

## INTERNATIONAL COMMERCIAL MEDIATION

### The Singapore Model

Singapore, an island nation, situated at the heart of Southeast Asia, serves as a key node for businesses serving the Asia-Pacific region, and a significant launchpad for access to major emerging markets in Southeast Asia, China and India. Moreover, in recent years, Asia has experienced unprecedented development and growth. Against this fast-evolving landscape, Singapore's international dispute resolution framework and services have developed rapidly in tandem, to serve the needs of the region. Set against the backdrop of Singapore's broader vision to serve as an international dispute resolution hub for cross-border disputes, this article traces the development of Singapore's user-centric model of international commercial mediation which is built upon Singapore's trusted legal framework, anchored by the rule of law, and supported by a comprehensive suite of high-quality dispute resolution services. The article also posits a mapping of key aspects of Singapore's mediation reforms against the conceptual model that undergirds the overall development of Singapore's international dispute resolution framework as a foundational support to catalyse growth and future relevance.

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### I. Introduction

1 The signing of the United Nations (“UN”) Convention on International Settlement Agreements Resulting from Mediation in

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2019<sup>1</sup> (“Convention on Mediation”) will mark a significant milestone for the development of international commercial mediation globally and enhance the attractiveness of mediation as an effective option for cross-border dispute resolution.

2 Singapore, an active proponent and early adopter of the proposed Convention, will host the signing ceremony and be among the first few countries to embrace the new Convention. The hosting of the signing ceremony is a rare honour for Singapore, and emblematic of the significance Singapore has placed on developing its international commercial mediation framework in recent years.

3 The transformation and development of Singapore’s mediation landscape from its initially domestic orientation to its current international focus required careful design, planning and implementation. In this article, the author will trace the development of Singapore’s emerging international commercial mediation framework, its domestic underpinnings and its evolution against the backdrop of broader efforts to develop Singapore as an international dispute resolution hub. The author will also map key aspects of Singapore’s reforms in the area of international commercial mediation against the conceptual model that undergirds the development of Singapore’s international dispute resolution framework.

## II. Contextual backdrop

4 Singapore, an island nation, is home to a high concentration of multinational corporations, organisations and start-ups. It has consistently ranked as one of the most competitive nations and best places for business.<sup>2</sup> Situated at the heart of Southeast Asia, and within a seven-hour flight radius of most countries in the Asia-Pacific, Singapore serves as a key node and gateway for businesses serving the Asia-Pacific region. It also serves as a launchpad and strategic location for access to major and emerging markets in Southeast Asia, China and India.

5 In recent years, Asia has experienced significant development and growth. It has become the fastest-growing region in the world, contributing to more than 60% of global growth.<sup>3</sup> The Asian Development Bank has projected that Asia could account for half of

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1 GA Res 73/198, adopted at the United Nations General Assembly, 73rd Session (20 December 2018).

2 World Bank Group, *Doing Business 2018: Reforming to Create Jobs* (15th Ed, 31 October 2017) at p 4. Singapore was ranked second after New Zealand.

3 International Monetary Fund, *The Regional Economic Outlook: Asia and Pacific* (October 2018).

global gross domestic product by 2050.<sup>4</sup> It is estimated that US\$1trn will be invested under China's Belt and Road Initiative ("BRI"), with many projects situated in Asia.<sup>5</sup> Around 33% of all outbound investments related to the BRI flows through Singapore, while 85% of inbound BRI investments makes their way to China through Singapore.<sup>6</sup>

6 Nestled in the centre of this economic activity, demand for Singapore's legal and dispute resolution services has likewise been on an upward trend. The value of legal services exported from Singapore more than doubled, from S\$363m in 2008 to S\$867m in 2017. The value of legal services exported as a percentage of operating receipts also showed an increase during the same period.<sup>7</sup>

7 The Global Arbitration Review estimated that between 2012 and 2016, there was a 37% increase in cases administered by 11 arbitration institutions worldwide. While caseloads of institutions outside Asia grew by 13%, caseloads of institutions in Asia grew by more than 75%. Singapore's flagship arbitration centre, the Singapore International Arbitration Centre ("SIAC"), saw a new record for the highest number of new case filings and administered cases in 2017. The caseload figures have grown year on year, and increased by more than five times since the last decade. Around 83% of new cases filed in 2017 involved international parties. SIAC was also ranked as the most preferred arbitral institution in Asia, and third out of the top five arbitral institutions in the world.<sup>8</sup> International dispute resolution organisations based in Singapore have also experienced similar growth. According to statistics released by the International Chamber of Commerce ("ICC"), Singapore retained its position as the number one ranking place of ICC arbitration in Asia in 2017, the eighth year in which it was ranked as ICC's top arbitration seat in Asia.<sup>9</sup>

8 The correlation between law, business and the demand for dispute resolution is perhaps best encapsulated in a speech delivered by

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4 Asian Development Bank, "Asia 2050 – Realizing the Asian Century" (Executive Summary).

5 Jane Perlez & Yufan Huang, "Behind China's \$1 Trillion Plan to Shake Up the Economic Order" *The New York Times* (13 May 2017).

6 Warren Fernandez, "Singapore Can Play Key Role in China-led Belt and Road Initiative: Chan Chun Sing" *The Straits Times* (24 January 2018).

7 Singapore Department of Statistics and Ministry of Law, *Profile of Singapore's Legal Industry* (September 2018).

8 Queen Mary University of London and White & Case LLP, *2018 International Arbitration Survey: The Evolution of International Arbitration* (May 2018).

9 International Chamber of Commerce, "ICC Court Case Management Team Begins Operations in Singapore" (23 April 2018).

the Minister for Law, K Shanmugam, at a conference in 2015<sup>10</sup> where he observed:

Law essentially follows business. As businesses grow in this part of the world, we can also expect demand for legal services to grow to support regional commercial activity. One key area is of course dispute resolution. With increased commercial activity, it is natural that the need for dispute resolution will also rise.

9 Against this backdrop, Singapore's dispute resolution framework and services have been developed to serve the needs of the growing numbers of international businesses operating out of Singapore. In devising this framework, significant attention has been paid to understanding the requirements of commercial users, and the need to modernise and evolve swiftly against a dynamic and constantly changing business landscape.

### III. Early beginnings – An eclectic and phased approach

10 The approach to building up Singapore's dispute resolution framework has always been a collaborative one, involving both public and private sector input and participation. The building blocks for a comprehensive Alternative Dispute Resolution ("ADR") system in Singapore were laid in the mid-1990s, when a high-level committee on ADR ("ADR Committee") comprising both public and private sector representatives<sup>11</sup> was appointed by the then Minister for Law and Minister for Foreign Affairs, S Jayakumar, in 1996 to look into how ADR

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10 K Shanmugam, Minister for Law and Foreign Affairs, speech at the International Bar Association 4th Asia Pacific Regional Forum Conference (19 March 2015) <<https://www.mlaw.gov.sg/content/minlaw/en/news/speeches/speech-by-minister-shanmugam-IBA-4th-AP-regional-forum-conference.html>> (accessed 27 December 2018).

11 Chaired by the then Minister of State for Law and Home Affairs, Ho Peng Kee, the Alternative Dispute Resolution Committee's members comprised Mohd Maidin Packer Mohd, Parliamentary Secretary, Ministry of Education and Member of Parliament ("MP") for the Marine Parade Group Representation Constituency ("GRC"); Choo Wee Khiang, MP for Jalan Besar GRC; Lau Wah Ming, Deputy Secretary, Ministry of Law; Lim Hsiu Mei, Deputy Secretary, Ministry of Community Development; Lim Hock Chuan, Chief Executive Officer, Singapore Broadcasting Authority (then representing the Ministry of Home Affairs); Ng Peng Hong, Deputy Registrar, Supreme Court; Liew Thiam Leng, Director, Court Mediation Centre; Soh Tze Bian, Deputy Senior State Counsel, Attorney-General's Chambers; Lim Lan Yuan, Head, School of Building and Estate Management, National University of Singapore; Lim Lei Theng, Lecturer, Law Faculty, National University of Singapore; Serene Wee, Director, Singapore Academy of Law; Chandra Mohan, President, Law Society of Singapore; Philip Chan, Executive Director, Singapore International Arbitration Centre; and Lawrence Boo (then representing the Singapore International Arbitration Centre).

processes and, in particular, mediation, could be further promoted in Singapore. Chaired by the then Minister of State for Law and Home Affairs, Ho Peng Kee, the ADR Committee was tasked to review the current uses and consider new uses for ADR processes in Singapore.

11 In the ADR Committee's report<sup>12</sup> that was submitted to the Government in July 1997, the ADR Committee opined that having studied the experience of other countries:<sup>13</sup>

... Singapore can take an eclectic approach. We should select the best features from these and other countries to set up a national framework for promoting ADR processes. The ADR Committee examined various models, and decided to take a measured and phased approach to promoting ADR processes, and in particular, mediation in Singapore. This will enable us to learn from the implementation process and fine-tune it, where necessary.

12 The ADR Committee contemplated an ADR model that was pervasive and adapted to suit the Asian culture and perspectives. Summarised in the ADR Committee's report as a national policy, the promotion of ADR and mediation in particular was recommended "as reflecting aspects of our Asian tradition and culture which are worthwhile preserving. Government should lead by formulating a policy statement to this effect"<sup>14</sup>

13 The ADR Committee recognised that "every society will have to consider which process or combination of processes best serves its needs"<sup>15</sup> In this vein, the ADR Committee proposed a conceptual model for how mediation should fit into the overall Singapore national infrastructure for court-based and non-court-based mechanisms to resolve not only commercial but also community disputes. The model as envisaged by the ADR Committee is depicted in Diagram I below.

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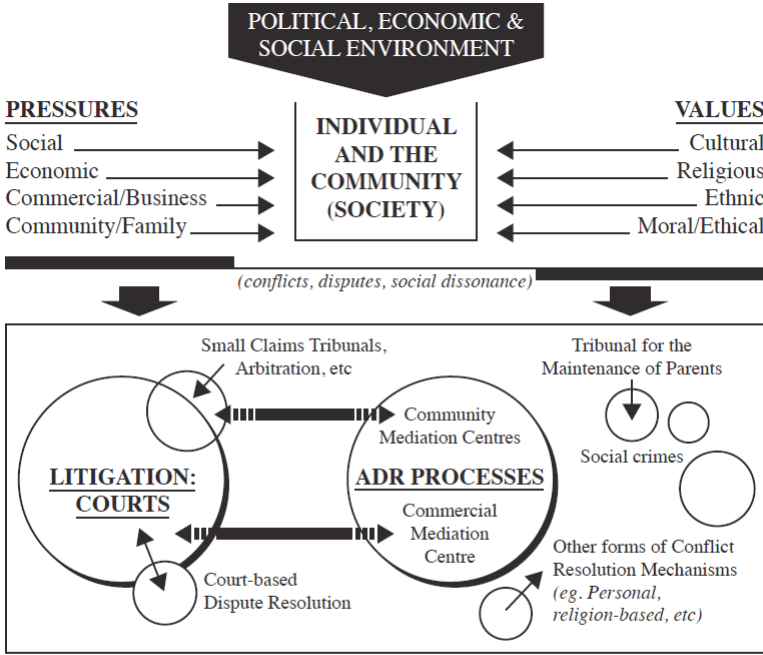
12 *Report of the Committee on Alternative Dispute Resolution* (1997).

13 *Report of the Committee on Alternative Dispute Resolution* (1997) at p 3.

14 *Report of the Committee on Alternative Dispute Resolution* (1997) at p 3.

15 *Report of the Committee on Alternative Dispute Resolution* (1997) at p 8.

Diagram I: Conceptual model of conflict resolution<sup>16</sup>



Note 1: The 2 large circles represent the 2 main systems of conflict resolution in society that we want to maintain

Note 2: The bold lines show that there are linkages between the 2 systems

Note 3: The smaller circles at top right hand corner portray the existence of social conflicts leading to crimes, which we want to minimise or eradicate, over a period of time.

14 As can be seen from the diagram, the conceptual model described by the ADR Committee was at that time built upon a domestic frame of reference, taking into account the then nascent ADR landscape in Singapore, and the domestic civil and social mediation needs at that time, while at the same time laying the foundation for the future development of commercial mediation. This conceptual model, which took into account Singapore’s unique Asian cultural and social context as well as the economic and political context of the times, formed the basis for the establishment of Community Mediation Centres (“CMCs”) to deal with community disputes, and the Singapore Mediation Centre (“SMC”) to deal with commercial disputes.

15 The framework has served Singapore well over the years. Since their establishment in 1998, the CMCs have handled more than

16 Report of the Committee on Alternative Dispute Resolution (1997) at p 10.

9,000 community disputes.<sup>17</sup> The settlement rate has remained consistent at around 75%.<sup>18</sup> Likewise, since establishment, more than 3,600 matters have been mediated at SMC with a settlement rate of about 70%, with 90% of them being resolved within one working day.<sup>19</sup> Both institutions have recently celebrated their 20th anniversaries and are now well recognised as the leading institutions for mediation in their respective spheres of influence.

#### IV. Singapore's international dispute resolution ecosystem – Developing an “international suite”

16 With the basic foundations laid, the impetus for developing Singapore's international commercial mediation regime gained momentum in the early 2010s. By then, Singapore had an active and thriving domestic mediation landscape. In the area of arbitration, Singapore had also developed its unique prototype for a thriving international arbitration “ecosystem” founded upon (a) Singapore's brand of trust anchored by a legal framework grounded in the rule of law; (b) strong judicial support; (c) strong institutions; (d) a critical mass of deep talent and expertise; and (e) purpose-built supporting physical infrastructure that was ergonomic and attentive to users' needs.<sup>20</sup>

17 Taking a leaf from the growth story of Singapore's arbitration system, it was assessed that an international commercial mediation framework could be built on a similar scaffolding, with steps taken to address deficiencies in the existing framework and introduce new innovations to increase Singapore's service offerings and enhance user choice. Together with the establishment of the Singapore International Commercial Court (“SICC”) that was also at that time a concept in discussion, the combined outcome of these efforts was to make available

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17 Edwin Tong, Senior Minister of State for Law and Health, speech at the Community Mediation Centre's 20th Anniversary Celebrations (5 October 2018) <<https://www.mlaw.gov.sg/content/minlaw/en/news/speeches/speech-by-sms-edwin-tong-cmc-20-anniversary.html>> (accessed 21 December 2018).

18 Indraneel Rajah, Senior Minister of State for Law and Finance, opening address at the Community Mediation Centre's Mediators' Appointment Ceremony and Appreciation Dinner 2015 (1 December 2015) <<https://www.mlaw.gov.sg/content/minlaw/en/news/speeches/opening-address-by-senior-minister-of-state-for-law-and-finance-.html>> (accessed 21 December 2018).

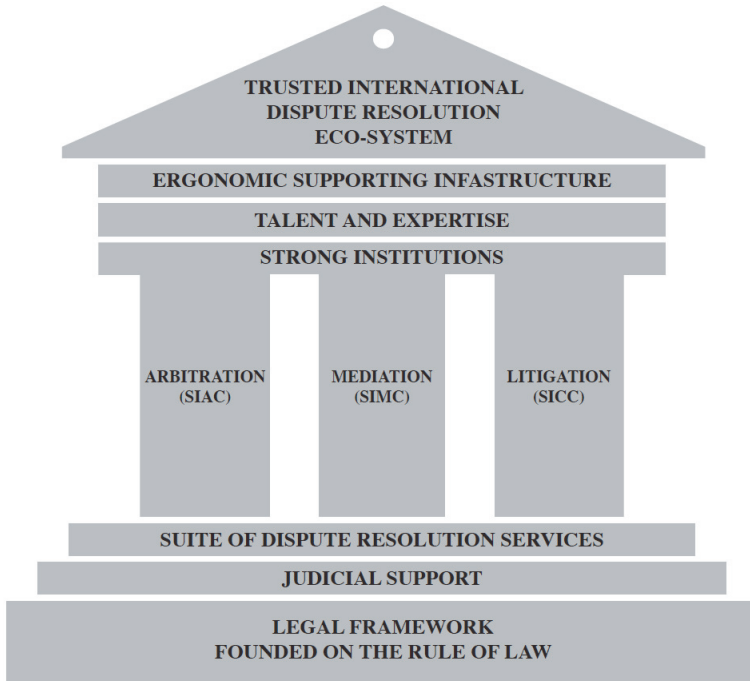
19 Singapore Mediation Centre website <http://www.mediation.com.sg/about-us/#our-achievements> (accessed 27 December 2018).

20 K Shanmugam, Minister for Home Affairs and Minister for Law, keynote address at the Litigation Conference 2017 (20 April 2017) <<https://www.mlaw.gov.sg/content/minlaw/en/news/speeches/opening-address-by-mr-k-shanmugam--minister-for-home-affairs-and0.html>> (accessed 27 December 2018).

to commercial parties a comprehensive “international suite” of world-class dispute resolution services covering arbitration, litigation and mediation.<sup>21</sup>

18 This conceptual model upon which Singapore’s international dispute resolution framework is built can perhaps best be illustrated in the form of a house, which is depicted in Diagram II below.

**Diagram II: Conceptual model for Singapore’s International Dispute Resolution Framework**



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## V. Developing a framework for international commercial mediation

19 To chart concrete plans for the development of Singapore’s international mediation landscape, in 2013, an international expert

21 K Shanmugam, Minister for Foreign Affairs and Minister for Law, keynote address at the Inaugural Singapore International Arbitration Centre Congress 2014 (6 June 2014) <<https://www.mlaw.gov.sg/content/minlaw/en/news/speeches/keynote-address-by-law-minister-k-shanmugam-at-the-inaugural-sia.html>> (accessed 27 December 2018).



working group to develop Singapore into a centre for international commercial mediation (“ICM WG”) comprising international and local experts in the field of mediation<sup>22</sup> was constituted by the Chief Justice, Sundaresh Menon, and the Minister for Law, K Shanmugam. In the Executive Summary of its November 2013 report, the ICM WG observed:<sup>23</sup>

The growth of trade and investment within Asia in recent years has significantly enhanced the need for dispute resolution services, especially for cross-border commercial disputes. Singapore enjoys a trust premium, and is uniquely well placed, as a neutral venue with sound legal infrastructure, to provide the broad range of litigation, arbitration and mediation services increasingly required within the region. In addition, Singapore’s connectivity and geographical location are added conveniences.

In Singapore, litigation and arbitration services are well established. The Singapore Courts are internationally respected. Singapore is now widely recognised as the leading arbitration hub in Asia and a base for international law firms as well as corporate counsel of MNCs within Southeast Asia and South Asia. The value-add of the legal services sector has grown by about 25 percent from \$1.5 billion in 2008 to an estimated \$1.9 billion in 2012.

In order for Singapore to become a focal point of dispute resolution in Asia, it is crucial for Singapore to build a credible offering of the entire suite of dispute resolution services. Developing international commercial mediation services and capabilities will ensure that commercial users of Singapore’s dispute resolution services can choose from the full spectrum of processes ranging from facilitative mediation to binding arbitration.

The Working Group believes that Singapore should take advantage of the current window of opportunity created by burgeoning trade and investment into Asia with the attendant need for trusted and efficient

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22 The International Commercial Mediation Working Group (“ICM WG”) was co-chaired by Edwin Glasgow CBE, QC and George Lim SC. Members of the ICM WG were: Nadja Alexander, cross-border mediation specialist and policy adviser, then at the World Bank Group and with academic appointments in Hong Kong, US and Australia; Lawrence Boo, Head, The Arbitration Chambers, Singapore; Josephine Hadikusumo, then Regional Legal Counsel, Texas Instruments, Singapore and mediator, Singapore Mediation Centre (“SMC”), Michael Leathes, former in-house counsel with international corporations and Director of the International Mediation Institute, The Hague; Joel Lee, Vice-Dean, National University of Singapore Law Faculty, and Principal Mediator and Training Director, SMC; Lok Vi Ming SC, then President, the Law Society of Singapore, Partner, Rodyk & Davidson LLP and mediator, SMC; and Valerie Thean, then Deputy Secretary, Ministry of Law.

23 *Report and Recommendations of the Working Group to Develop Singapore into a Centre for International Commercial Mediation* (November 2013) Annex A: Executive Summary.

dispute resolution solutions, to build Singapore's capabilities as a centre of excellence for international commercial mediation.

20 Having conducted a detailed survey of the then prevailing international and domestic landscape and deliberating with key stakeholders including SIAC and SMC, the ICM WG made six key recommendations to develop Singapore's international mediation framework:

- (a) **legislative framework.** Enact a mediation act;
- (b) **exemptions and incentives.** Extend existing tax exemptions and incentives applicable for arbitration, to mediation;
- (c) **judicial support.** Enhance rules and court processes to encourage greater use of mediation;
- (d) **international mediation services.** Establish an international mediation service provider which will work closely with the SIAC and will offer as part of its service offerings a quality panel of international mediators and experts, as well as user-centric innovative products and services;
- (e) **quality standards.** Establish a professional body to set standards and provide accreditation for mediators; and
- (f) **marketing and promotion.** Reach out to target markets and key industries to focus promotion efforts on the use of mediation services.

21 These reforms were considered and accepted by the Singapore government and have since been implemented together with other initiatives. The ensuing analysis will seek to explain the key features and design thinking behind Singapore's current international mediation system by mapping key aspects of these reforms against the conceptual model described above.

#### **A. Firm foundation – Legal framework founded on the rule of law**

22 Singapore's legal system is founded on the rule of law and accepts it as a universal value.<sup>24</sup> Ranked the top Asian nation out of 113 countries in the 2017–2018 Rule of Law Index compiled by the World Justice Project,<sup>25</sup> and 13th globally, Singapore's culture of respect for the law finds form in a sound, transparent and predictable trusted

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24 K Shanmugam, "The Rule of Law in Singapore" [2012] SingJLS 357.

25 World Justice Project website <https://worldjusticeproject.org/our-work/wjp-rule-law-index/wjp-rule-law-index-2017-2018> (accessed 27 December 2018).

legal framework and environment. This is particularly important in the area of commercial dispute resolution, where dispute resolution clauses are drafted into agreements many years before any differences or disputes between the parties concerned might emerge. It is important for commercial parties to be assured that with the passage of time, such clauses remain honoured, and the rules and institutions administering the dispute remain as the parties had envisaged when they first signed their agreement.

23 To support international investor and commercial confidence, Singapore has taken pains to ensure the promulgation of a clear, progressive and business-friendly framework for dispute resolution, aligned with international legal and trade developments. In the context of international commercial mediation, this has found form in various reforms to strengthen the mediation regime.

(1) *Mediation Act*<sup>26</sup>

24 Unlike arbitration, which was supported by an International Arbitration Act<sup>27</sup> and Arbitration Act,<sup>28</sup> until 2017, with the exception of the Community Mediation Centres Act<sup>29</sup> there was no dedicated general legislation on mediation in Singapore. In 2017, a Mediation Act was passed to strengthen the legal framework supporting mediation. The Mediation Act applies to any mediation conducted under a mediation agreement where either (a) the mediation is wholly or partly conducted in Singapore; or (b) the agreement provides that the Act or the law of Singapore is to apply to the mediation. This means that parties wishing for the Mediation Act's provisions and attendant benefits to apply to their agreements can therefore specify it in their contracts.<sup>30</sup>

25 The Mediation Act strengthened Singapore's mediation regime in the following ways.

- (a) First, it introduced a provision to strengthen the enforceability of settlement agreements resulting from mediation.<sup>31</sup> Prior to the introduction of the Mediation Act, should there be a breach of a mediated settlement agreement, the aggrieved party would need to institute court proceedings to enforce the mediated settlement agreement as a breach of contract, unless the dispute was already being heard by the

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26 Act 1 of 2017.

27 Cap 143A, 2002 Rev Ed.

28 Cap 10, 2002 Rev Ed.

29 Cap 49A, 1998 Rev Ed.

30 Mediation Act 2017 (Act 1 of 2017) s 6.

31 Mediation Act 2017 (Act 1 of 2017) s 12.

court. Section 12 of the Mediation Act introduced an additional method of enforcement for such mediated settlements by allowing parties by consent, and within eight weeks of the mediated settlement agreement (or such longer period as the court may allow), to record a mediated settlement agreement as an order of court. This would enable a settlement agreement arrived at outside of courts proceedings to be directly enforceable as a court order should there be a breach of its terms subsequently.

As a safeguard, the court will only record such a mediated settlement agreement if: (a) the mediation is administered by a designated mediation service provider or conducted by a certified mediator; (b) the agreement is in writing and signed by or on behalf of all the parties to the agreement; and (c) the agreement contains certain prescribed information.<sup>32</sup>

The court may also refuse to record a mediated settlement agreement as an order of court on certain limited grounds including where the agreement is void or voidable because of incapacity, fraud, misrepresentation or duress; where the subject matter of the agreement is not capable of settlement; where any term of the agreement is not capable of enforcement as an order of court; and where the recording of the agreement as an order of court is contrary to public policy.<sup>33</sup>

The current institutions that are designated mediation service providers under the Mediation Act include, *inter alia*, the Singapore International Mediation Centre (“SIMC”), SMC, and the World Intellectual Property Organization’s Arbitration and Mediation Center (“WIPO-AMC”), while the Singapore International Mediation Institute (“SIMI”) Credentialing Scheme is currently the only approved certification scheme under the Act.

The Mediation Act benefits parties with cross-border mediated settlements conducted in Singapore (or where they by

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32 Mediation Rules 2017 (S 624/2017). For the purposes of s 12(3)(c) of the Mediation Act 2017 (Act 1 of 2017), a mediated settlement agreement must contain all of the following information:

- (a) the name of each party to the mediated settlement agreement;
- (b) the name of each mediator conducting the mediation;
- (c) the name of the mediation service provider (if any) administering the mediation;
- (d) the name of each certification scheme (if any) under which each mediator conducting the mediation is certified;
- (e) the date on which the mediated settlement agreement is made; and
- (f) the terms of the settlement reached by the parties at the mediation.

33 Mediation Act 2017 (Act 1 of 2017) s 12.

agreement provide for the Act or the law of Singapore to apply), in that if they record their mediated settlement as an order of court, the agreement can then be enforced internationally as a court order under international instruments such as the Hague Convention on the Choice of Court Agreements,<sup>34</sup> or reciprocal enforcement arrangements under the Singapore Reciprocal Enforcement of Commonwealth Judgments Act<sup>35</sup> and the Reciprocal Enforcement of Foreign Judgments Act.<sup>36</sup>

(b) Second, the Mediation Act provided parties with a statutory basis to apply to the court for an order to stay ongoing court proceedings pending the outcome of a mediation. Such provisions sought to mirror what was available for arbitration in the International Arbitration Act and Arbitration Act, and serve to provide greater certainty and clarity to parties by ensuring that their legal positions in any court proceedings would be preserved pending the mediation outcome.

(c) Third, the Mediation Act introduced provisions that preserved the confidentiality of mediation proceedings and clarified the circumstances in which communications during the course of a mediation could be disclosed, or else admitted into court as evidence. Prior to this, such rules were based on common law principles which could be subject to the vagaries of different interpretations.

26 The reforms described above were introduced after extensive closed and public consultations involving lawyers, mediation and alternative dispute resolution practitioners and service providers, academics, mediation professional bodies and other stakeholders. The Mediation Act came into force on 1 November 2017.

## (2) *Legal Profession Act*<sup>37</sup>

27 In 2016, amendments were made to the Legal Profession Act to extend certain exceptions applicable to arbitration to mediation. While mediation is not commonly understood to involve the practice of law, there may be instances where the relevant law may be discussed during the mediation session.

28 The Legal Profession Act now makes clear that participation by foreign mediators and foreign-qualified counsel in mediation sessions

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34 30 June 2005; entry into force 1 October 2015.

35 Cap 264, 1985 Rev Ed.

36 Cap 265, 2001 Rev Ed.

37 Cap 161, 2009 Rev Ed.

will not amount to the unauthorised practice of Singapore law,<sup>38</sup> and aligns with the position for arbitration. As explained in a note prepared by then Senior Minister of State for Law, Indranee Rajah, to the legal community, this amendment seeks to:<sup>39</sup>

... further enhance support for international commercial mediation in Singapore by providing flexibility for parties to mediate with their own mediators and counsel, and by encouraging foreign mediators and counsel to use Singapore as a venue for mediation.

(3) *Tax exemption for non-resident mediators*

29 It bears mention that the ICM WG's recommendation to introduce a tax exemption for mediators was also implemented. In 2015, the withholding tax exemption applicable to non-resident arbitrators was extended to apply to non-resident mediators with suitable modifications and prerequisites tailored to the mediation context.<sup>40</sup> Under this exemption, income derived by non-resident mediators for mediation services rendered in Singapore from 1 April 2015 to 31 March 2020 will be exempt from tax.

(4) *United Nations Convention on International Settlement Agreements Resulting from Mediation*

30 Apart from ensuring Singapore's domestic legislation provides support for international commercial mediation, Singapore has also

38 Legal Profession Act (Cap 161, 2009 Rev Ed) s 35B.

39 Ministry of Law, "Mediation Moves: A Note from Indranee Rajah SC, Senior Minister of State for Law" (31 January 2017).

40 Ministry of Law, "Exemption for Income Derived by Non-resident Mediators for Mediation Services Rendered in Singapore", industry circular (29 April 2016). As stated in the industry circular, this is a broad-based tax exemption on the income derived by a qualifying non-resident individual for mediation services rendered in Singapore, including services rendered in Singapore pursuant to an agreement to mediate specifying Singapore as the venue for the mediation (*ie*, the mediation case was undertaken in Singapore or was originally planned to be undertaken in Singapore, and pre-mediation services were rendered, but the case settled before the mediation session took place). A qualifying non-resident individual has to be either a (a) certified mediator; or (b) mediator conducting a mediation administered by a designated mediation service provider. For the purpose of this tax exemption:

(i) A "certified mediator" means a mediator who is certified under an approved certification scheme.

(ii) An "approved certification scheme" means an approved accreditation or certification process run by a mediation institution.

The designated mediation service provider is the Singapore International Mediation Centre and the approved certification scheme is the Singapore International Mediation Institute ("SIMI") Credentialing Scheme (SIMI Certified Mediator), conducted by SIMI.

been a strong proponent of the development of international rules to develop and promote the use of international commercial mediation. In June 2018, the United Nations Commission on International Trade Law (“UNCITRAL”) completed its work on the Convention on Mediation. Singapore was an active participant in deliberations on the Convention and played an active role in shaping the final instrument. In December 2018, the UN General Assembly, at its 73rd session in New York, passed a resolution to adopt the Convention and to name it after Singapore.<sup>41</sup> It will be the first UN treaty named after Singapore, and will be called the Singapore Convention on Mediation.

31 The Convention will serve to address an often-cited weakness of mediation, namely, the lack of enforceability of the mediated settlement agreement, and facilitate cross-border enforcement of mediated settlement agreements. Prior to this Convention, a private mediated settlement agreement only had contractual force in Singapore and many other countries. As such, should there be a breach of the terms of such a mediated settlement agreement, the party seeking enforcement would need to take the additional step of initiating court or arbitration proceedings, and enforcing the agreement either by way of a court judgment or arbitral award. The Convention provides for mediated settlements to be binding and enforceable, and streamlines the procedure for enforcement in a similar manner to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards<sup>42</sup> (“New York Convention”) in respect of arbitral awards. This is a promising development and will lend further support to international commercial mediation over time, particularly if the instrument garners the same acceptance internationally as the New York Convention has since its adoption in 1958 with an initial ten signatories. As of 2018, the New York Convention now covers close to 160 parties. It is hoped that the Singapore Convention on Mediation will gain the same level of popularity and adoption in years to come.

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41 Ministry of Law, “Written Answer by Minister for Law, K Shanmugam, on upcoming Singapore Convention on Mediation” (6 August 2018). See also *Official Records of the United Nations General Assembly 73rd session* (62nd Plenary Meeting) (20 December 2018) (resolutions 73/197–73/199) at pp 3–4; Ministry of Law, “UN Convention on Mediation to Be Named after Singapore”, press release (21 December 2018) <<https://www.mlaw.gov.sg/content/minlaw/en/news/press-releases/UN-convention-on-mediation-to-be-named-after-Singapore.html>> (accessed 27 December 2018); and Adrian Lim, “UN Treaty with S’pore Name to Be Signed Here Next August” *The Straits Times* (22 December 2018).

42 10 June 1958; 7 June 1959.

## B. *Judicial support*

32 The Singapore judiciary has been an active promoter of mediation and has played an important role in developing the mediation landscape. The Singapore courts were early supporters of mediation. As early as in 1997, at the launch of the SMC, then Chief Justice Yong Pung How said:<sup>43</sup>

The judiciary has always been supportive of mediation and will continue to do so. Mediation is here to stay. ... The public and commercial sectors will have to shift out of the litigation gear and be willing to attempt mediation. The Singapore Mediation Centre should be the first stop for the parties to try to resolve their dispute.

Mediation is encouraged within the Singapore court system and, where appropriate, has been integrated extensively into various stages of the court process and machinery. Between 2012 and 2017, 6,700 cases were mediated at the State Courts annually with settlement rates at above 85%. The Supreme Court also frequently makes case referrals to the SMC.<sup>44</sup>

33 In its 2013 report, the ICM WG recommended that support for mediation could be further enhanced by the introduction of court rules to ensure that parties adequately consider it as part of the dispute resolution process. Order 59 r 5 of the Rules of Court,<sup>45</sup> which provides that the court can take into account parties' conduct in relation to ADR when deciding on costs,<sup>46</sup> could be more rigorously enforced in relation to mediation. It was also recommended that a Practice Direction could be introduced to provide that parties should be required to attend a session at the Summons for Direction stage together with their counsel to explore ADR options in the context of discussing the cost implications of proceeding on to trial. This would help the parties to make informed decisions concerning the management of their dispute and costs.

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43 Singapore Mediation Centre website <http://www.mediation.com.sg/about-us/#our-achievements> (accessed 27 December 2018).

44 Justice Belinda Ang Saw Ean, "Expanding the Scope of Dispute Resolution and Access to Justice: The Use of Mediation within the Courts", opening remarks at the Singapore Management University Research Forum (12 March 2018).

45 Cap 322, R 5, 2014 Rev Ed.

46 Order 59 r 5 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) states that:  
... [t]he Court in exercising its discretion as to costs shall, to such extent, if any, as may be appropriate in the circumstances, take into account —

...

(c) the parties' conduct in relation to any attempt at resolving the cause or matter by mediation or any other means of dispute resolution

...



34 This idea has been developed over time. In 2014, the ADR Offer<sup>47</sup> process was implemented. Under this process, a party receiving an ADR offer has 14 days to file a response to the ADR offer stating whether or not the party is agreeable to ADR, or to otherwise state reasons for their unwillingness or make counter-proposals. An ADR offer could be made by any party at any time of the proceedings. Lawyers are encouraged to discuss ADR with their clients. Where the parties choose mediation, the courts will support the parties' election by providing directions to facilitate mediation such as holding court timelines in abeyance pending the mediation session, or setting out timelines for mediation to be initiated and completed.<sup>48</sup> The Supreme Court Practice Directions also require that ADR "be considered at the earliest possible stage in order to facilitate the just, expeditious and economical disposal of civil cases."<sup>49</sup> This was further expanded to emphasise that this was especially so "where ADR may save costs, achieve a quicker resolution and constitute a surer way of meeting their client's needs."<sup>50</sup>

35 In 2016, the Supreme Court Practice Directions were further amended to make it the professional duty of advocates and solicitors to advise their clients about the different ways disputes may be resolved using ADR. They are also required to advise their clients on potential adverse costs orders for unreasonable refusal to engage in ADR to resolve their dispute.<sup>51</sup> Detailed guidelines for advocates and solicitors on advising clients about ADR have also been issued, highlighting in particular the key differences between litigation and mediation as a means of resolving commercial disputes.<sup>52</sup>

### **C. Strong institutions, talent and expertise**

36 Strong institutions, talent and expertise form the essential pillars and supports to ensure a healthy, vibrant and sustainable ecosystem for dispute resolution. The development and anchoring of strong international dispute resolution institutions engaged in various aspects of the dispute resolution "supply chain" in Singapore, whether

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47 The Supreme Court Practice Directions (updated 27 March 2019) para 35C.

48 Justice Andrew Phang, "Mediation and the Courts – The Singapore Experience", speech at the 4th Asian Mediation Association Conference, Beijing, China (20 October 2016).

49 The Supreme Court Practice Directions (updated 27 March 2019) para 35B(4).

50 The Supreme Court Practice Directions (updated 27 March 2019) para 35B(4).

51 Justice Belinda Ang Saw Ean, "Expanding the Scope of Dispute Resolution and Access to Justice: The Use of Mediation within the Courts", opening remarks at the Singapore Management University Research Forum (12 March 2018).

52 The Supreme Court Practice Directions (updated 27 March 2019) para 35B, Appendix I.

through the provision of services, setting professional standards, training or practice-based research, creates a conducive platform for the development of the human capital and expertise needed for a thriving, self-sustaining dispute resolution ecosystem.

37 In the area of international commercial mediation, the following three newly established Singapore institutions play important and complementary roles.

(1) *Singapore International Mediation Centre*

38 SIMC was established in 2014 to spearhead the provision of “best-of-class” international commercial mediation services. To ensure a world-class service, the ICM WG recommended that SIMC have an international board of directors, a panel of high-quality international mediators whose competency was certified by SIMI to be established alongside it,<sup>53</sup> and a panel of technical experts and specialists.

39 It was envisaged that SIMC would drive the development of international commercial mediation, while SMC would continue to retain its focus on domestic and court-annexed mediation. While SIMC is still a relatively young institution, it currently has a panel of more than 70 mediators covering over 15 jurisdictions. It has an expert panel comprising more than 70 independent consultants and key personnel of well-established companies from diverse industry sectors. SIMC also engages in mediation training activities as part of its work.

40 Since its establishment, SIMC has dealt with more than 70 cases involving parties from more than 20 different jurisdictions, and a wide range of industries and sectors. SIMC’s highest value dispute exceeded S\$600m. Settlement rates in 2017 and 2018 were at an average of 85%.

(2) *Singapore International Mediation Institute*

41 SIMI was established in 2014 as a new professional self-regulatory body for mediation in Singapore. The intent was for SIMI to contribute to the development of mediation in Singapore in three main areas:

- (a) **credentialling schemes.** To certify the competency of mediators through its credentialling schemes and ensure the professionalism and quality of mediators on its panel;
- (b) **quality assurance.** To serve as a mark of quality assurance for mediators, to require continuing professional

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53 See paras 41–42 below.

development for SIMI-accredited mediators, and apply and enforce world-class standards of professional ethics so as to instil user trust and confidence in the mediation services they provide; and

(c) **promoting greater understanding and wider use of mediation.** To provide information about mediation and conduct mediation awareness activities.<sup>54</sup>

42 To maintain its impartiality, neutrality and independence, SIMI does not provide mediation services or run training courses leading to its own certification or accreditation. SIMI is currently constituted as a non-profit entity owned by the National University of Singapore. To date, SIMI has successfully implemented a four-tiered credentialling scheme for both local and international mediators, and a three-tiered partner scheme for organisations offering mediation services and/or training. SIMI partners with domestic and international organisations to promote the use of mediation and set competency standards in mediation practice. To promote mediation, SIMI has also pioneered initiatives such as mediation and negotiation skills workshops, the “Contemporary Issues in Mediation” essay competition and book series to encourage research and academia in mediation, and the development of a user-centric mediator search platform called “SIMI Mediator Look and Hire”.

(3) *Singapore International Dispute Resolution Academy*

43 The Singapore International Dispute Resolution Academy (“SIDRA”) was established in 2016 to complement Singapore’s suite of dispute resolution services. SIDRA is a research institute of the Singapore Management University. Its key focus is on applied research in dispute resolution, with a view to developing ideas that will bridge theory and practice, and provide useful research and analyses for policy development. It operates in three ways: (a) fostering ideas by offering international platforms and building international networks; (b) generating innovation through conducting research projects with international partners; and (c) sharing insights by providing capacity building and technical assistance services to government and business stakeholders.

44 SIDRA’s current work includes the conduct of an international dispute resolution survey commissioned by the Singapore Ministry of

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54 Indranee Rajah, Senior Minister of State for Law and Education, speech at the launch of the Singapore International Mediation Institute (5 November 2014) <<https://www.mlaw.gov.sg/content/minlaw/en/news/speeches/SMS-speech-at-SIMI-launch.html>> (accessed December 2018).

Law on global dispute resolution trends with a focus on the user perspective and deep-dive legal analyses of the Convention on Mediation.

45 SIDRA's goal is to produce and disseminate wide-ranging, academically robust thought-leadership products, and add an Asian perspective to the global *corpus* of research in these areas. SIDRA's work is delivered through various publications, seminars and consulting engagements, and operates collaboratively with SIMC and SIMI to leverage the missions and expertise of the three institutions.

46 In addition to the above-mentioned Singapore institutions, Singapore is also home to other key international institutions whose service offerings, apart from arbitration, also include mediation services, such as the WIPO-AMC, the ICC International Court of Arbitration and the American Arbitration Association's International Centre for Dispute Resolution ("AAA-ICDR").

#### ***D. Marketing, promotion, user centric products and services***

47 The ICM WG also recommended promotional efforts to reach out to emergent regional and international markets, and key industries where mediation could be useful. Such marketing and outreach activities are undertaken in various ways by SIMC, SIMI and SIDRA in their respective spheres of influence, adopting a collaborative and complementary approach.

48 Marketing and promotion are, however, futile without a good product or service. As such, in tandem with such marketing and promotional work, significant energies have been devoted to strengthening Singapore's product and service offerings. In designing such processes, "user" centricity is a key focus. On account of its advantages (*viz* time and cost efficiency, procedural flexibility and consensual focus), mediation is commonly either built into the process or included as part of a "smorgasbord" of ADR options. This has led to the development of hybrid dispute resolution processes such as the "Arb-Med-Arb" protocol offered by the SIAC and SIMC, and more recently, the new "Singapore Infrastructure Dispute-Management Protocol" administered by the SIMC and SMC for infrastructure disputes. Both protocols can be adopted by parties through contractual agreement and are described below.

##### ***(1) Arb-Med-Arb protocol***

49 The Arb-Med-Arb protocol offered by SIAC and SIMC was the brainchild of the ICM WG, which had reviewed the enforceability of

mediated settlements and concluded that this was a critical issue in the context of cross-border commercial dispute settlement and enforceability concerns might be an inhibiting factor in attracting commercial disputants to use mediation. If a mechanism could be found to reassure parties and their advisers that the mediated settlement was enforceable internationally, that would offer a greater level of reassurance to the parties involved.

50 The ICM WG noted that there was significant uncertainty among commentators as to whether the New York Convention would apply in situations where parties settled their dispute first via mediation, and then commenced arbitration for the sole purpose of converting the mediated settlement into a consent award. Article 30 of the UNCITRAL Model Law on International Commercial Arbitration<sup>55</sup> applies where the dispute was settled “during arbitral proceedings”.<sup>56</sup> This implies that it would not apply in situations where a settlement had been reached before proceedings were filed and that there would be a risk of challenge because by the time the parties referred the settlement to “arbitration” for a consent award, there would be no dispute between them and, given that no arbitration had been commenced or conducted, the arbitral tribunal would have no authority.

51 The ICM WG recommended that the procedure would be far less open to challenge and invalidation if, prior to the commencement of the mediation process, parties formally filed an arbitration claim, appointed an arbitrator, prepared an outline of pleadings and then applied to the arbitral tribunal for a formal stay of proceedings to allow for a mediation to take place. This would remove all doubt that arbitration proceedings had not formally begun before the mediation process took place. A mediated settlement arrived at would then comply fully with the enforcement provision of the New York Convention. If mediation did not result in a full settlement, the parties could proceed with the arbitration. The ICM WG also believed that the additional costs that would result from the formal appointment of an arbitral tribunal

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55 A/40/17, Annex I; A/61/17, Annex I (21 June 1985; amended 7 July 2006).

56 Article 30 of the United Nations Commission on International Trade Law Model Law on International Commercial Arbitration (A/40/17, Annex I; A/61/17, Annex I) (21 June 1985; amended 7 July 2006) provides that:

(1) If, *during arbitral proceedings*, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.

(2) An award on agreed terms shall be made in accordance with the provisions of article 31 and shall state that it is an award. Such an award has the same status and effect as any other award on the merits of the case. [emphasis added]

should be capable of being minimised if the procedure was efficiently administered.

52 The Arb-Med-Arb protocol has since been adopted by SIAC and SIMC.<sup>57</sup> In implementation, the process has been refined to be completed within eight weeks from the commencement of mediation, unless otherwise extended. The arbitral tribunal, once constituted, shall, after the exchange of the Notice of Arbitration and Response to the Notice of Arbitration, stay the arbitration in order for the mediation to take place. A dispute settled by mediation between the parties under the procedure will be recorded by the tribunal in the form of a consent award. Disputes that cannot be settled by mediation either partially or entirely will go on to arbitration. As of 2018, SIMC has handled more than ten Arb-Med-Arb cases under this protocol.

(2) *Singapore Infrastructure Dispute-Management Protocol*

53 A report from the Asian Development Bank estimated that Asia will need more than US\$1.7trn (S\$2.3trn) of infrastructure per year from 2016 to 2030.<sup>58</sup> However, as infrastructure projects are typically complex and involve multiple parties, differences and disputes are sometimes unavoidable and can result in delays and higher costs if not managed appropriately. Seeing that this was and remains a critical gap in the infrastructure space, the Ministry of Law convened a working group of eminent private sector infrastructure and dispute resolution specialists, SIMC and SMC,<sup>59</sup> to see how Singapore could address this need.

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57 See sample clause taken from Christopher Boog, “The New SIAC/SIMC AMA-Protocol: A Seamless Multi-tiered Dispute Resolution Process Tailored to the User’s Needs” *Asian Dispute Review* (April 2015) at pp 91–96:

All disputes, controversies or differences (‘Dispute’) arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in Singapore in accordance with the Arbitration Rules of the Singapore International Arbitration Centre (‘SIAC’) for the time being in force. The parties further agree that following the commencement of arbitration, they will attempt in good faith to resolve the Dispute through mediation at the Singapore International Mediation Centre (‘SIMC’), in accordance with the SIAC-SIMC Arb-Med-Arb Protocol for the time being in force. Any settlement reached in the course of the mediation shall be referred to the arbitral tribunal appointed by SIAC and may be made a consent award on agreed terms.

58 Asian Development Bank, *Meeting Asia’s Infrastructure Needs* (February 2017).

59 The Singapore Infrastructure Dispute-Management Protocol working group was chaired by Chow Kok Fong, Board Member, Singapore International Mediation Centre and Managing Director of Equitas Chambers Pte Ltd. Its members comprised: Christopher Chuah, Partner, Wong Partnership; Candy Agnes Sutedja, Partner, Wong Partnership; Mohan Pillay, Managing Partner, Pinsent Mason  
(cont’d on the next page)

54 In October 2018, a new Singapore Infrastructure Dispute-Management Protocol (“SIDP”) was launched to serve as a comprehensive dispute management tool to help parties engaged in mega-disputes to proactively manage differences that might arise in the life of a project, reduce escalation of such differences into full-blown disputes, and thereby reduce the risks of time, cost and project delays caused by such conflicts.<sup>60</sup>

55 While the SIDP leverages the concept of dispute boards, which has been in existence for some time, the concept has been improved upon with a number of salient features:

(a) **Upfront and preventive intervention.** The SIDP’s focus is on project delivery and risk management. Unlike in traditional dispute situations, where the neutral is appointed when the dispute arises, under the SIDP, parties appoint a dispute board comprising up to three neutral professionals right from the outset of the project. The SIDP envisages the dispute board professionals following the project from start to finish and being on hand to proactively manage conflicts or issues that may arise during the life of the project. In carrying out their task, they would have recourse to a spectrum of customised dispute avoidance and resolution processes. This early involvement will ensure that the appointed experts can build up trust and relationship between the parties, be familiar with the project and its features, and step in to address any differences that might arise during the project instead of leaving them to

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MPillay; Toh Chen Han, Partner, Pinsent Mason MPillay; Eugene Tan, Partner, Clyde & Co LLP; Seah Choo Meng, Senior Advisor, Surbana Jurong Private Limited, and Chairman, Threesixty Cost Management Pte Ltd & Threesixty Contract Advisory Pte Ltd; Aloysius Goh, Chief Executive Officer, Singapore International Mediation Centre, Loong Seng Onn, Executive Director, Singapore Mediation Centre; and Sabiha Shiraz, Deputy Executive Director, Singapore Mediation Centre.

60 The protocol was announced by Minister for Finance Heng Swee Keat in his opening address: at the Asia Singapore Infrastructure Roundtable (ASIR) on 23 October 2018. See also Ministry of Law, “Launch of SIDP Reduces Time and Cost Overruns in Infrastructure Projects”, press release (23 October 2018) <<https://www.mlaw.gov.sg/content/minlaw/en/news/press-releases/launch-of-sidp-reduces-time-and-cost-overruns-in-infrastructure-projects.html>> (accessed 25 December 2018); Singapore International Mediation Centre, “New Singapore Dispute Protocol Launched to Minimise Time and Cost Overruns in Infrastructure Projects”, press release (23 October 2018) <<http://simc.com.sg/new-singapore-dispute-protocol-launched-minimise-time-cost-overruns-infrastructure-projects/>> (accessed 25 December 2018); Singapore Mediation Centre, “Singapore Infrastructure Dispute-Management Protocol” <http://mediation.com.sg/business-services/sidp/> (accessed 25 December 2018); and Ministry of Finance, “Note by Second Minister for Finance, Ms Indranee Rajah, on the Singapore Infrastructure Dispute-Management Protocol” (7 November 2018).

fester and only be addressed at the tail end of the project. This reduces the time and administration costs required to “get up” for formal proceedings on the matter, and helps parties focus more squarely on project delivery.

(b) **Spectrum of dispute resolution tools.** The SIDP introduces a framework where the dispute board members can decide to use one or a combination of dispute methods to resolve a dispute that could arise, namely: mediation, non-binding opinions, determination and high-level management consultations. As to which method is deployed will be dependent on the situation at hand. A unique feature of the SIDP’s mediation process is that it is recommended that the dispute board members do not engage in caucuses to ensure that there are no accusations of bias against the neutral, bearing in mind that there are also determinative processes in his toolbox. Given that the SIDP is a creature of contract between the parties, however, it remains open for the parties themselves to agree to a mediation process that includes caucuses.

(c) **Cost considerations.** The SIDP is designed for use in mega-projects of S\$500m and above, such that the appointment of the dispute board will be cost-effective. It is estimated that the costs of maintaining the SIDP will be in the region of well below 1% of the project cost.

(d) **Option of administered support.** Most dispute boards run on an *ad hoc*, unadministered model. The SIDP envisages the assistance of an authorised appointing authority that provides the parties with access to full professional and administrative support through SIMC<sup>61</sup> and SMC<sup>62</sup> which can help with identifying and appointing dispute board members as well as with meeting arrangements, escrow and other administrative services.

(e) **Choice of neutrals.** While the parties are free to choose from their own agreed lists, SIMC and SMC’s panel of SIDP dispute board members, from which parties can appoint dispute board members, consists of experts not only in the fields of law but also in engineering, architecture and quantity surveying. They will be able to lend their expertise in the various professional services to the resolution of issues that may arise during the course of the project.

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61 Singapore International Mediation Centre, “Appointing Authority Service” <http://simc.com.sg/aas-ene/> (accessed 31 December 2018).

62 Singapore Mediation Centre, “Singapore Infrastructure Dispute-Management Protocol” <http://www.mediation.com.sg/business-services/sidp/> (accessed 31 December 2018).



(f) **Flexible and complementary to arbitration, litigation and statutory remedies.** The SIDP is crafted to be flexible and complementary to existing avenues. It can support both the contract between the developer and the contractor, as well as the contracts between the contractor and the subcontractors. It does not prevent parties from choosing other processes such as arbitration, litigation or adjudication under the Building and Construction Industry Security of Payments Act<sup>63</sup> in the case of local construction disputes. Parties who wish to use the SIDP should include an appropriate clause in their contract.<sup>64</sup>

56 As at the time of this article, the SIDP is being piloted in several infrastructure projects and will be refined over time with use. Parties along the infrastructure value chain – financiers who are concerned about risk exposure and bankability of projects, engineers and contractors who are concerned about timely project delivery and cost containment – will appreciate that the SIDP has been carefully designed with these considerations in mind.

#### *E. Ergonomic supporting infrastructure*

57 The idea of introducing purpose-built infrastructure and facilities that were ergonomic and customised to the needs of users of dispute resolution services had its beginnings in 2002. At that time, a Legal Services Working Group of the Economic Review Committee chaired by then Deputy Prime Minister Lee Hsien Loong had stressed the need for “good infrastructure and facilities” to make Singapore a regional alternative dispute resolution service centre. In 2005, the Ministry of Law began planning the development of what was then conceived as an integrated dispute resolution complex. In January 2007, Maxwell Chambers’ present site was chosen, and design work commenced. In July 2009, refurbishment works were completed and the building opened for hearings.

58 Maxwell Chambers was designed to be the world’s first integrated dispute resolution complex with best-in-class hearing room

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63 Cap 30B, 2006 Rev Ed.

64 A standard clause which parties can adapt to suit their needs is found in the Appendix of the Singapore Infrastructure Dispute-Management Protocol 2018, and provides as follows:

Parties shall establish a Dispute Board in accordance with the Singapore Infrastructure Dispute-Management Protocol 2018 (‘the SIDP’), which is incorporated by reference. The Dispute Board shall comprise [one/two/three] member[s]. The Dispute Board shall assist parties in preventing, managing and resolving differences or disputes in accordance with the terms of the SIDP.

facilities and services. In his speech at the grand opening of Maxwell Chambers in January 2010, then Senior Minister S Jayakumar observed:<sup>65</sup>

With this facility, Singapore is now poised to become a place where every facet of the arbitration process is taken care of to the satisfaction of the users. This is especially important for big international cases, where the duration of the case tends to be long and the number of counsel and parties involved much greater. Proper hearing room facilities go a long way for such cases.

The first of its kind, Maxwell Chambers was the first complex in the world to offer both purpose-built hearing room facilities and office space for ADR institutions. Over the years, these facilities have been further improved to include mediation rooms, purposed for mediation sessions. The tenancy of the building has also grown, with a strong cluster of the major international alternative dispute resolution institutions all housed together under one roof, making the building a convening platform for the arbitration and mediation community.

59 Apart from SIAC, SIMC, and the Singapore Chamber of Maritime Arbitration, Maxwell Chambers also houses many key international institutions including the ICC International Court of Arbitration, the Permanent Court of Arbitration (“PCA”), WIPO-AMC and AAA-ICDR. It is noteworthy that as an office complex for practitioners and institutions, Maxwell Chambers was the first overseas office for AAA-ICDR, WIPO-AMC’s first overseas office outside Geneva, ICC’s first regional office in Asia, and the PCA’s first office in Asia.

60 In April 2018, Maxwell Chambers launched a “Smart Maxwell” initiative, which will take the hearing facilities into the digital age and redefine the arbitration and mediation experience for users and practitioners.<sup>66</sup>

61 Since its establishment in 2010, Maxwell Chambers has quickly become one of the top most preferred hearing facilities in the world. Maxwell Chambers’ introduction has also precipitated other similar facilities being established in other parts of the world. To meet strong

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65 S Jayakumar, Senior Minister, speech at the grand opening of Maxwell Chambers (21 January 2010) <<https://www.mlaw.gov.sg/content/minlaw/en/news/speeches/speech-by-sm-s-jayakumar-at-the-grand-opening-of-maxwell-chambers.html>> (accessed 27 December 2018).

66 Indranee Rajah, Senior Minister of State for Law and Finance, speech at the launch of the “Smart Maxwell” Initiative (4 April 2018) <<https://www.mlaw.gov.sg/content/minlaw/en/news/speeches/speech-by-sms-indranee-launch-smart-maxwell-initiative.html>> (accessed 27 December 2018).

demand for hearing and office facilities, Maxwell Chambers is currently undergoing refurbishment works into an adjacent conserved heritage building (named Maxwell Chambers Suites) which will triple its current size. The refurbished Maxwell Chambers Suites will be completed by the first half of 2019.

## VI. Building forward

62 The Singapore model for developing its international commercial mediation framework is premised on the nation's broader vision to serve as an international dispute resolution hub for cross-border disputes. It is a user-centric model, built upon a trusted legal framework premised on the rule of law, with strong judicial support, a suite of high-quality dispute resolution services, anchored by strong institutions with the necessary expertise, service offerings and infrastructure to address commercial needs. It is an international dispute resolution ecosystem designed to instil trust, certainty and confidence in its users.

63 At the same time, it is not a static model, but one that evolves with the times and is attentive to present day realities, striving to deliver practical justice to address the commercial needs of the day. As expounded by Sundaresh Menon CJ in a speech delivered at the Global Pound Conference Series in 2016:<sup>67</sup>

An ideal system of justice is one that delivers justice that is *customised* to each type of case, keeping in mind the subject matter, the parties, and the desired outcomes. This is a situation where one size does not always fit all. In this regard, it would perhaps be timely to embrace a paradigm shift and understand 'ADR' as a reference to '*Appropriate Dispute Resolution*' instead. This requires us to move away from our traditional and rigid ideas of how disputes should be resolved, towards a flexible and option-laden model where disputants are well-placed to choose the ideal mode of dispute resolution from a suite of options. [emphasis in original]

64 International commercial mediation, with its increasing popularity and relevance, will remain a key focus for Singapore. With the signing of the Singapore Convention on Mediation taking place in Singapore in August 2019, and the expansion of Maxwell Chambers into its newly refurbished office wing, Maxwell Chambers Suites, Singapore is poised to serve as a global centre of excellence and convening

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67 Chief Justice Sundaresh Menon, "Shaping the Future of Dispute Resolution & Improving Access to Justice", opening address at the Global Pound Conference Series 2016 (17 March 2016).

platform for international commercial mediation innovation and activity as envisaged by the ICM WG.

65 The Singapore international commercial mediation landscape continues to be a work in progress. Significant progress has been made since its beginnings in the 1990s, but more remains to be done in its evolutionary journey to unlock the full potential of this promising field of ADR practice.

66 In the road ahead, it will take continued co-ordination, collaboration and co-creation involving the public as well as private sector players and stakeholders in the Singapore international commercial mediation community to take Singapore's model to the next level, building forward towards a trusted international dispute resolution ecosystem for the future.

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