



المركز السعودي للتحكيم التجاري
Saudi Center for Commercial Arbitration

Panel Series
UNCITRAL Texts and COVID-19 Response and Recovery

How will International Dispute Resolution Evolve as a Result of the COVID-19 Crisis?

Mediation, Legal Formalities and ODR

Christian P. Alberti

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Does Mediation Stand the Test of Time or has COVID-19 Triggered or Even Accelerated any Long-term Evolution?

- Unsettling unpredictability has reignited discussions to rethink strategy and corporate culture regarding disputes.
- Mediation may become a court-mandated process as part of the Courts' renewed focus on efficiency in litigation proceedings in a COVID 19 world.
- **Issue:** The long-perceived drawback of Mediation is that a breach of the settlement agreement takes you straight back into an adversarial process.
- **International:** Singapore Convention
- **Domestic:** Homologation of Settlement Agreements by local Courts



SCCA launches its COVID-19 Emergency Mediation Program (EMP)



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- Fully remote process using dedicated online platform
- Conversion of settlement agreement into final and enforceable bond without Court intervention
- Limited grounds for refusal; review relates to public policy and ability to settle dispute by way of mediation
- Direct enforcement through Enforcement Courts
- **The Future:** SCCA considers keeping conversion process as an opt-in on its regular mediation services in the long-term.



Is it Time to Rethink Legal Formalities in International Arbitration?

- **Benefits:** Equal treatment and application of the rule of law, predictability of proceedings, legal stability of law.
- **Drawbacks:** Excessive formalism can lead to patently unjust outcomes, contradict the spirit of the law, or constitute a denial of justice.

Arbitration is in principle less formal, though a certain level of formalism cannot be dispensed with.

- **Question:** How much formalism is necessary and reasonable, particularly in times of a pandemic.



Requirement for Notarized Power of Attorneys (POAs)

- **Italy**: Italian Courts allow attorneys to accept a POA signed and dated by the prospective client that was sent via email with a copy of the his/her ID.
- **UAE**: The Dubai Courts have announced In April that public notary services are available on a remote basis for Power of Attorneys through the use of a special video/voice calling application.
- **United States**: The majority of the states issued statutes allowing public notaries to notarize remotely.



Requirement for written and signed Awards

- **Form Requirements:** Governed by a multitude of National Arbitration Laws, which are only partially harmonized. Most require a written award with at least one signature. Others allow for party-agreement as to the form, thereby allowing for digital awards with e-Signatures.
- **Highlights:** U.S. e-Sign Act and German Signature Act allow for e-Signatures; the Dutch Code of Civil Procedure allows for digital awards with e-Signatures.
- **ICC Guidance Note:** Parties may agree to use e-Signatures and e-Service, subject to any mandatory laws (concerns remain in countries such as Italy).



Requirement to sign Awards at the Legal Seat

- Most national laws as well as institutional arbitration allow for remote signatures.
- Some jurisdictions such as China, Indonesia, and Monaco still require for local signing and some even for in-person court registration.



Rebirth of ODR?

- ODR was heralded as the next big thing, particularly for small and mass claims. But the initial hype slowed down.
- COVID-19 has revitalized the interest in ODR out of necessity.
- **Benefits:** 24/7 registration of new cases and filing of pleadings and evidence online using robust and secure online case management platforms; time and costs savings by managing documents online (e.g., electronic bundles).
- **Recent Highlight:** Protocol on Online Case Management in International Arbitration (goal: global industry best practice and reference guide; help providers and developers better understand user needs).





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Thank you!

Christian P. Alberti

Chief of ADR / General Counsel

CALberti@sadr.org

