

瑞中法律协会
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14TH SCLA GLOBAL FORUM REPORT

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ROUTES TO ENFORCEMENT OF MEDIATION SETTLEMENTS

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Report on the 14th SCLA Global Online-Forum on Routes to Enforcement of Mediation Settlements

On 26th February 2021 13:00 – 15:30 CET the Swiss Chinese Law Association organized the 14th *Global Online Forum on Routes to Enforcement of Mediation Settlements*. This very lively and thought-provoking cross-border exchange between well-experienced lawyers on issues arising in the context of international enforcement of mediated settlement agreements.

At the beginning, Mr. Tianze Zhang, Member of the SCLA Committee, introduced the SCLA. In line with its vision of being a facilitator of cross-border legal discussion and collaboration, the SCLA major events in March 2021 are as follows: establishment of the SCLA fellowship program, forming the SCLA league network, publishing the third edition of the Journal of the Swiss Chinese Law Review and establishing the Geneva International Dispute Resolution Institute (“GIDI”).

He was followed by Mr. Philipp Hackett QC, Barrister at 36 Commercial, UK, who presented an excellent checklist on cross-border commercial mediation settlement agreements. Insofar difficult issues may arise such as privilege and without prejudice rules or requirement of Court approval (PRC).

The next presentation by Mr. Norman Clark, founder of Walker Clark LLC, USA, dealt with cross-border enforcement and the practical impact of Covid-19. He pointed out four practical issues that the Covid-19 crisis has raised in relation to cross-border enforcement: The challenge to client relations, the challenge to advocacy, the challenge to profitability and the challenge to innovation.

The first discussion panel which was moderated by Ms. Samantha Mathieu, Member of the German Bar, dealt with enforcement in jurisdictions and/or sector perspective. Mr. Pawel Sikora, Partner at KKG Law Firm, Poland, the first speaker of this panel explained that in Poland the settlement signed before the mediator may be enforced but the approval of the court is required. Mr. Gary Gao, Partner at Zhong Lun Law Firm Shanghai, China, then explained that China has a long tradition of mediation before the parties go to court. Next, Mr. Kenneth Barden, Compliance Specialist, USA, who is specialized in climate change mediation gave some insight into this special field of mediation, which may involve disputes with persons adversely impacted by climate change projects. Finally, Mr. Xiaobing Tang, Former Senior Counselor of WTO, China explained that mediation may be an alternative means of dispute settlement in the WTO-system. A short intervention by Mr. Xiaobing Tang followed on this issue.

The following presentation by Mr. Peter Petibone, Former Managing Partner at Hogan Lovells, USA, was about *Med-Arb: The Future of Dispute Resolution?* In Med-Arb a formal contract requires the conduct of mediation, before arbitration can begin; if the dispute is not settled in mediation it is arbitrated. A court or tribunal itself may conclude that the tribunal lacks jurisdiction if the mediation did not take place. He also explained Arb-Med or Arb-Med-Arb which involves a voluntary referral of a dispute in arbitration to mediation. If the mediation is successful, the settlement can be incorporated in a consent award which is entitled to recognition and enforcement in jurisdictions which have adopted the New York Convention.

The second panel about Med-Arb with a focus on enforcement was moderated by Mr. Godson Ugochukwu, Partner at Fortress Law Firm, Nigeria. Mr. Suhail Nigar, Managing Partner at Directus, Pakistan and UK, gave the perspective from the Middle East, and pointed out how especially in the UAE enforcement was not straightforward. Mr. Philipp Hackett QC then added the common law perspective. As a striking example how important effective enforcement is in ADR proceedings, he referred to section 44 English Arbitration Act which allows English Courts to issue worldwide freezing orders in arbitration proceedings. Mr. Gary Gao explained that China has more and more economic

interests around the world and therefore promotes mediation. Finally, Ms. Isabel Cristina López, Founding Partner of LOVILL, Panama, highlighted the benefits of mediation which are: saving costs, confidentiality, and party autonomy.

The following presentation by Mr. Anton G. Maurer, independent arbitrator, Germany, was about exceptions in enforcement of mediation settlements. These exceptions do not only relate to public policy but also to allegations of fraud and the correct translation of the identity of the parties.

The third panel which was chaired by Mr. Federico Antich, Studio dell'Avvocato Antich, Italy, was about challenges facing the Singapore Convention on Mediation. The speakers, Ms. Yonca Yucel, UIA, Turkey, Mr. Martin Skovbjerg, Associated Partner at Magnusson Law Denmark, Mr. Han Zheng, Partner at Jinmao Law Firm, China, and Mr. Peter Ruggle, Ruggle Partner, Switzerland, unanimously stressed the need to promote the Singapore Mediation Convention and mediation in general because of its efficiency. Hermann Knott stressed that the parties should also address enforcement issues in their settlement agreement.