, SIAC Arbitration Rules.
\textsuperscript{140} SIMC, SIMC Mediation Rules.
continue pursuant to the SIAC Arbitration Rules. Contrary, in the event of a stipulated settlement, the SIMC informs the SIAC and, if requested by parties, a consent award is rendered by the tribunal. The settlement may contain issues, which fall outside the jurisdiction of the tribunal. Those are not possible to record in a consent award. Therefore, they need to be recorded in separate agreement, which has a mere contractual character unenforceable under the New York Convention.

3.2.3 Mediator and arbitrator – two different individuals

The arbitrator and the mediator, pursuant to the AMA Protocol, are two different individuals, who can be appointed from two separate panels held by the SIAC and the SIMC. Detachment of their roles ensures impartiality and consequently contributes to protection of the awards against potential challenge on the grounds of bias.141

In addition, parties can feel safe to share with the mediator their situation and all their intentions. In the opposite case, parties may be reluctant to confide all the information to the single neutral not to disadvantage their position in the potential subsequent arbitration. Parties may also be concerned about declining or not declining a settlement proposed by the neutral due to the fear of displeasing him or her by doing so, and thus adversely affecting the future award.142

With arbitrator and mediator being different individuals, the whole process of mediation can benefit from the possibility to use caucuses. If chosen and used wisely, caucuses have the potential to be the seminal tool for a mediator, especially in the course of gaining the trust and confidence of the parties. The necessity of these two elements was pointed out in the survey conducted by G. B. Goldberg and M. L. Shaw focused on the level of importance of the different abilities of the mediator.143 Since the parties will more likely speak freely to the mediator during caucuses than during opened sessions, he/she might get to understand the parties better and consequently lead the mediation effectively.

3.2.4 The arbitration is stayed pending the outcome of the mediation

Generally, there are two ways to carry out the dispute resolution process, in which the mediation is inserted in between the arbitration. They are either carried out in parallel, or arbitration is stayed

141 Herbert Smith Freehills, supra note 88.
142 Kryvoj and Davydenko, supra note 54, 845.
143 Goldberg and Shaw, supra note 92, 397.
pending the outcome of mediation. The question, which of these two methods stakeholders prefer, was explored in greater detail by the QMUL’s survey. In favour of carrying out the processes parallelly was 51% of the respondents, whereas 78% of them preferred staying an arbitration. According to the results, it appears that stakeholders prefer minimal overlap between arbitration and mediation when conducted in conjunction. It has been already mentioned that the AMA Protocol is based on staying an arbitration for mediation, which indicates that Singapore’s model reflects the current demand of the market.

3.2.5 Set time frame

Predictability of the length of the dispute resolution process is an extremely important factor when parties choose a dispute resolution method. In one part of the QMUL’s survey, respondents were asked:

‘what could [arbitral] institutions do to improve international arbitration?’

The highest percentage of the respondents expressed their desire for publication of data about average length of time of the institution’s arbitrations. This outcome clearly reflects parties’s growing frustration with the length and uncertainty of the award process.

The AMA Protocol provides a fixed time frame of the proceedings, especially of the mediation part, which might be the right response to these demands of the market. The timeline of the AMA Protocol was aptly presented in the diagram created by the Herbert Smith and Freehills:145

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144 QMUL, supra note 6, 31.
145 Herbert Smith Freehills, supra note 116, 12.
The graphic model displays well the set periods of the individual steps of the mediation phase. Moreover, the set timeframe explicitly provides the parties with a better understanding of the period of time necessary to resolve their dispute.

To provide its clients a better perspective of the presumable length of the entire procedure, the SIAC released in 2016 the Costs and Duration Study.\textsuperscript{146} The data regarding duration of SIAC arbitrations are presented in a table herebelow.

<table>
<thead>
<tr>
<th>Type of Tribunal</th>
<th>Mean Duration (months)</th>
<th>Median Duration (months)</th>
</tr>
</thead>
<tbody>
<tr>
<td>All Tribunals</td>
<td>13.8</td>
<td>11.7</td>
</tr>
<tr>
<td>Sole Arbitrator Tribunal</td>
<td>13.0</td>
<td>11.3</td>
</tr>
<tr>
<td>Three-Member Tribunal</td>
<td>15.3</td>
<td>11.7</td>
</tr>
</tbody>
</table>

The study provides valuable information in the case, when the proceedings under the AMA Protocol advances to the arbitration phase. Moreover, pursuant to Rule 5. of the SIAC Arbitration Rules, the parties under certain conditions can apply for the proceedings to be conducted in accordance with the ‘Expedited Procedure.’ Thus awards are required to be rendered within 6 months from the constitution of a tribunal.

Altogether, the set timeframe of the mediation phase as well as the data released by the SIAC, contribute to the previously mentioned better predictability of the length of the dispute resolution process.

3.2.6 Enforceability of the outcome

There are two possible outcomes of the dispute resolution process pursuant to the AMA Protocol. The parties, after filing the notice of arbitration, will try to reach a settlement in the mediation. If successful, the parties have the option to record the settlement agreement in a consent award enforceable under the New York Convention. This is enabled due to initiation of the mediation subsequently after the arbitration fulfilling the condition of existence of a genuine unresolved dispute between parties by the time of commencement of arbitration.\textsuperscript{147} The exception create issues falling outside the jurisdiction of the arbitral tribunal. These, if settled in mediation, would need to be

\textsuperscript{146} SIAC, \textit{Costs and Duration Study}.

\textsuperscript{147} Kryvoj and Davydenko, supra note 54, 867.
recorded in a separate settlement agreement, upon which the New York Convention would not be applicable. If necessary, subsequent outcomes of the arbitral proceedings under the SIAC Rules have a form of regular arbitral awards, which fall under the scope of the New York Convention as well.

As already noted, all the hybrid models are being used with the purpose of combining the benefits of both arbitration and mediation. However, some of them forfeited the most recognized advantage of arbitration, the possibility to recognize and enforce arbitral awards effectively under the New York Convention. The AMA Protocol allows almost all the outcomes of the resolution process to be enforceable under the New York Convention in the usual way.

All the distinctive features introduced in this section form and define the AMA Protocol. All of them are in various order and composition mentioned in articles dedicated to the Singapore’s ADR method.148 How they function in practice, or more precisely, how they effect the issues of arbitration and mediation when used individually, or in other hybrid models, is discussed in the upcoming Section 3.3 and the Section 3.4.

3.3 What does the AMA Protocol bring to parties?

In the Chapter 1 were presented their advantages and disadvantages by analysing arbitration and mediation in their original forms and their various hybrid models. From these analyses emerged certain issues connected with the usage of each one of them. The upcoming paragraphs examine these issues in terms of the AMA Protocol.

3.3.1 From the perspective of costs and time

Both arbitration and mediation were analysed with a focus on costs and length of the proceedings. Especially in the case of arbitration, as displayed in the QMUL’s survey, these two characteristics have turned out to be a serious issue.149

‘Cost and lack of speed were both ranked by respondents as amongst the worst characteristics of international arbitration.’


149 QMUL, supra note 6, 24.
Where the parties submit their dispute under the AMA Protocol, there are some particularities in the terms of costs, caused by involvement of two institutions. The costs shall include a non-refundable case filing fee payable upon the filing of a notice of arbitration, an advance on the estimated costs of the arbitration and an advance on administrative fees and expenses for the mediation, both payable upon request of the SIAC.

The non-refundable case filing is, in comparison with the usual arbitration under the SIAC, increased by SGD$1,000. The amount of the advance on the estimated costs of the arbitration shall be, pursuant to Article 12 of the AMA Protocol, determined by the Registrar of the SIAC in consultation with the SIMC. The determination is based on Rule 35, Paragraph 35.2 of the SIAC Rules, according to which the costs of the arbitration include:

- ‘the arbitration tribunal’s fee and expenses;’
- ‘SIAC’s administration fees and expenses; and’
- ‘the costs of any expert appointed by the [arbitration] tribunal.’

Both the advances on the arbitration tribunal’s and the SIAC’s administration fees are calculated according to the sum in dispute. The same applies also to the mediation. In contrast, the arbitration tribunal’s and the SIAC’s administrative expenses are not set.

Including mediation in a dispute resolution process should bring savings of costs and time. Therefore, assessing what happens with the advance on the estimated costs of the arbitration when parties reach settlement in the mediation, plays a significant role when considering the actual benefits of the AMA Protocol. Pursuant to Rule 34, Paragraph 34.7 of the SIAC Arbitration Rules and Article 5, Paragraph 5.4 of the SIMC Mediation Rules, the actual costs are calculated at the conclusion of the arbitration proceedings, and at the end of the mediation respectively, always in accordance with the stage of the particular proceedings. Subsequently, the parties shall be reimbursed for the amounts already paid in the form of the advances.

Therefore, even if a settlement is reached in the course of mediation, the parties will inevitably pay some part of the arbitration costs. However, they should be entitled to the refund in the amount

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150 SIMC, SIMC Mediation Rules, Appendix B.
151 SIAC, “SIAC Schedule of Fees.”
152 SIMC, “Our Fees”; SIMC, SIMC Mediation Rules, Appendix B.
153 SIAC, “SIAC Schedule of Fees.”
154 SIMC, “Our Fees;” SIMC, SIMC Mediation Rules, Appendix B.
155 Rule 36, Paragraph 36.1 of the SIAC Arbitration Rules.
of the difference between the advance on the estimated costs paid upon request of the SIAC and the actual costs of the arbitration and mediation specified in the arbitration award, and by the SIMC respectively.

Commencement of arbitration prior to mediation and having involved two separate institutions inevitably burdens parties with additional expenses avoidable either by an *ad hoc* procedure or choosing a different institution. Therefore, it is only upon consideration of the parties, whether the other pros of the AMA Protocol outweigh these extra fees.

3.3.2 Possibility to enforce the outcome of the dispute resolution process

The possibility to enforce the outcome of the dispute resolution process is the biggest advantage of arbitration, the most preferred dispute resolution method,\(^{156}\) as well as a drawback of the rising one, mediation.\(^{157}\) The purpose of combining these two most popular ADR is to take advantage of both of them. The AMA Protocol provides parties with the possibility to obtain an outcome of the dispute resolution, which is easily enforceable in various jurisdictions regardless of how they resolve it.

The dispute resolution process under the AMA Protocol, as presented in the previous Subsection 3.3.2, may result either in a settlement agreement recorded into a consent award or in a regular arbitration award. In either case, the parties will in the majority of the cases obtain a result, which will allow them to rely on the benefits provided by the New York Convention, which ensures a uniform regime on enforcement in more than 150 countries.

3.3.3 Desire to resolve disputes amicably

Arbitration embraces the possibility to settle a dispute amicably and various institutions encourage parties in their arbitration rules to attempt it.\(^{158}\) However, by subjecting a contract to the AMA Protocol a dispute resolution process, if initiated, automatically includes the benefits of mediation. Thus parties enhance their dispute resolution by a set process, which, as pointed out M. Kallipetis, provides solutions that courts or arbitration cannot.\(^{159}\)

\(^{156}\) QMUL, supra note 6, 2 and 6.
\(^{157}\) Stepanovich and Lamare, supra note 59.
\(^{158}\) E.g. Article 5 of the ICDR International Arbitration Rules or the Appendix IV of the ICC Rules of Arbitration.
\(^{159}\) SIMC, supra note 93.
3.3.4 Limited scope of mediation

Even though the AMA Protocol benefits from combining strong sides of mediation and arbitration, it is affected by their drawbacks as well. Mediation by its nature is not a solution for every dispute. It is a method highly dependable on the will of the parties to find common ground. Lack of one of the parties to reach an agreement will thwart any efforts even by using the AMA Protocol.\textsuperscript{160} What the AMA Protocol provides in addition is the obligation to mediate adopted by parties by subjecting their contract to the AMA protocol, while arbitration is stayed. As stated in the previous paragraph, the other models encourage parties to mediate. However, commencing the process itself and an effort of a good mediator could actually have a positive impact on changing the will of the party, who had initially no desire to settle and who would decline the possibility if merely offered. As aptly pointed out by W. Von Kumberg:\textsuperscript{161}

‘Even though we users and our legal advisors and counsel are also responsible for the shape, costs and speed of our arbitration, we don’t always act in accordance with our needs.’

The disputes, in which an authoritative decision is desired, however, will still not be possible to mediate even under the AMA Protocol. The only highlight might be using the mediation for reaching a settlement agreement of those parts of the dispute, which do not require a resolution by a binding decision.

3.3.5 Dependability of the result on the skills of mediator

Mediation at its pure form is a process highly dependable on the skills of the mediator. The only solution for this weak spot of mediation, is ensuring high standards of mediators. The SIMC puts serious efforts into ensuring a high quality panel of mediators, as was presented previously. Moreover, 14 SIMC mediators were mentioned in the Mediation 2016: Analysis conducted by the Who’s Who Legal.\textsuperscript{162} The aim to assure parties about the level of expertise of the mediators is also recognisable from the policy of the SIMC in that all the mediators are required to be certified by the SIMI.\textsuperscript{163}

Even though the ultimate solution does not exist, the quality of the panel of mediators under the SIMC is undisputable. Thus at least a certain guarantee of minimisation of the risk connected with the dependability of the result on the skills of the mediator is provided.

\textsuperscript{160} Herbert Smith Freehills, supra note 88.
\textsuperscript{161} Von Kumberg, supra note 49, 83.
\textsuperscript{162} SIMC, “14 SIMC Mediators Mentioned in Who’s Who Mediation 2016.”
\textsuperscript{163} Herbert Smith Freehills, supra note 88.
3.4 Confrontation of the AMA Protocol with other hybrid models

The features of the AMA Protocol were assessed from various perspectives. This section introduces a comparison with all the other previously discussed hybrid models with focus set on the objectively comparable features. Therefore, the relative or highly variable ones like time and costs, staying of arbitration for conduction of mediation etc., even though addressed generally will not be considered, or only partially.

3.4.1 Distinctions between the Arb-Med model and the AMA Protocol

A settlement agreement, if recorded in a consent award, is enforceable due to commencement of arbitration before mediation in the Arb-Med proceedings enforceable.\(^\text{164}\) The enforceability of the result of mediation is, therefore, not the issue when compared with the AMA Protocol. However, the fact that parties approach mediation primarily before actual conduct of arbitration is the essential advantage of the AMA Protocol over the Arb-Med model in the terms of costs and time effectivity.\(^\text{165}\)

If both mediation as well as arbitration in the Arb-Med model are conducted by the same neutral, the parties may under certain circumstances face a potential challenge of the award on the grounds of bias of the neutral. In contrast, the separations of the role of mediator and arbitrator, as provided by the AMA Protocol, conforms to the principle of neutrality and impartiality highly desired for the neutral in both of these procedures. Furthermore, trust and confidence towards the mediator is also ensured in greater extent.

3.4.2 Distinctions between the Med-Arb model and the AMA Protocol

In comparison with the Med-Arb model, there are two main differences. Considering the assumption that a mediation settlement recorded as a consent award is enforceable under the New York Convention only if the commencement of the arbitration precedes the mediation,\(^\text{166}\) the greater advantage of the AMA Protocol becomes apparent. By choosing the AMA Protocol, parties gain assurance of the possibility to enforce the settlement agreement with all the benefits provided by the New York convention. However, as presented in the Subsection 3.3.1, the commencement of

\(^{164}\) Kryvoj and Davydenko, supra note 54, 867.

\(^{165}\) With awareness of their relative character.

\(^{166}\) Kryvoj and Davydenko, supra note 54, 867.
arbitration prior to mediation attracts some additional expenses, which creates the disadvantage of the AMA Protocol.

Secondly, the same conclusion with regard to the situation, when the role of the mediator and the arbitrator is assumed by one neutral, applies for the Med-Arb model.167 Of course, if the rules, under which the Med-Arb is conducted, separate these roles, this issue becomes irrelevant.

Most of the leading arbitration institutions168 offer as one of their services a pre-drafted Med-Arb clauses as one of the alternatives for resolving international disputes. Due to the basic feature of this model, commencement of mediation before arbitration, the settlement awards reached in the mediation part of the proceedings of all of these institutions will be unenforceable under the New York Convention.169 This creates the most significant advantage of the AMA Protocol in comparison with the Med-Arb model conducted by these institutions.

Considering the second distinction, the provision of the ICC Mediation Rules, the SCC Mediation Rules, ICDR International Arbitration Rules and the HKIAC Mediation Rules applicable on the Med-Arb proceedings articulate that a mediator shall not act or be appointed as an arbitrator in the subsequent proceedings.

In other cases, where rules do not regulate this question, the parties may of course adjust the rules and separate the roles of the neutral *ad hoc*. However, the biggest benefit of the pre-drafted rules resides namely in the direct usability of the ready-made solution without necessity to adjust them. This is particularly issue of the next Subsection 3.4.3.

3.4.3 Distinctions between the Arb-Med-Arb model and the AMA Protocol

The Section 2.4 dedicated to the Arb-Med-Arb model presented alternatives provided by leading arbitration institutions permitting parties to embrace the Arb-Med-Arb model.170 Regardless of their differences, they have one common characteristic. They do not provide pre-established solutions, as they do in the case of the Med-Arb model.

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167 Ross, supra note 58, 360.
168 ICC, LCIA, HKIAC, ICDR and SCC.
169 Kryvoj and Davydenko, supra note 54, 867.
170 ICC, LCIA and ICDR.
The ICC in Appendix IV of the ICC Rules of Arbitration and the ICDR in Article 5 of the ICDR International Arbitration Rules, set some basic groundings, while the LCIA only encourages parties to mediate under the LCIA Mediation Rules. In the context of the previously mentioned issue of the neutral acting both as the mediator and arbitrator, under the ICC Rules of Arbitration, as well as the ICDR International Arbitration Rules, the neutral shall not be the same person. The clarity of the procedure ensured by the AMA Protocol in connection with the Singapore Arb-Med-Arb Clause\textsuperscript{171} is, therefore, the most superior uniqueness of the dispute resolution method provided under the auspices of the SIMC in conjunction with the SIAC.

\textsuperscript{171} SIAC, “The Singapore Arb-Med-Arb Clause.”
4 **Illustrative case**

4.1.1 Background information

A comparison of the AMA Protocol with other hybrid models, as presented in the Section 3.4, provides rather theoretical conclusions. This chapter introduces an illustrative case, which is set in order to present some of the individual distinctions in a more practical manner. A background of the case is partially designed upon information obtained directly from the SIMC. With awareness of numerous possibilities of the parties to adjust the dispute resolution process *ad hoc*, the case shall follow the default procedure as set by the AMA Protocol, and the SIAC Arbitration Rules and the SIMC Mediation Rules, where applicable.

The case discusses a dispute worth SG$10,000,000\(^{172}\) between the constructor, a Norwegian company (Constructor), and the client, a company from the Republic of Korea (Client) that has arisen from a construction contract.\(^{173}\) The goal of the parties is to avoid a lengthy arbitration, as a consequence of a joint venture of the parties on a new important project, which has already started to be negotiated by representatives of both of the parties. The Singapore Arb-Med-Arb Clause was incorporated in the contract, upon which the dispute has arisen, during its negotiation by the parties. Any disputes arising out of or in connection with this contract, are thus subjected to the AMA Protocol and shall be resolved under the auspices of the SIAC and the SIMC. The arbitration tribunal shall consist of one arbitrator, and the mediation shall be conducted by one mediator, both chosen from the respective panels of the SIMC and SIAC.

4.1.2 Conduct of the case

The Constructor initiates the dispute resolution process by filing a Notice of Arbitration\(^{174}\) together with sending a copy to the Client.\(^{175}\) The day of receipt of the complete Notice of Arbitration by the

\(^{172}\) SG$10,000,000 = Cca US$7,377,000 (According to the: XE, “XE Currency Converter: USD to SGD.”)

\(^{173}\) The countries were chosen because neither of the legislations of Norway nor Republic of Korea enable any expedited procedure for enforcement of international commercial settlement agreements. (According to the: UNCITRAL, *Compilation of comments by Governments – A/CN.9/846/Add.1.*, 8, 10-11.)

\(^{174}\) Article 2. of the AMA Protocol.

\(^{175}\) Rule 3, Paragraph 3.4 of the SIAC Arbitration Rules.
Registrar of the SIAC shall be deemed to be the date of commencement of the arbitration.\textsuperscript{176} The Client has 14 days to file a response to the Notice of Arbitration.\textsuperscript{177}

The Notice of Arbitration shall include, among others, payment of the filing fee\textsuperscript{178} calculated for the overseas parties as to SG$3,000 (SIAC SG$2,000 + SIMC SG$1,000).\textsuperscript{179} The SIAC’s Registrar shall inform the SIMC within 4 days from the commencement of the arbitration.\textsuperscript{180} Upon request of the SIAC, the parties shall also pay deposit,\textsuperscript{181} whose quantum will be determined by the Registrar of the SIAC in consultation with the SIMC, based on the approximate length of the proceedings. The deposit is payable equally by the parties\textsuperscript{182} and contains:

- an advance on the estimated costs of the arbitration, including the arbitration tribunal’s fees and expenses, SIAC’s administration fees and expenses and the costs of any potential expert.\textsuperscript{183} According to the SIAC’s calculator,\textsuperscript{184} the estimated average\textsuperscript{185} fee is SG$150,525 and the estimated fee is SG$200,700.\textsuperscript{186}
- an advance on the administrative fees and expenses for the mediation; According to the SIMC’s calculator,\textsuperscript{187} SG$26,600 for one day of mediation, SG$47,920 for two days of mediation, etc, including excess deposits,\textsuperscript{188} case management fees, mediator’s fees, rental of mediation chambers, and two tea breaks.

The arbitrator is appointed by the SIAC’s President and shall be nominated by the parties until 21 days from the commencement of the arbitration, otherwise he/she will be appointed solely by the SIAC’s President as soon as possible.\textsuperscript{189} The arbitrator shall stay the arbitration and inform the Registrar, which shall send the file of the proceedings to the SIMC.\textsuperscript{190}

\textsuperscript{176} Rule 3, Paragraph 3.3 of the SIAC Arbitration Rules.
\textsuperscript{177} Rule 4, Paragraph 4.1 of the SIAC Arbitration Rules.
\textsuperscript{178} Article 10. of the AMA Protocol.
\textsuperscript{179} Appendix B of the SIMC Mediation Rules.
\textsuperscript{180} Article 3. of the AMA Protocol.
\textsuperscript{181} Article 12. of the AMA Protocol.
\textsuperscript{182} Rule 34, Paragraph 34.2 of the SIAC Arbitration Rules; Article 5, Paragraph. 5.5 of the SIMC Mediation Rules.
\textsuperscript{183} Rule 35, Paragraph 35.2 of the SIAC Arbitration Rules.
\textsuperscript{184} SIAC, “Estimate Your Fees.”
\textsuperscript{185} 75\% of the estimated fee (According to the: SIAC, “Estimate Your Fees”).
\textsuperscript{186} The calculations do not include expenses of the arbitration tribunal and the SIAC.
\textsuperscript{187} SIMC, “Fee Calculator.”
\textsuperscript{188} ‘Excess deposits are to cater for possible overtime charges.’ (According to the: SIMC, “Fee Calculator.”)
\textsuperscript{189} Rule 9 and 10 of the SIAC Arbitration Rules.
\textsuperscript{190} Article 5. of the AMA Protocol.
The mediation shall be deemed to commence on the date on which the SIMC informs the Registrar of the SIAC of the commencement of mediation.\textsuperscript{191} The parties can agree on a mediator to be nominated in ten days, otherwise he/she shall be appointed by the SIMC.\textsuperscript{192} A timeframe of eight weeks is delimited for reaching a settlement in the mediation and shall be conducted under the SIMC Mediation Rules.\textsuperscript{193}

In the event of a successful settlement, the SIMC shall inform the Registrar of the SIAC. The arbitrator may, upon a request of the parties, render a consent award on the terms agreed to by the parties enforceable under the New York Convention.\textsuperscript{194} In the opposite case, if a settlement is not reached, the SIMC shall promptly inform the Registrar of the SIAC, which, subsequently informs the arbitrator that the arbitration proceedings shall resume.

With regard to the costs of the proceedings, it needs to be emphasized that the actual costs are calculated at the end of the mediation,\textsuperscript{195} or at the conclusion of the arbitration proceedings,\textsuperscript{196} in accordance with the stage of the proceedings.\textsuperscript{197} Subsequently, the parties shall be reimbursed for the amounts already paid in the form of the deposit exceeding the actual costs.\textsuperscript{198}

Assuming both the Constructor’s and the Client’s desire to settle and thus cooperate with the procedure and with each other, the entire length of the proceedings depends on the swiftness of the communication between the SIAC and the SIMC. Otherwise, it is possible to conclude the dispute resolution process in the course of days, after which parties can continue in their other joint venture. In the event of noncompliance with the settlement agreement by any of the parties, the aggrieved party may hold a directly enforceable title under the New York Convention.

By subjecting resolution of disputes from the contract to the AMA Protocol, the Contractor and the Client, for additional expenses caused by involvement of two institutions and initiation of the arbitration prior to the mediation, thus obtained:

- a seamless solution without necessity to spend substantial expenses on legal advisors to draft the proceedings;

\textsuperscript{191} Article 5. of the AMA Protocol.
\textsuperscript{192} Article 4, Paragraph 4.2 of the SIMC Mediation Rules.
\textsuperscript{193} Article 6. of the AMA Protocol.
\textsuperscript{194} Article 9. of the AMA Protocol.
\textsuperscript{195} Article 5, Paragraph 5.4 of the SIMC Mediation Rules.
\textsuperscript{196} Rule 34, Paragraph 34.7 of the SIAC Arbitration Rules.
\textsuperscript{197} Rule 36, Paragraph 36.1 of the SIAC Arbitration Rules.
\textsuperscript{198} Article 5, Paragraph 5.4 of the SIMC Mediation Rules; Rule 34, Paragraph 34.7 of the SIAC Arbitration Rules.
• a possibility to resolve their dispute amicably in order not to harm their associated business interests;
• a possibility to resolve their dispute in a pre-set predictable timeframe;
• a possibility to resolve their disputes for lower costs in comparison with arbitration when used as a stand-alone method;
• the assistance of a mediator with high level of expertise when chosen from the panel of the SIMC;
• a guarantee of independence of mediation and mediator in relation to arbitration and arbitrator; and
• a possibility to record their settlement in a consent award constituting a title with direct, predictable and relatively inexpensive enforceability under the New York Convention in more than 150 countries of the world including countries of their domicile, Norway and the Republic of Korea.
5 Prospect and trends of the AMA Protocol

The Chapter 3 was focused on introduction of the solution provided by the SIMC in conjunction with the SIAC, and on a comparison of the AMA Protocol with possible alternatives offered by the currently leading arbitration institutions. To complement the analysis, this Chapter will discuss the practical applicability of the AMA Protocol, and a probability to become an eminent part of it.

5.1 Suitability of the AMA Protocol for certain legal fields

Considering suitability of the AMA Protocol for certain areas of disputes, two main features, pursuant to the Chapter 3 dedicated to the AMA Protocol, have the most significant impact. First is the possibility to reach an amicable solution in a pre-established seamless procedure in a pre-set predictable time frame. Second is the access to a utilization of the New York Convention as the superior tool for enforcement of outcomes of international commercial disputes, regardless of whether the dispute is resolved amicably or by the decision-making authority in arbitration. This section does not attempt to assess in detail or enumerate the areas, in which subjecting a dispute to the AMA Protocol might be convenient. The intention is, rather, by applying the previously ascertained conclusions to describe broad examples, upon which the pros and cons will be better apparent and, due to which its possible applicability in individual cases could be analogically considered.

The first feature aims the AMA Protocol towards disputes, in which the parties have considerable interest in sustaining the relationship, from which the dispute arose. One example is long term contracts where suspension of cooperation would cause higher costs than a settlement, even on initially disadvantageous terms, for instance, construction contracts or franchise agreements. Another example is a case, where the dispute prevents the parties involved in another consequent cooperation, for instance, joint ventures. Such disputes require a prompt and amicable resolution, where a guarantee of compliance with agreed settlement is a valuable benefit. Therefore, the AMA Protocol might be the favourable answer.

Besides the contractual area, corporate governance disputes might benefit from usage of the AMA Protocol as well. The confidential character of the disputes establishes a requirement, which is fully achieved by the AMA Protocol. In addition, adopting into corporate governance procedures a mechanism providing a possibility for a swift resolution method with enforceability of any outcome, might increase confidence in the ability of the company to commit towards its stakeholders and thus
increase attractiveness of the company for potential investors.\textsuperscript{199} However, the amicable character of mediation raises some questions in this case. On one side, the conflict can initiate the healing process of the company, so it can perform more effectively and efficiently. On the other side, mediation tends to bring swifter and less costly resolution, which is less harmful for the company and thus for the shareholders.\textsuperscript{200}

Deeper analysis exceeds the scope of this thesis. Moreover, proper assessment of suitability of the AMA Protocol will always be influenced by numerous factors specific for each particular case. However, as presented in this subsection, there are some characteristics of disputes, due to which the AMA Protocol might be more suitable for certain areas of international commerce.

5.2 Prospects of the AMA Protocol in the terms of its viability and competitive ability

5.2.1 The AMA Protocol: a service tailored to the user’s needs?

Even though the the SIMC and the SIAC are non-for-profit organizations, the AMA Protocol is still a paid service provided for clients. W. Von Kumberg stressed that arbitration:\textsuperscript{201}

\textit{‘is no different from any other service.’}

As such, arbitration, and the AMA Protocol \textit{per analogiam}, needs to be designed according to the needs of users of ADR to become sought-after and frequently used means. The preconception of the AMA Protocol being tailored to the user’s needs was already expressed in the introduction of this paper. If the assumptions that:

- high costs and lack of speed undermine the popularity of arbitration, particularly in conjunction with a desire for better predictability of its length;\textsuperscript{202}
- one of the biggest drawbacks of mediation impeding its wider spread is unenforceability of reached settlements;\textsuperscript{203} and
- parties desire to implement possibilities to resolve the dispute amicably,\textsuperscript{204}

\textsuperscript{199} Guy and Runesson, “Mediating corporate governance conflicts and disputes,” 42.
\textsuperscript{200} Ibid., 31.
\textsuperscript{201} Von Kumberg, supra note 49, 78.
\textsuperscript{202} QMUL, supra note 6, 23.
\textsuperscript{203} Strong, supra note 73, 2055.
\textsuperscript{204} QMUL, supra note 6, 30.
are correct, then the AMA Protocol truly seems designed according to the users needs. Moreover, they benefit from clarity of the pre-established process under the auspices of two independent institutions with worldwide recognised mediators.

5.2.2 The SIAC and the SIMC in numbers

Despite the growing interest in amicable resolution of disputes, arbitration still holds the unshakeable position of a preferred dispute resolution mechanism as indicated by 90% of respondents of the QMUL’s survey.\(^{205}\) However, only 56% preferred arbitration as a stand-alone method. The remaining 34% preferred arbitration in combination with other forms of ADR. In respect of these findings, if properly promoted, the AMA Protocol provided in conjunction with the SIAC, could greatly benefit from the current significant growth of importance of Singapore as an arbitration hub,\(^{206}\) especially since the SIAC, together with the ICC, reported in 2016 the highest growth of caseloads.\(^{207}\) All of these arguments are, nevertheless, merely assumptions.

The data concerning the caseload of the SIMC since its launch indicated, pursuant to the Annual Report 2015,\(^{208}\) an increase as well. During the course of 2014 the SIMC reported the filing of one and in 2015 of 6 cases, out of which, altogether, three were under the AMA Protocol. Until now, according to unpublished information obtained directly from the SIMC, nine cases representing 15 various jurisdictions have been filed under the AMA Protocol.

The success of the AMA protocol is undisputable considering the short time period. Nonetheless, to make any credible conclusions, the numbers are still too low. Conclusions based on assessing the caseload of the SIMC would be, therefore, premature.

5.2.3 Competitive ability towards other hybrid models

The Section 3.4 already introduced a fairly detailed comparison between the AMA Protocol and other hybrid models. Therefore, the competitive ability towards other hybrid models will be addressed only briefly. According to the information obtained from the SIMC, the AMA Protocol was designed upon outcomes of the ICMWG reflecting:\(^{209}\)

- Singapore’s reputation for neutrality;

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\(^{205}\) QMUL, supra note 6, 5.
\(^{206}\) Ibid.
\(^{207}\) Maxwell, “Arbitration statistics: and the winner is…”
\(^{208}\) SIMC, Annual Report 2015.
\(^{209}\) The official report of the ICMWG has not been made public.
• the popularity of SIAC as an international arbitration centre;
• the competency of Singapore mediators and lawyers to handle international commercial mediation; and
• review of shortcomings of the Med-Arb model, as the most frequently provided model by leading arbitration institutions, resulting in finding that the best solution was to introduce a method with commencement of arbitration prior to mediation.

All the points underline the already expressed potential of the AMA Protocol to become a part of the portfolio of ADR due to its innovative conception of the Arb-Med-Arb model.

However, to address only the legal side of its competitive ability, with regard to the Arb-Med model, the scheme, where arbitration is conducted prior to mediation, it attracts in large amount of cases higher expenses than the AMA Protocol. Moreover, it is not even provided by any of the leading arbitration institutions, which suggests lower popularity of the Arb-Med model in general. Users of the Med-Arb model might, by contrast, be attracted by the same order of conduct of the procedures, which the AMA Protocol enhances by the possibility to obtain an enforceable settlement agreement. Furthermore, when compared to the procedures, which concentrate the role of arbitrator and mediator into one neutral, the AMA Protocol offers better assurance of impartiality. However, some of the users of the Med-Arb model might be discouraged by the additional costs connected with the involvement of two institutions and commencement of arbitration before conduct of mediation. In comparison with the Arb-Med-Arb alternatives provided by leading arbitration institutions, the AMA Protocol offers an incomparably clearer and more coherent procedure and, thus, has a substantial chance to be the preferred the Arb-Med-Arb model.

5.2.4 The Arb-Med-Arb model provided by the CEDR

The SIMC is not the only dispute resolution institution providing a pre-established dispute resolution proceedings designed upon the Arb-Med-Arb model. A similar set of rules is provided by, for instance, the Centre for Effective Dispute Resolution (CEDR), namely the CEDR Rules for the Facilitation of Settlement in International Arbitration (CEDR Rules). Parties, by referring their dispute to the CEDR Rules, obtain similar clarity of a procedure provided by the AMA Protocol, with

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\(^{210}\) CEDR, *CEDR Rules.*
possible enforceability of the settlement agreements reached in the course of the mediation window.\textsuperscript{211}

The relevant difference distinguishing these two pre-established solutions is conduct of mediation by one neutral bringing the issues of bias and impartiality of the neutral.\textsuperscript{212} The negative effects of this feature, described previously,\textsuperscript{213} are compensated by provisions specifically regulating confidentiality of information obtained by the neutral during the mediation process, among others, inadmissibility of private discussions between the mediator and parties embodied in Article 5 of the CEDR Rules. But, most importantly, even though confidentiality is regulated by proper drafting, the factual problems of the parties being less likely to be candid with the mediator, remains.\textsuperscript{214} Thus the effectiveness of mediation may be decreased.

In comparison with the SIMC, besides certain differences in the rules of the proceedings, the CEDR is a well established institution, claiming to be the leading independent commercial ADR provider in Europe and one of the largest and leading ADR organisations internationally, launched in 1990.\textsuperscript{215} Due to the focus of the CEDR on the neutral-assisted dispute resolution and location in London, its target group, and consequent impact is going to be probably slightly different, especially considering that the SIMC will rather benefit from the investment growth in the Asia-Pacific Economy and the growth of importance of Singapore as an internationally recognized arbitration hub.

Nevertheless, both the CEDR Rules and the AMA Protocol address the same issue, which is currently under efforts of the UNCITRAL to provide appropriate response on an international level.

5.2.5 Enforceability of settlement agreements from the perspective of the UNCITRAL

The universally recognised need to improve enforceability of settlement reached in mediation even attracted the attention of the UNCITRAL. Precisely, the UNCITRAL Working Group II at its 62\textsuperscript{nd} session in 2015 started to consider the issue of enforcement of international settlement agreements

\begin{itemize}
\item[211] As is the time period when arbitration is stayed for the conduct of the mediation defined by Article 1, Paragraph 5. of the CEDR Rules.
\item[212] Ross, supra note 58, 360.
\item[213] Ibid.
\item[214] Carper, McKinsley, supra note 111; Goldberg, supra note 107, 423; Kaufmann-Kohler and Kun, supra note 112; Kryvoj and Davydenko, supra note 54, 848.
\item[215] CEDR, “About CEDR.”
\end{itemize}
resulting from conciliation proceedings and to assess preparation of a convention on settlement agreements.\textsuperscript{216}

Nonetheless, despite general consensus in the UNCITRAL Working Group II regarding the need to deal with this issue, various principal questions remain unsettled. Most importantly, the Working Group is even after the last session in October 2017 still not certain,\textsuperscript{217} whether a convention is the appropriate form that the international instrument should take. Also, it remains uncertain, whether the instrument, if adopted, will have the same impact as the New York Convention on arbitration, often used as a comparison. The controversies arise from complexities surrounding problems with enforcement of settlement agreements, mainly from their contractual character and extensive fragmentation\textsuperscript{218} of the regulation on the national level.\textsuperscript{219} All these uncertainties cause absolute unpredictability of the period of time until adoption of such an instrument or until it comes into force.

The results of the efforts of the UNCITRAL are still too unclear to make any current credible assessment of the possible impact on the viability of the AMA Protocol. Nonetheless, assuming the UNCITRAL resolves all the particularities, eventually adopts an instrument enabling direct, predictable and relatively inexpensive enforceability of settlement awards, and a large number of countries implement it, the effect on the AMA Protocol could be substantial. Specifically, commencement of arbitration prior to mediation by the AMA Protocol would be absolutely pointless, only burdening parties with unnecessary expenses. In such a case, the Med-Arb model would provide the same result, only with lower costs. Therefore, the results of the efforts of the UNCITRAL are crucial for the potential of the AMA Protocol, nevertheless, currently way too uncertain and probably, due to the element of time, not imminent. In any case, the most relevant aspects possibly threatening the AMA Protocol will be the practical expediency of the instrument for users of international commercial ADR, and the amount of states adopting it.

\textsuperscript{219} UNCITRAL, \textit{Note by the Secretariat} – A/CN.9/WG.II/WP.187.
**Conclusion**

Three research questions were established to examine the potential of the AMA Protocol provided under auspices of the SIMC and the SIAC in Singapore. The first to present the added value of the AMA Protocol for users of international commercial ADR, the second to discuss advantages and disadvantages of the AMA Protocol when confronted with other alternatives in the filed of international commercial ADR, and the third aimed to current and future perspectives of the AMA Protocol.

**The added value of the AMA Protocol**

The study localised several points distinguishing the ADR process when conducted under the AMA Protocol, which may be characterised as the added value of the AMA Protocol.

- A clear comprehensive set of rules governing the entire dispute resolution process without blank spots that would require the parties to design some part on their own.
- Involvement of two ADR institutions separating the arbitration and the mediation phase in the terms of the independence of the process itself, the institutions governing it, and the neutral since the arbitrator and the mediator are two different individuals.
- Providing a proceedings based upon staying arbitration when a mediation is inserted in between an arbitration, which is more preferred solution by users of ADR.
- A pre-set time frame of the mediation procedure leading to better predictability of the mediation part of the proceedings.
- A possibility to enforce the outcome of the dispute resolution proceedings regardless of whether it is a result of mediation or arbitration.

**Comparison with other ADR alternatives**

Features of the AMA Protocol were confronted with other alternatives in the field of international commercial ADR.

The AMA Protocol, in comparison with the Arb-Med model, benefits from the arrangement of the scheme, where mediation is conducted prior to arbitration. This general brings a possibility to lower expenses and resolve the dispute faster.

The main advantage of the AMA Protocol in comparison with the Med-Arb model is according to the results of the study the possibility to enforce settlement agreements arising from the mediation phase. However, formal commencement of arbitration prior to conduct of mediation and involvement
of two institutions attract additional expenses, which is the main disadvantage of the AMA Protocol. In the event that the Med-Arb or Arb-Med model is conducted by the same neutral, the separation of the roles of the mediator and the arbitrator ensured by the AMA Protocol may, nevertheless, be seen as another advantage.

Despite several leading arbitration institutions enabling parties to attend a mediation in the course of arbitration, and thus a process resembling the Arb-Med-Arb model, none of them is a pre-established solution. Thus, needlessness to design an *ad hoc* procedure is the most significant advantage of the AMA Protocol when compared with other alternatives of the Arb-Med-Arb model.

**The current and future prospects of the AMA Protocol**

Last but not least, the current and future prospects of the AMA Protocol are assessed from several perspectives. The first reveals the suitability of the AMA Protocol for certain types of disputes, particularly disputes arising from long-term contracts, generally contracts between parties with an interest in sustaining the relationship, and, even though with certain doubts, from corporate governance.

One of the conclusions of the study also indicates that the growing interest in non-adversarial dispute resolution methods and the possibility to utilize the enforcement mechanism of the New York Convention are the needs of users of ADR, to which the AMA Protocol is tailored. However, according to the information obtained from the SIMC, as well as from other public sources, the study confirmed that number of so far conducted cases under the AMA Protocol is still not high enough yet. Any assessment of the AMA Protocol’s caseload, in the terms of its potential and viability, would thus not bring credible conclusions.

The assessment of competitive liability of the AMA Protocol resulted in the conclusion that the AMA Protocol has the potential to be more preferred solution than the Arb-Med model. Moreover, it was ascertained that the Arb-Med model is not provided by any of the leading arbitration institutions, which indicates its lower popularity in general. The conclusions also indicate the potential of the AMA Protocol to attract a certain share of users of the Med-Arb model, especially those, whose priority is to obtain an enforceable settlement agreement arising from the mediation part despite additional costs brought by the AMA Protocol. In contrast, the Med-Arb model is provided by all of the recognised leading arbitration institutions. Regarding the Arb-Med-Arb model, the AMA Protocol seems to have the potential to become the preferred alternative, especially due to the pre-established solution. It provides better predictability and avoids the need to design an individual *ad hoc* solution.
Beside the claim that no other leading arbitration institutions provide a pre-established proceedings based on the Arb-Med-Arb model, the study recognises the existence of other alternative dispute resolution institutions, which do so. As an example, the study presents the CEDR Rules, which, nevertheless, differ from the AMA Protocol in certain aspects. Another conclusion of the brief analysis is that a target group and the consequent impact of these two sets of rules most probably differ as well.

As the biggest risk for the viability of the AMA Protocol was recognised the results of the current efforts of the UNCITRAL addressing the issues of enforceability of settlement agreements arising from conciliation. An expedient and widely adopted instrument could erase the most significant advantage of the AMA Protocol, enforceability of settlement agreements reached in mediation. However, the results of the efforts are still uncertain in numerous aspects, which makes any credible assessment of a current or future effect impossible.

**Final words**

The study confirmed that the AMA Protocol carries a considerable potential. The added value consists mainly in combining mediation and arbitration in a manner enabling parties to enforce a settlement agreement through the well functioning and verified mechanism of the New York Convention, and in the pre-established design of a dispute resolution process. Altogether, the conclusions of the thesis indicate that the SIMC and the SIAC have succeeded to build a bridge tailored to the user’s needs rather than a raft. However, its stability will be tested by practice, and, under certain circumstances, may be shattered in future by the results of the current efforts of the UNCITRAL.
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