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SCMA arbitration and mediation in the changing landscape of dispute resolution

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The fundamentals of insurance

Insurance underwrites risk of loss arising from an insured peril. The insured pays a premium to insurers to transfer the financial burden of potential losses structured under the policy. In the event a peril falls within the covered risk, then there is no question of the insurer not making payment. This would be subject to the doctrine of uberrimae fidei or utmost good faith. Otherwise, the insurer will be known in the market for not honouring its obligations and will go out of business.

It is not, however, sometimes a straightforward assessment of whether a peril will be considered as a risk covered by the policy, and/or whether there is a failure to act in good faith.

Insurer's POV | Assessing the risk

While an insurer is assessing its risks, the insured must be guided to take steps that are reasonably expected to mitigate its losses, i.e. to act as a prudent uninsured. It is in the interest of insurers both from the perspective of preserving the business relationship, and the risk of

ultimate liability, to guide the insured on the steps to be taken without prejudicing their legal rights.

The nuances in the expectation of steps which should be taken to minimise losses, and the tension between the expense and the outcome of the steps is often resolved by way of expert evidence. There are also occasions where much will depend on the adjudicators' experience in assessing reasonableness, which often leads to inevitable damage to the relationship between parties and sometimes reputation. Confidentiality is vital in preserving both.

To that end, the Singapore Chamber of Maritime Arbitration (SCMA) has instituted its own set of arbitration rules, now in its 4th Edition, that imposes the obligation of confidentiality in arbitrations under the SCMA Arbitration Rules, something that is not always the case in Court proceedings that are open and public.

SCMA: Facilitating commercial settlements and cost-effective dispute resolution

The prospect of a commercial settlement through either non-administered arbitration, a model adopted by the SCMA, or blended solutions such as the SCMA ARB-MED-ARB Protocol, offers a way to preserve the relationship between parties and avoid substantial costs.

The SCMA ARB-MED-ARB Protocol, which the SCMA has put in place with the Singapore International Mediation Centre and the Singapore Mediation Centre, provides for a tiered dispute resolution mechanism and provides for the Tribunal to order the stay of the arbitration following the exchange of the Notice of Arbitration and the Response to the Notice of Arbitration.

When the dispute cannot be settled by mediation, the parties may inform the Tribunal so that the arbitration proceedings may resume.

Mediation as a preferred method for resolving disputes

The inclusion of mediation as a serious tool for dispute resolution comes as part of a change in how honest commercial men wish to resolve their

disputes. It takes the sting out of the perception that the decision is an arbitrary assessment of reasonableness especially in situations where parties have in their view, acted reasonably, often acting in a crisis on occasions where there are constraints on funds. The new Singapore Convention on Mediation also creates a harmonised international framework for the enforcement and invocation of international settlement agreements resulting from mediation, and aims to mirror the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and its successes.

SCMA's diverse dispute resolution framework

The key features of having a unique ARB-MED-ARB Protocol within the SCMA Arbitration Rules is the ability to preserve confidentiality, as well as to offer parties who may be deadlocked in a dispute the chance at mediation to preserve relationships.

SCMA has, through the careful calibration of its Arbitration Rules, strived to provide a more diverse dispute resolution framework outside of the traditional litigation tools to achieve cost-efficiency as well as the amicable resolution of disputes to maintain existing relationships. These tools, when utilised by insurers and the insured, can lead to more positive outcomes in any subsequent disputes with the hope of creating more "win-win" solutions to disputes in the future.

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