

Court-Annexed Mediation for International Commercial Disputes in Asia: Strengths and Weaknesses

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Abstract : In recent years, mediation has gained a great attention from many jurisdictions thanks to its advantages. With respect to Asia, mediation has a long history of development in this region with various types to amicably settle disputes in civil and commercial issues. The modern mediation system in several Asian countries and territories comprises three main categories, namely court-annexed mediation, mediation within arbitral proceedings and institutional mediation. Court-annexed mediation (or in-court mediation) is mediation conducted by the court in the course of judicial procedures. In dealing with cross-border business disputes, in-court mediation exposes a number of advantages in comparison with two other types of mediation, especially in terms of enforcement of final result. However, the confidentiality of mediation process in subsequent judicial proceedings, qualifications of court judges and the issue of recognition and enforcement of foreign judgment are normally seen as drawbacks of court-annexed mediation as in court-annexed mediation judges will be casts as dual roles as both mediator and ultimate adjudicator in the same dispute. This paper will examine the strengths and weaknesses of in-court mediation in settling transnational business disputes in selected Asian countries, including China, Hong Kong, Japan, Singapore and Vietnam.

Keywords : court-annexed mediation, international commercial disputes, Asia, strengths and weaknesses

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