BOOK REVIEW

ALTERNATIVE DISPUTE RESOLUTION:
A HANDBOOK FOR IN-HOUSE COUNSEL IN ASIA*
by Rashda Rana SC

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1 Mention the phrase “Alternative Dispute Resolution” (“ADR”) and most people would immediately think of either arbitration or mediation. While these are indeed two of the most popularly used forms of ADR, there do exist other forms such as expert determination, private mini-trials, neutral evaluation, dispute boards and adjudication. In recent times, we have also seen the rise of ADR platforms that combine one or more existing forms, such as Med-Arb or Arb-Med clauses, as well as multi-tiered dispute resolution clauses. For many legal counsel, navigating an unfamiliar field of ADR can be a daunting task. It is perhaps in response to this that the author, Rashda Rana SC, has taken time and effort to put together, as the book’s blurb puts it, a work that functions as a “first look and preliminary guidance to navigate the different types of dispute resolution methods” targeted at “corporate counsel based all around Asia who are dealing with disputes based in Singapore”. It is with regard to the above purported scope of coverage and target audience that this review will be concerned with.

2 As the name suggests, a handbook should contain information concise enough to be held in the palm of one’s hand. From this reviewer’s point of view, a handbook need not be the last word on a topic although it should provide sufficient context for readers to find more information if they wish to. On this basis, the author has certainly delivered. This is evident even from the introductory chapter that looks at the historical development of ADR at a global scale. The chapter is replete with references to seminal speeches as well as other primary and secondary documents that this reviewer found useful for further reading. Special attention is also given to the latest developments on ADR in Singapore, Malaysia, Hong Kong and China – jurisdictions that would be of prime interest to the book’s target audience. For instance, the section on Singapore makes references to the establishment of the Singapore International Mediation Institute and the Singapore International Mediation Centre, both recent additions to the Singapore mediation landscape, having only been incorporated in 2014.

* Rashda Rana SC, Alternative Dispute Resolution: A Handbook for In-House Counsel in Asia (LexisNexis, 2014). A review copy was kindly provided to the Singapore International Mediation Institute by the publishers.
With regard to the actual ADR forms, the author has adopted what this reviewer found to be a rather unique approach. Rather than devote specific chapters to every single ADR form, the author groups them into three, broad categories: (1) minimal requirements of due process and natural justice; (2) processes with direct involvement of and most control by the parties; and (3) process driven forms of ADR. Under this framework, “expert determination” falls under the first category, mediation under the second and Med-Arb the third. To this reviewer’s mind, it was difficult initially to appreciate this approach. After all, placing mediation under category (2) of “processes with direct involvement of and most control by the parties” seemed to suggest that it was not a “process driven form of ADR” – category (3). However, it soon became clear that the categorisation was done mainly to facilitate a neater presentation of information and was not intended to polarise each form along the category headings. The author herself comments that while arbitration and adjudication would fall under category (3), these two forms are dealt with in separate chapters because of their perceived separate sphere of influence from other forms of ADR. Subsequently, this reviewer did find the categorisation framework helpful as a starting point in explaining the differences between various ADR forms to others less well-versed in the field.

Within each chapter that explores the ADR forms in more detail, the author provides not only a summarised history of each ADR form but also excerpts and analysis of cases where legal issues have arisen from the use of such ADR clauses. These lend themselves well both to readers who wish to identify potential areas of concern in using such ADR forms as well as researchers who seek case precedents. There are numerous references to cases and legislation from across the Asia-Pacific region, which would be particularly helpful for readers who undertake cross-border work. For example, the section on early neutral evaluation draws on material from the Building Disputes Tribunal in New Zealand, while a discussion on the role of good faith under common law covers cases from Australia, England and Singapore.

Those in practice may find the chapter on multi-tiered dispute resolution clauses particularly insightful especially if such clauses are prevalent in their line of work. Such clauses are not only complicated from a risk-management perspective but may also raise novel points of law such as enforceability. The inclusion of a comparative study of some of the latest cases from countries such as Singapore, Australia and England helped this reviewer greatly in appreciating the different legal positions and issues that have arisen recently on such multi-tiered dispute resolution clauses.

No handbook on ADR would be complete without drafting guidance and here the author provides sound advice on the entire process in the closing chapter. This chapter sets out a comprehensive list of issues that may arise at every stage of the drafting process, from planning strategies to tackling common problems. The author takes the reader through a methodical checklist that covers various choices parties have to
make, such as selecting a jurisdiction clause, conditions precedent to the trigger of the jurisdiction clause and the choice of law clause. An even more detailed outline is provided for the drafting of multi-tiered dispute resolution clauses. Common areas of confusion, such as the difference between jurisdiction and choice of law clauses, are also dealt with in detail. A section has also been set aside that purports to deal with common problems in drafting dispute resolution clauses, which primarily advocates using a bespoke approach rather than relying on boiler-plate dispute resolution clauses. However this reviewer felt that given the author's experience, it may have been helpful to share some case studies or anecdotes that highlight how some of these problems manifest in practice and the consequences or solutions that came about.

7 This leads to areas that this reviewer would like to see incorporated in a future edition of the work. Aside from more personal experiences or case studies, it may also be helpful to have drafting tips placed at the end of the chapter, section or group for each ADR form. This may make the reference process more efficient for a reader who wishes to quickly draft or review a specific ADR form, instead of having to flip between chapters to look at issues specific to the ADR form and issues on drafting. Last, this reviewer is concerned that the decision to place arbitration and adjudication in separate chapters from other ADR forms may lead readers to conclude erroneously that the former forms are preferred. One suggestion would be to avoid categorising the ADR forms entirely. This would shift the focus to looking at each ADR form on its own merits and uses, which in this reviewer's view, would be consistent with the author's own position of encouraging drafters to adopt a bespoke drafting approach for dispute resolution clauses.

8 Nevertheless, given the ever-evolving nature of the ADR field, the author's work in successfully collating and providing concise analysis on so many different forms of ADR remains an impressive feat. While there may certainly be other publications that go into much more detail on specific issues, the coverage provided here is perfectly suitable for a handbook, particularly one targeted at in-house counsel dealing with disputes based in Singapore.