FOCUS
ACCOUNTANT AS MEDIATOR

EMBROILED IN A FINANCIAL DISPUTE?

Consider an Accountant-mediator

This is where mediation comes in. In many complex commercial disputes, an accountant-led mediation offers potential advantages over the traditional courts in terms of efficacy (getting it done right), efficiency (getting it done quickly), and confidentiality (keeping it quiet).

GETTING IT DONE RIGHT
Judges typically do not have specialised training or experience in financial matters, leading them to rely heavily on evidence from expert witnesses (who often disagree on technical issues and are of course partial to the party appointing them). In the absence of his/her own understanding of the technical issues, such an either-or scenario may lead to the temptation to “split the baby”.

Mediation may offer deliverance. It allows for the appointment of an accountant-mediator with financial expertise to facilitate a technical discussion that may enable the parties to recognise solutions beyond the either-or scenario.

GETTING IT DONE QUICKLY
Similarly, an accountant-mediator can make use of his/her facilitation and negotiation skills to remove some of the “noise” and focus on the technical points in dispute. This process of “hot-tubbing”, getting the parties and/or their experts together to answer...
questions from the mediator, can be very effective in identifying common ground and moving the parties toward a resolution.

Another benefit of mediation is the promise of finality, subject to reaching a settlement agreement in writing. Without the threat of and the ability to appeal, the tendency for either party to stretch out litigation to another round of costly briefings and arguments is lessened, resulting in mediation offering the advantage of a (relatively) speedy resolution of issues. With mediation generally being less procedural compared to, say, litigation, it can also be less costly to engage an accountant-mediator.

**KEEPING IT QUIET**

*Stare decisis* or the doctrine of precedent requires that the outcome of court cases, including the key issues and findings, be subject to public disclosure in order to provide insight into decided cases and to provide guidance on the potential impact on pending matters.

This is of key concern to litigants in situations where the issues relate to sensitive financial or operational information that constitute the intellectual property of the company. Sales and profitability forecasts for specific products in new territories, the state of development of a new anti-viral drug, or a host of other trade secrets can be subject to discovery in litigation. Indeed, trade secrets need to be protected throughout the discovery process and through trial (and potentially, through appeal). Apple found this out the hard way when marketing spend and other sensitive iPhone and iPad financial data were disclosed in a suit against Samsung Electronics before the US Federal Court.

In contrast, mediation allows for the confidentiality of the parties, their trade secrets, the issues and the ultimate disposition of the matter. It enables companies to avoid the risk of negative publicity – information provided in the course of mediation is to remain confidential.

**CONCLUSION**

As long as there are business agreements, there are going to be business disagreements. When it comes to complex commercial disputes, the use of a mediator with financial expertise and experience can offer potential advantages over the traditional courts – by getting it done right, getting it done quickly and keeping it quiet.

Quek Bin Hwee is Principal Mediator, Singapore Mediation Centre, and Partner, PwC Singapore. For more information on the Singapore Mediation Centre, please visit www.mediation.com.sg.