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TACKLING SOCIETAL CHALLENGES

This is a monthly series on SMU research which aims to create significant impact by addressing these five societal challenges: Economies & Financial Markets, Social Fabric & Quality of Life, Boundaries & Borders, Sustainability, Innovation & Technology.

In this issue, SMU researchers offer insights on tackling the societal challenge of navigating boundaries & borders.

A smoother channel for settling disputes

The changing field of international mediation is offering small businesses a cost-effective means of resolving commercial disputes

As the profile of businesses engaged in disputes is now more diverse than ever – including start-ups, small family businesses, women and young entrepreneurs, as well as large corporates – there is a need for dispute resolution mechanisms that are culturally responsive as well as internationally robust.

According to Nadja Alexander, Professor at Singapore Management University (SMU) School of Law, mediation is one mechanism that offers a flexible and confidential forum for businesses to resolve their differences in an effective and efficient way. Mediation is a structured process where an impartial third party assists disputing parties in resolving commercial conflict through the use of specialised techniques.

Interest in mediation to resolve cross-border disputes has increased dramatically in recent years due to increasing access to the Internet and the growing number of smaller enterprises doing business internationally. Businesses of all sizes are also turning to mediation because other forms of dispute resolution, such as arbitration and litigation, can be inflexible, as well as expensive and lengthy processes.

Emerging trends

In a recent study, Prof Alexander identified some of the top trends impacting the nature and practice of international mediation. For instance, mediation is being combined with arbitration and other forms of dispute resolution in what are referred to as mixed mode mechanisms. Examples of such mechanisms include the Arbitration-Mediation-Arbitration (AMA) Protocol developed by the Singapore International Mediation Centre (SIMC) and the Singapore International Arbitration Centre (SIAC).

"This has made it easier for businesses to insert mixed mode dispute resolution clauses in their commercial contracts well before any dispute arises. This makes a lot of sense as it's generally easier to agree on a method for managing conflict before it happens. Of course, the AMA protocol can also be used by disputing parties after a dispute has arisen, provided all parties agree to its use," explained Prof Alexander.

The surge in international mediation has also accelerated the need for good governance structures. In August 2019, 46 countries came together to sign the first United Nations treaty on mediation called the Singapore Convention on Mediation. The Convention offers an international legal framework that facilitates the recognition and enforcement of mediated settlement agreements across national borders. The number of signatories has since grown to 51 and continues to grow.

"The Convention will have a significant impact on how businesses decide to resolve disputes and, beyond that, on trade and investment flows. It will promote investor confidence in the use of mediation within regional developments such as the Belt and Road Initiative, and enhance the attractiveness of online mediation initiatives that support commercial justice for micro, small and medium enterprises in cross-border disputes," said Prof Alexander.



Professor Nadja Alexander

The study also identified the increasing use of technology in mediation as another significant trend, with digital solutions such as artificial intelligence facilitating a move towards online dispute resolution. Meanwhile, private international dispute resolution hubs that facilitate effective mediation services are also on the rise.

These and other trends in international mediation are having an impact on the role that professional advisors, especially lawyers, play in advising their commercial clients who are caught up in disputes. This has led to a new legal specialisation called mediation advocacy.

"Assisting commercial clients in mediation involves a significant paradigm shift for trial lawyers, in particular. It's about helping clients make smart business choices to sort out their differences and get on with their future. At the same time, they need to recognise that mediation is a client-centred negotiation; it's not about winning a legal case," said Prof Alexander.

Increasingly viable for SMEs

While many large corporations are already using mediation, numerous SMEs are unaware of the opportunities this mechanism offers to solve problems in a cost-effective manner. With the Singapore Convention, mediation will become an attractive option for smaller businesses.

Technology is also bringing down the cost of using this process to settle disputes. "Mediation doesn't have to be expensive, it doesn't always have to involve lawyers, and a lot can be done online," said Prof Alexander.

Meanwhile, as businesses increasingly look for greater certainty in managing their risk, Singapore offers a dispute resolution eco-system that is both robust and flexible, she noted. "Singapore plays a leadership role as a mediation-friendly venue, in addition to its reputation as an international hub for arbitration and litigation."



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The role of trust in business success

Demonstrating integrity is a key factor for organisations keen to build trust within their ranks

Whether it's between managers and their subordinates or a brand and its customers, trust is an important factor for success in any organisation.

And in today's globalised world, it is critical that business leaders understand how different cultures build trust.

A lack of trust in a relationship at the workplace can create conflict and, over time, further reduce trust and adversely affect group performance.

While there has been research that focuses on factors leading to trust, such as ability, benevolence and integrity of the trustee, there is very little understanding on how these three factors of trustworthiness vary in terms of importance in trust-building across countries.

In addition, it is unclear how one's general willingness to trust, a trait-like factor termed propensity to trust, affects relationship-building in different countries.

Associate Professor Tan Hwee Hoon from SMU's Lee Kong Chian School of Business was part of a team that conducted a multi-year study spanning 30 countries across six continents using a dataset of 2,715 individuals that examined the above two issues.

Integrity and trust-building

The team aimed to provide individuals from different cultures with a road map for successful trust-building.

The project, which was conducted with two other trust researchers, Roger Mayer from North Carolina State University and David Schoorman from Purdue University, found that integrity plays the biggest role in trust-building in all 30 countries except for Ethiopia.

"This was sort of a surprising finding for us as we had earlier theorised that the factor of benevolence would be more important in trust-building in more collectivistic cultures.

Hence, we expect benevolence to be of more importance in Singapore and in Asia compared to the United States and Europe," said Associate Prof Tan.

She suggested that integrity could have become more salient in the last few years given the current global environment marked by the emergence of US President Donald Trump and Brexit, where outrageous claims that are clearly not true have taken centre stage.

"Being primed of this situation on an almost daily basis could affect one's consideration of what is considered trustworthy."

Based on the team's findings, she argued that businesses should work to create a reputation that focuses on integrity and "doing the right thing".

She said, "At the individual level, supervisors or anyone who wants to build trust, should walk the talk, be reliable, and focus on the larger interest of the organisation, rather than on one's self-interest."

As behaviours are what others can see, this will be



Associate Professor Tan Hwee Hoon

an important focus. Not just by talking, but by doing."

Indeed, in an increasingly complex and impersonal world, building a reputation for trust and integrity will help businesses succeed by enhancing their ability to attract talent and customers.

The 2018 Edelman Trust Barometer Report found that 42 per cent of respondents felt they were not sure which brands or companies they could trust.

Against this backdrop, it is critical that businesses demonstrate integrity if they want to gain an edge over the competition.

More certainty is related to greater willingness to trust

Another finding in their study was that the propensity to trust, that is, the general willingness to trust others, was higher in societies which are higher in uncertainty avoidance.

"Our study found uncertainty avoidance to positively impact propensity to trust. It supports our theorising that the rules and processes that are built into a society with a high level of uncertainty avoidance allow for higher propensity to trust," she said.

She explained, "Societies high in uncertainty avoidance build rules and processes to cope with the ambiguity they face. The prevalence of rules and processes likely protects one against uncertainty. When there is a strong safety net, one's general willingness to trust strangers would be higher."

This has practical implications for a high uncertainty avoidant society such as Singapore. Singaporeans have a greater willingness to trust others as the Singapore society has structures built in to facilitate trust-building.

Perhaps the implication for organisations is to build sufficient structures to foster a willingness to take risk in trusting others. This finding is paradoxical in that to enable risk taking, one needs to build safety nets.



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