

Evolution of Mediation in Singapore

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Abstract: Mediation is a dispute resolution method in which the parties attempt to reach an agreement with the help of a neutral third party who does not have adjudicatory powers. A successful mediation results in a mediated settlement agreement that contractually binds the parties. While mediation is ancient, its roots are unknown. Some believe it began in 1800 B.C. in modern-day Syria, where the Mari monarchy utilised it to settle disputes with other kingdoms. Others trace it back to Phoenician commerce, ancient Greece, and the Roman civilisation. However, thankfully mediation’s enduring impact is certain. Mediation usage has grown exponentially over the centuries and is gaining popularity in commercial disputes as it allows parties to retain direct control over the outcome and by reason of its confidential, inexpensive, efficient, and compelling nature. This too is the case for Singapore, where mediation has emerged as a pivotal alternative dispute resolution mechanism and has helped in transforming the overall landscape of conflict resolution and facilitate an efficient and cost-effective solutions. This phenomenon has gained pace after the adoption of the United Nations Commission on International Trade Law (“UNCITRAL”) Convention on International Settlement Agreements Resulting from Mediation (“Singapore Convention on Mediation”).

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Through this article, we have attempted to present a comprehensive analysis of the evolution of mediation in Singapore, and the intent of mediation before dwelling into its domestic and international growth. Additionally, the article will focus on the legal frameworks and most importantly the institutionalisation of the

¹ This paper was written with the assistance of Carina Lim.

process, coupled with the creative use of incentives and legislation that helped to strengthen the mediation eco-system in Singapore. The article also examines various hybrid models and will attempt to identify the challenges and future prospects for the continued growth and development of mediation in Singapore.

Introduction

The success of mediation lies in the willingness to collaborate. Understanding each other's perspectives, needs, and interests is critical. Ultimately, a party feels satisfied when the dispute is resolved with closure, and the issues are resolved holistically. Singapore has adopted a collaborative approach by creating in its dispute resolution framework, a synergy between the mechanisms, users, institutions and the judiciary. As a result, mediation has become an effective medium of dispute resolution, and the Singapore Convention on Mediation² has put it on an international pedestal. To create a robust justice system, the priorities of the institutions have shifted from an adversarial towards a consensual and collaborative resolution. The alternative dispute resolution ("ADR") movement started early in Singapore and was meticulously planned with the establishment of dispute resolution institutions, amendments to the legislation, the growth of service providers, and most importantly, with support from the government and the judiciary. Having made significant strides in the international development and recognition of mediation, Singapore has gained global recognition as a preferred destination for resolution of international disputes.

Today, private mediation by organisations like the Singapore Mediation Centre ("SMC") and community-based mediation through the Ministry of Law's Community Mediation Clinics ("CMCs") offer a whole suite of mediation services to cater to the needs of domestic disputes. There are also organisations that provide sector-based mediation services such as Financial Industry Dispute Resolution Centre ("FIDReC") which was instituted as part of one of the Monetary Authority of Singapore's initiatives to provide mediation services for the resolution of all eligible retail disputes with financial institutions.³ Operating alongside these to cater to international disputes is the Singapore International Mediation Centre ("SIMC"). Additionally, global mediation centres, such as the World Intellectual Property

² On the Singapore Convention in Brazil see: COMETTI, Anna K. F; MOSCHEN, Valesca R. B. The Singapore Convention in the framework of the Investor-State Dispute Settlement System. *Revista Brasileira de Alternative Dispute Resolution – RBADR*, vol. 4, nº 7, 2022, pp. 37-57. See also MASON, Paul E. A Convenção de Cingapura e seus benefícios para o Brasil. *Revista Brasileira de Alternative Dispute Resolution – RBADR*, vol. 2, nº 4, 2021, pp. 181-193.

³ FIDReC, *About Us*, <https://www.fidrec.com.sg/about/> (last accessed May 8, 2023).

Organization (“WIPO”) Arbitration and Mediation Center,⁴ have established offices in Singapore – further strengthening Singapore’s mediation arsenal. The increasing adoption of mediation as a dispute resolution mechanism is a global movement, and Singapore, despite being one of the smallest nations, has emerged to be a dispute resolution hub in the East.

A The Mandate for Mediation

Since it was first introduced in the former Subordinate Courts (now known as the State Courts), mediation has always been premised on voluntariness – parties cannot be compelled, nor does the Court compel parties, to mediate. However, such an emphasis on the voluntary nature of mediation has arguably ‘softened’ in recent years as amicable dispute resolution has slowly been ‘entrenched’ in Singapore’s legal framework. For example, the Rules of Court (Cap 322, 2021 Rev Ed) were amended to include, amongst others, rules that impose a duty on parties to consider “amicable resolution” prior to and during civil proceedings,⁵ and that the court may consider “efforts made by the parties at amicable resolution” in deciding to make adverse orders against any party when considering the award of legal costs.⁶ Given that there are financial consequences for refusing mediation, viz amicable dispute resolution, where the Court is satisfied that the reasons for refusal are unsatisfactory, mediation is arguably implicitly ‘mandatory’ as parties are encouraged to consider ADR methods before resorting to litigation as a last resort. Thus, ADR including mediation, has assumed an unprecedented importance within the reformed civil justice regime’s focus on efficiency and active case management.⁷

However, mediation is mandatory for some matters. For example, under Section 139I of the Women’s Charter (Cap 353, 2020 Rev Ed), where parties proceed with a contested divorce and have children below the age of 21, parties or their children (or both) must be ordered to attend mediation and/or counselling, unless the court considers it to not be in their interests. Another example is of

⁴ The WIPO Arbitration and Mediation Center is one of the three mediation service providers recognised by the Intellectual Property Office of Singapore (“IPOS”), and it is the only global centre to provide specialist services for intellectual property and technology disputes. It is also a designated mediation service provider and so with the consent of the parties, its mediated settlement agreements also be registered and enforceable as orders of court under the Mediation Act 2017. See IPOS, *Mediation*, <https://www.ipos.gov.sg/manage-ip/resolve-ip-disputes/mediation> (last accessed May 8, 2023); WIPO, *The WIPO Arbitration and Mediation Center Singapore Office*, <https://www.wipo.int/amc/en/center/singapore/> (last accessed May 8, 2023).

⁵ Order 5, Rule 1 of the Rules of Court (Cap 322, 2021 Rev Ed).

⁶ Order 21, Rules 2 and 4 of the Rules of Court (Cap 322, 2021 Rev Ed).

⁷ Dorcas QUEK ANDERSON, *Empowering the courts to order the use of amicable dispute resolution: The Singapore Rules of Court 2021*, 41(3) Civil Justice Quarterly 191 (2022).

cases filed with the Small Claims Tribunal where Section 17 of the Small Claims Tribunals Act imposes a statutory obligation on the Registrar, when a claim has been filed, to invite parties for a “consultation with a view to effecting a settlement acceptable to all the parties”. Furthermore, since April 2017,⁸ mediation with the Tripartite Alliance for Dispute Management is compulsory before the matter is heard by an Employment Claims Tribunal. Further, it was announced in March 2023 that under the enhanced Community Dispute Management Framework, mediation for neighbourly disputes over noise will be mandatory.⁹

Despite not being mandatory, amicable dispute resolution, particularly mediation, has a strong presence in the early stages of legal proceedings in Singapore. Due to the pro-amicable dispute resolution culture, the strong legal framework that promotes and supports it, as well as the active push from the judiciary, mediation has been successfully positioned as “the first stop”.¹⁰ Besides that, where parties have mediation clauses incorporated in their contracts, the Court will enforce such clauses, and parties are bound to negotiate in good faith.¹¹ Given that the Court of Appeal had also held that where parties incorporate a multi-tier dispute resolution clause and that parties are mandated to mediate prior to arbitration, such clauses are enforceable and effective.¹² Crucially, it was also held that the parties’ obligation to mediate would be viewed as a pre-condition to a valid arbitration.¹³ Thus, while not always court-mandated as a prelude to legal proceedings, mediation plays a key role in dispute resolution in Singapore.

It is pertinent to note that the advocates and solicitors now have a professional duty to advise their clients about the various ways their disputes may be resolved using an appropriate form of ADR. This is supported by Supreme Court guidelines, which state that lawyers have a duty to explain the benefits of mediation, the process, and what might be achieved over and above what remedies are available through the courts.¹⁴

⁸ Employment Claims Act 2016.

⁹ Yuen-C THAM, *Mediation to be mandatory for noise disputes between neighbours*, Mar. 28, 2023, available at <https://www.straitstimes.com/singapore/politics/mediation-to-be-mandatory-for-noise-disputes-between-neighbours> (last accessed Apr. 27, 2023).

¹⁰ James LEONG & David LIM, An Overview of Court Mediation in the State Courts of Singapore in *MEDIATION IN SINGAPORE: A PRACTICAL GUIDE* 227 - 250 (Danny McFadden and George Lim SC eds, Sweet & Maxwell, 3d ed, 2021).

¹¹ *HSBC Institutional Trust Services (Singapore) Ltd v Toshin Development Singapore Pte Ltd* [2012] SGCA 48.

¹² *International Research Corp PLC v Lufthansa Systems Asia Pacific Pte Ltd and another* [2013] SGCA 55.

¹³ *Ibid.*

¹⁴ Dorcas QUEK ANDERSON, *The development of mediation for civil disputes* in *MEDIATION IN SINGAPORE: A PRACTICAL GUIDE* 313, 332 (Danny McFadden and George Lim SC eds, Sweet & Maxwell, 3d ed, 2021).

B The Growth of Mediation in Singapore

Traditionally, mediation is referred to the process where disputants talked about their differences and were afforded counsel to resolve their disputes amicably. In Singapore, this typically involved ‘respected community leaders’ who would act as a neutral party. Following the establishment of modern Singapore’s legal system, mediation took a back seat as the government prioritized the development of court-based processes (i.e., litigation). However, in the late 1990s, mediation was resurrected primarily through the efforts of the judiciary, particularly the enormous support of the then presiding Honourable Chief Justice Yong Pung How. Aside from the aim to clear a backlog of cases before the courts, another key goal of the judiciary’s push for mediation was its belief that mediation benefited the society and its individuals by preserving harmony and cohesion.

The groundwork for a comprehensive ADR system in Singapore was laid in the mid-1990s, when the then-Minister for Law and Foreign Affairs, S Jayakumar, appointed a high-level committee on ADR (“ADR Committee”) in 1996, which comprised both public and private sector representatives to investigate how ADR processes, particularly mediation, could be promoted in Singapore.¹⁵ The ADR Committee, chaired by then-Minister of State for Law and Home Affairs Ho Peng Kee, was tasked with reviewing current uses and considering new uses for ADR processes in Singapore. 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.¹⁶

Singapore’s concept of access to justice through mediation has evolved over the last two decades. Court-based mediation was established in 1994, followed by commercial mediation in 1997 and community mediation in 1998. Two opposing forces have influenced the relationship between the mediation movement and access to justice: the desire to create an indigenous model of mediation and the need for it to be aligned with the internationally accepted mediation principles. The introduction of mediation coincided with a shift from adversarial justice to a more traditional form of conciliatory justice, in which a respected mediator served as an advisor to the disputants and was trusted to ensure the fairness of the process. As mediation was now viewed as complementary and co-equal to court adjudication,

¹⁵ Prof S Jayakumar, Minister for Law and Foreign Affairs, Speech at the 15th Anniversary Dinner of the Singapore Institute of Arbitrators (May 24, 1996) (transcript available at <https://www.nas.gov.sg/archivesonline/data/pdfdoc/sj19960524s.pdf>) (last accessed May 8, 2023).

¹⁶ See Assoc Prof Ho Peng Kee, Minister Of State For Law And Home Affairs, Address at The Conference on “Resolving Disputes: Exploring The Alternatives” (Mar. 31, 1998) (transcript available at <https://www.nas.gov.sg/archivesonline/data/pdfdoc/1998033101.htm>) (last accessed Apr. 27, 2023).

the revival of conciliatory justice strengthened the relationship between mediation and access to justice. This trajectory, however, has been tempered by the need to ensure that Singapore's mediation practice adheres to international best practices regarding the protection of parties' autonomy. Recent efforts to promote the use of mediation in cross-border disputes have emphasised this need.¹⁷

Thus, mediation is now a crucial component of Singapore's judicial system¹⁸ over and above of it being used for interpersonal issues. It is frequently employed to resolve disputes in courts, organisations, businesses, and other settings. As previously highlighted, the Singapore courts now have the option to record mediated settlement agreements as court orders following the passage of Singapore's Mediation Act ("Mediation Act 2017") on 1 November 2017, which allows for parties to consensually apply for their privately mediated settlement agreements to be registered as an order of court, provided the conditions for the Act's applicability are satisfied.¹⁹ This includes factors such as, whether the mediation was conducted by a certified mediator,²⁰ or handled by a designated mediation service provider,²¹ the mediated settlement agreement is in writing and signed by all parties and no proceedings have been commenced in any court. The application must be made within eight weeks of the date of settlement unless the court grants an extension of time.²² These conditions apply to any mediation conducted under a mediation agreement where (a) the mediation is conducted entirely or partially in Singapore; or (b) the agreement states that the Act or Singapore law will apply to the mediation.²³ Moreover, with the Singapore Convention on Mediation Act being passed on 12 September 2020, it is now possible for an international settlement agreement to be enforced as a court order after fulfilling the necessary steps under Section 4 of the Act.

¹⁷ Dorcas QUEK ANDERSON, *The evolving concept of access to justice in Singapore's mediation movement*, 16(2) *International Journal of Law in Context*, Research Collection School Of Law, 128-145 (2020).

¹⁸ On multiparty mediation in Brazil see FERREIRA, Daniel B; SEVERO, Luciana. *Multiparty Mediation as Solution for Urban Conflicts: A case analysis from Brazil*. *BRICS Law Journal*, Vol. VIII, nº 3, 2021, pp. 5-29. <https://doi.org/10.21684/2412-2343-2021-8-3-5-29>. See also: FARIAS, Bianca O. *Mediação de conflitos em ambientes educacionais: um horizonte com novas perspectivas*. *Revista Brasileira de Alternative Dispute Resolution – RBADR*, vol. 2, nº 3, 2020, pp. 157-194. See: AWAD, Dora R. *Mediação de conflitos no Brasil: atividade ou profissão*. *Revista Brasileira de Alternative Dispute Resolution – RBADR*, vol. 2, nº 4, 2020, pp. 57-66. On mediation in Palestine see: SHAAT, Haia. *Mediation in Palestine*. *Revista Brasileira de Alternative Dispute Resolution – RBADR*, vol. 2, nº 3, 2020, pp. 231-249.

¹⁹ Section 12 of the Mediation Act 2017.

²⁰ For example, a SIMI-certified mediator whereby SIMI is a premier independent professional standards body for mediation in Singapore and the region. For more information: SIMI, <https://www.simi.org.sg> (last accessed May 2, 2023).

²¹ They are the Tripartite Alliance for Conflict Settlement, SMC, SIMC, the WIPO Mediation and Arbitration Center. See Press Release, Ministry of Law, *Mediation Act to commence from 1 November 2017* (Nov. 1, 2017) (available at <https://www.mlaw.gov.sg/news/press-releases/mediation-act-to-commence-from-1-november-2017>) (last accessed May 8, 2023).

²² Section 12 of the Mediation Act 2017.

²³ Section 6(1) of the Mediation Act 2017.

Given that there are also other legislation supporting the mediation ecosystem, such as the Income Tax Act 1947 and the Income Tax (Qualifying Mediation and Qualifying Mediator) Rules 2016,²⁴ the growth of mediation in Singapore is likely to be sustained. Where the relevant requirements are met, non-resident mediators can enjoy tax incentives for their services.²⁵ From 1 April 2023 to 31 December 2027, gross income derived by non-resident mediators from mediation work carried out in Singapore will be subject to a concessionary withholding tax rate of 10%, or the mediator may elect to be taxed at 24% on net income. This applies to income derived from mediation services for a mediation that was conducted in Singapore or was planned to take place in Singapore, but the dispute was settled before the mediation. Mediation services extend to those that were rendered pursuant to an agreement to mediate specifying Singapore as the venue for the mediation. To qualify, at least one of the following must apply: (a) the mediator is certified or accredited, or (b) the mediation is administered by a designated mediation service provider such as SIMC. Other initiatives in Singapore to further incentivise mediation such as the Revised Enhanced Mediation Promotion Scheme (REMPS) – a funding scheme by IPOS to partially cover parties’ mediation costs for disputes before IPOS that are to be mediated.²⁶

C Mediations in Singapore

There are 3 broad categories of mediation in Singapore – community-based, court-based, and private mediation.

C.1 Community-Based Mediations

Community-based mediation is offered through the CMCs, where matters are mediated by volunteers. By providing a safe and neutral space for dialogue, community-based mediations empower individuals to voice their concerns, understand different perspectives, and work towards mutually acceptable resolutions. These mediations have proven effective in resolving neighbourhood disputes, interpersonal conflicts, and other community-related issues, thereby

²⁴ The Rules are based on the Recommendations of the Working Group to develop Singapore into a Centre for International Commercial Mediation by the International Commercial Mediation Working Group (“ICMWG”), available at <https://www.mlaw.gov.sg/news/press-releases/icmwg-recommendations>. *Infra* note 37.

²⁵ Sections 13 and 43 of the Income Tax Act.

²⁶ IPOS, *Revised Enhanced Mediation Promotion Scheme (REMPS)*, <https://www.ipos.gov.sg/docs/default-source/growing-your-business-with-ip/funding-assistance/remps-information-sheet.pdf> (last accessed May, 8 2023); IPOS, *Revised Enhanced Mediation Promotion Scheme Frequently Asked Questions (FAQ)* <https://www.ipos.gov.sg/docs/default-source/growing-your-business-with-ip/funding-assistance/remps-faq.pdf> (last accessed May 8, 2023).

enhancing social cohesion and nurturing a sense of belonging among residents. Privilege and secrecy of mediations by the CMCs are enshrined by sections 19 and 20 of the Community Mediation Centres Act 1997. The success of community-based mediations in Singapore reflects the country's commitment to fostering strong community ties and ensuring peaceful coexistence.

C.2 Court-Based Mediations

The State Courts' Court Dispute Resolution Cluster ("CDRC"), Family Justice Courts, and the Small Claims Tribunal offer court-based mediation. Apart from being referred for mediation, when mediation is requested and all parties agree, parties can also undergo court-based mediation with either a judge in the CDRC or a court volunteer mediator. While the cases that go for court-based mediation range from civil disputes to matters relating to protection from harassment, not all matters can be mediated through the courts. For example, as the Supreme Court does not offer any mediation services, the court can only allow parties' request to mediate by giving directions to facilitate mediation, e.g., adjourning the matter.

At the 1996 Opening of Legal Year Address, the then Attorney-General Chan Sek Keong floated the idea of institutionalising private commercial mediation.²⁷ Thereafter, SMC was launched in August 1997. SMC plays a significant role in facilitating court-based mediations, providing trained mediators and a structured process for parties to engage in constructive dialogue. Court-referred mediations cover a wide range of disputes, including civil, commercial, and family matters. As SMC developed, it began to establish specialist schemes to mediate industry-specific matters. For example, the Alternative Dispute Resolution Sports Scheme was launched in early 2008, and the Council for Estate Agencies Mediation Scheme in 2011. Such efforts continue with a scheme aimed at resolving disputes between telco and media service providers that was launched in April 2022.²⁸

C.3 Private Mediations

Most private mediations require parties to reduce the terms of the agreement in writing and to have their signatures to the document. The legal standing of settlement agreements will depend on (i) the intention of the parties; (ii) the

²⁷ Attorney-General Chan Sek Keong, Address at The 1996 Opening of Legal Year (Jan. 6, 1996) (transcript available at <https://www.agc.gov.sg/docs/default-source/speeches/2010-1992/speech-1996.pdf>) (last accessed May 2, 2023); See Laurence BOULLE and Hwee Hwee TEH, *Mediation – Principles, Process and Practice* 207 (Butterworths Asia, Singapore ed, 2000).

²⁸ See generally Kit TANG, *New Scheme to Help Resolve Disputes with Telco and Media Service Providers*, Channel News Asia, Mar. 4, 2022, available at <https://www.channelnewsasia.com/singapore/new-scheme-help-resolve-disputes-telco-media-service-providers-2536191> (last accessed Apr. 27, 2023).

context of the mediation; and (iii) the existence and nature of relevant statutory requirements. If the conditions are satisfied, it would constitute a binding contract. As a result, accepted contractual principles determine whether such settlement agreements can be enforced. Additionally, with the Mediation Act 2017, parties can apply for privately mediated settlement agreements to be recorded as an order of court if the statutory requirements are met.²⁹

Generally, in private mediations, apart from the mediator and the parties, no one else would be allowed to attend the mediation.³⁰ Mediation proceedings are also conducted on a 'without prejudice' basis, meaning that if the mediation is unsuccessful, anything that transpired during the mediation that could possibly be used against a party's interest, may not be presented in subsequent arbitration or court proceedings (unless it would have been subject to and disclosed under the normal discovery process). In addition, unless it is the wish of the party to share any information provided in the course of mediation, the mediator is prohibited from divulging any information obtained in the private sessions with one party to the other parties in the mediation. Mediators, and parties would be obligated by a mediation agreement that forbids the disclosure of such information pertaining to the mediation. To safeguard the privacy of mediations, several statutory safeguards, such as privilege and secrecy obligations, have been put in place. These laws include, for instance, Section 23 of the Evidence Act which stipulates that admissions in civil cases are not relevant where they were made:

- (a) upon an express condition that evidence of it is not to be given; or
- (b) upon circumstances from which the court can infer that the parties agreed together that evidence of it should not be given.³¹

While there are various ADR organisations in Singapore, only four are designated mediation service providers for the purposes of the Mediation Act 2017. While the Tripartite Alliance for Dispute Management and the Intellectual Property Organization Arbitration and Mediation Center focus on mediations of disputes in specialised areas, SIMC and SMC provide mediation services that cater to a broader range of disputes.

²⁹ Section 12 of the Mediation Act 2017.

³⁰ Some staff members of mediation service providers who are bound by confidentiality obligations may be present to assist the mediator and parties with administrative affairs.

³¹ Section 23 (1) of the Evidence Act.

SMC is a designated mediation service provider under the Mediation Act 2017, which means that settlement agreements from mediations at SMC may be registered as an order of court under the Mediation Act 2017 and enforceable as such, if the conditions of the Act are satisfied. It is supported by the Singapore Academy of Law. SMC has mediated more than 5,200 matters worth over SG\$10 billion since its launch in 1997.³² Usually, one or both parties request mediation by contacting SMC. The courts may also refer the case to SMC. SMC arranges for the mediation agreement to be signed by all parties, finds a mediator, and takes care of all other administrative issues such as date, time, and location for mediation. If either party has good justification, it may reject the suggested mediator (e.g., conflict of interests). The parties may also make a request for a specific mediator to be appointed. The mediator receives valuable support and counsel from the parties' lawyers throughout the mediation process. Similar to SIMC, settlements from mediations handled by the SMC can, with the consent of the parties, also be registered and enforceable as orders of court, after fulfilling the provisions under Section 12 of the Mediation Act 2017.

SIMC stands out for its mediation services targeted at the needs of parties in cross-border commercial disputes. SIMC was established on 5 November 2014 as an independent, not-for-profit institution to meet the growing demand for quality dispute resolution services and to help Singapore become a premier destination for legal services and dispute resolution in Asia and globally. Since its establishment, SIMC has handled more than 300 international mediation matters with a cumulative dispute value of more than US\$15 billion, with parties originating from 51 jurisdictions as of May 2023. SIMC offers three main services for conducting mediation: First, it primarily administers mediation if parties agree that the mediation will be conducted in accordance with the SIMC Mediation Rules. Secondly, for mediations not administered in accordance with the SIMC Mediation Rules, parties may consent to use SIMC as an *ad hoc* appointing authority for mediators or experts. Thirdly, SIMC works with other domestic and foreign dispute resolution organisations to offer mixed-modes dispute resolution services, such as the Singapore International Arbitration Centre ("SIAC") to provide services under an innovative hybrid process known as 'Arb-Med-Arb',³³ the Shenzhen Court of International Arbitration ("SCIA") under an 'Med-Arb' protocol,³⁴ and the Singapore International Commercial Court ("SICC") under a 'Lit-Med-Lit' protocol.³⁵ These protocols are discussed further in the *Multi-tiered Clauses, Mixed-modes and*

³² SMC, *About Us*, <https://www.mediation.com.sg/about-us/about-smc/> (last accessed May 2, 2023).

³³ *Infra* Section E.1.

³⁴ *Ibid.*

³⁵ *Infra* Section E.2.

Protocols section of this paper. As SIMC is also a designated mediation service provider under the Mediation Act 2017, settlement agreements from mediations administered by SIMC can be recorded as an order of court for enforcement.³⁶

D Singapore's Evolution into an International Dispute Resolution Hub

The evolution of Singapore's mediation landscape from its initial domestic focus to its current international focus necessitated careful design, planning, and implementation. Singapore has long been regarded as one of the most competitive countries and best places to do business.³⁷ Singapore's location makes it a key node and gateway for businesses serving the Asia-Pacific region. It also serves as a strategic launchpad for access to major and emerging markets in Southeast Asia, China, and India. With Singapore at the epicentre of this economic activity, demand for legal and dispute resolution services has also increased.³⁸

Mediation in Singapore reached new heights following its development at the international level. In 2013, the Ministry of Law welcomed the recommendations by the International Commercial Mediation Working Group ("ICMWG") to develop Singapore into an international commercial mediation centre. These included the formation of a professional standards body for mediation, the establishment of an international mediation service provider, a legislative framework, exemptions and incentives, and the enhancement of existing rules and court processes to encourage greater use of mediation. The main suggestions included: (1) the establishment of SIMC; (2) the establishment of Singapore International Mediation Institute ("SIMI"); (3) the promulgation of a Mediation Act; (4) the extension of tax exemptions and incentives to mediation; (5) the improvement of rules and court processes; and (6) reaching out to target markets and key industries.³⁹ These demonstrate how the Singapore government has actively promoted mediation in Singapore.

Singapore as a nation, does not hesitate to take risks to achieve its goals. When it recognises an opportunity, a strategy is immediately formulated, and resources are mobilised to effectively secure the benefit. Extended decision-making

³⁶ Section 12 of the Mediation Act 2017; Ministry of Law, *supra* note 19.

³⁷ IMD World Competitiveness Booklet 2022, International Institute for Management Development (Jun. 2022) (available at <https://imd.cld.bz/IMD-World-Competitiveness-Booklet-2022>) (last accessed May 8, 2023).

³⁸ See generally Gloria LIM, *International Commercial Mediation The Singapore Model*, 31 SAclJ 377, 401 available at <https://journalsonline.academypublishing.org.sg/Journals/Singapore-Academy-of-Law-Journal-Special-Issue/e-Archive/ctl/eFirstSALPDFJournalView/mid/513/ArticleId/1465/Citation/JournalsOnlinePDF> (last accessed Apr. 27, 2023). *Infra* note 55.

³⁹ ICMWG, *supra* note 22.

processes are rarely used because getting things done is the main priority. To boost international investor and commercial confidence, Singapore has worked hard to establish a clear, progressive, and business-friendly dispute resolution framework that is in line with international legal and trade developments. This has resulted in various reforms to strengthen the mediation regime in the context of international commercial mediation. This means that parties who want the Mediation Act 2017's provisions and associated benefits to apply to their contracts can specify it in their contracts.

Singapore has been a strong proponent of the development of international rules to develop and promote the use of international commercial mediation, in addition to ensuring that Singapore's domestic legislation supports international commercial mediation. UNCITRAL completed its work on the Singapore Convention on Mediation in July 2018 and Singapore was an active participant in the deliberations and helped shape the final instrument.⁴⁰ At its 73rd session in New York in December 2018, the United Nations General Assembly adopted the United Nations Convention on International Settlement Agreements Resulting from Mediation and recommended that it be named after Singapore,⁴¹ making the Singapore Convention on Mediation the first UN treaty named after the city-state. Interestingly, it saw a record number of signatories on the first day of its launch.⁴² Since then, various other countries have signed the Singapore Convention on Mediation, and others are in the process of ratification. Uruguay was the most recent country to ratify the Singapore Convention on Mediation, which she did on 28 March 2023, and on 3 May 2023, the United Kingdom became the 56th country to sign it.

E Multi-tiered Clauses, Mixed-modes and Protocols

Considering that there can be no ancillary 'proceedings' to a mediation, it is evident that the time and cost savings afforded through mediation are generally indefeasible. Furthermore, given that mediations are typically set up in short period and the lead-up prior to the mediation does not involve huge bundles of evidentiary documents or extensive submissions, there is arguably good cause for parties or

⁴⁰ Report of the United Nations Commission on International Trade Law, 51st Session, 25 June – 13 July 2018, U.N. Doc A/73/17 ; GAOR, 73rd Session, Supp. No. 17 (2018).

⁴¹ Report of the United Nations Commission on International Trade Law, Fifty-first session (25 June–13 July 2018) General Assembly Official Records Seventy-third Session Supplement No. 17. (Page 9) - <https://documents-dds-ny.un.org/doc/UNDOC/GEN/V18/052/21/PDF/V1805221.pdf> (last accessed May 30, 2023)

⁴² 46 signatories signed up to the Singapore Convention on Mediation on the first day of its launch and there are 56 signatories and 11 of which have ratified it, as at May 8, 2023. See Singapore Convention on Mediation, <https://www.singaporeconvention.org> (last accessed May 8, 2023).

counsel to consider the incorporation of mediation clauses in their contractual agreements.

Parties to international commercial contracts frequently agree that any dispute arising from them will be resolved by various stated processes in sequence, and often do so at the beginning of contract negotiations. Multi-tiered dispute resolution clauses, also known as escalation clauses, serve several functions. The main goals are to reach an early settlement through a more informal process, saving the parties time and money from having to resort to more formal arbitration or litigation. Other reasons for agreeing on an escalation clause include putting alternative dispute resolution methods on both parties' agendas from the start, without requiring either party to give up a perceived strategic advantage once a dispute has arisen.

The first tiers of a multi-tier dispute resolution process can include a variety of methods, such as inter-party negotiations involving higher management, as well as conciliation, mediation, adjudication, mini-trials, or dispute boards — all of which, save for negotiations, involve the engagement of a third party in facilitating dispute resolution. Commercial mediation is one of the most commonly agreed-upon early-tier dispute resolution methods, often followed by arbitration if mediation is unsuccessful. The approach to mixed-modes dispute resolution may involve 2 tiers or 3 tiers.⁴³

E.1 Mediation & Arbitration

Suggested pre-litigation solutions in these multi-tier dispute resolution clauses could include hybrid forms of mediation and arbitration known as Med-Arb or Arb-Med, in which one person is entrusted with both mediating and arbitrating the parties' dispute. There is no standard definition for these processes, and they come in a variety of flavours. In general, 'Med-Arb' refers to a process in which parties initiate mediation and if that fails, parties will undergo arbitration. Generally, parties agree in writing that the process is binding from the very beginning — setting it apart from 'classical' mediation.⁴⁴ 'Arb-Med' is defined as a process in which parties initiate arbitration and then choose to have at least one (or the sole) member of the arbitral tribunal mediate the dispute. If mediation is unsuccessful, the arbitration will be resumed with the same arbitrator(s). The Arb-Med process may involve the arbitral tribunal drafting an award early in the arbitral

⁴³ For example, a 2-tier mechanism would be the SIMC-SCIA MA Protocol (*Infra* note 48) and the SIMC-SIAC AMA Protocol is a 3-tier mechanism (*Infra* note 45).

⁴⁴ Katie SHONK, What is Med-Arb? The pros and cons of med-arb, a little-known alternative dispute resolution process, Harvard Law School, Mar. 6 2023, available at <https://www.pon.harvard.edu/daily/mediation/what-is-med-arb/> (last accessed May 8, 2023).

process, which is then sealed and only released to the parties if the subsequent mediation is unsuccessful. As Rosoff observes, “both Med-Arb and Arb-Med face the same issues associated with assigning one person to serve as both mediator and arbitrator”.⁴⁵

Indeed, in practice, both processes are met with considerable scepticism, particularly with regard to the impartiality of an arbitrator who has received confidential information in mediation that a party may not have disclosed in arbitration — especially if such information is disclosed in a private caucus during mediation. On the other hand, parties are unlikely to disclose information or bottom lines for settlement in mediation to the same individual(s) who will later adjudicate the dispute if mediation fails.

In light of this, SIAC and SIMC have jointly devised a novel solution to the issues highlighted above. To coincide with the SIMC’s official launch on November 5, 2014, they presented their joint Arb-Med-Arb Protocol (“AMA Protocol”) which involves a three-stage process. The first step is to start arbitration proceedings before SIAC. Following the filing of a Notice of Arbitration and the formation of the arbitration tribunal, the arbitration at SIAC is stayed to allow the parties to mediate their disagreement with SIMC. The matter is referred back to arbitration in the third and final stage, which concludes with the issuance of an enforceable award in accordance with the terms of the settlement, if the dispute was settled during mediation. Under the terms of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which is more commonly known as the New York Convention, this arbitral award would be enforceable across 170 countries.⁴⁶ However, where mediation does not result in a settlement, the stay may then be lifted, and parties would then resume their arbitral proceedings. The arbitrators and mediators are chosen individually and independently under the AMA Protocol by SIAC and SIMC, respectively. Through this procedure, mediation’s flexibility and cost-effectiveness are paired with arbitration’s enforcement and finality.⁴⁷

The AMA Protocol applies where the parties have agreed in their contract to do so or where they have otherwise agreed to submit a dispute for resolution under it. In other words, parties can agree to submit their disputes to the AMA Protocol at any time, including after a dispute has arisen and even when arbitral

⁴⁵ See, e.g., Jacob ROSOFF, Hybrid Efficiency in Arbitration: Waiving Potential Conflicts for Dual Role Arbitrators in Med-Arb and Arb-Med Proceedings, 26 J Int’l Arb 89 (2009).

⁴⁶ New York Arbitration Convention, *List of Contracting States*, <https://www.newyorkconvention.org/list-of-contracting-states> (last accessed May 8, 2023).

⁴⁷ SIMC, *The New SIAC/SIMC AMA-Protocol: A Seamless Multi-tiered Dispute Resolution Process Tailored to the User’s Needs*, <https://simc.com.sg/blog/2015/04/14/the-new-siacsimc-ama-protocol-a-seamless-multi-tiered-dispute-resolution-process-tailored-to-the-users-needs/> (last accessed May 2, 2023).

proceedings have already begun. For parties wishing to refer disputes under the AMA Protocol, SIAC and SIMC provide a model dispute resolution clause, the 'Singapore Arb-Med-Arb Clause',⁴⁸ which like most model clauses, provides for the bare necessities of an arbitration agreement. Therefore, parties may want to consider amending it to meet the specific needs of their commercial transaction. In any case, parties should include language specifying the location and language of the arbitration, as well as the number of arbitrators they want to hear their case. The model arbitration clauses available on SIAC's website may provide them with supplementary guidance in this regard.

The SIAC-SIMC AMA Protocol is to be commended because it addresses issues that are truly relevant to the practice of international dispute resolution. It combines mediation's efficiency with the certainty and enforceability of an arbitral award. It also ensures a smooth transition between the arbitration and mediation phases of the process, which is not guaranteed by many other mediation and arbitration combinations. The AMA procedure is also cost-effective and transparent. Furthermore, the AMA Protocol includes financial rules that coordinate filing fees and cost advances for the arbitration and mediation stages of the procedure. The seamless transition between the arbitration and mediation stages should also promote cost efficiency.

However, there still remains some practical issues that must be addressed. Some believe that a critical question is whether and to whom a party requiring urgent interim relief during the mediation phase of the AMA process – during which the arbitration is stayed – should address such a request.⁴⁹ In an ideal world, such issues can be resolved through mediation. If the worst happens, a party can always terminate mediation in order to regain access to the arbitral tribunal to seek an order for interim relief.

The SIAC-SIMC AMA Protocol is expected to be fully embraced by users of international dispute resolution services. It appears to be tailored to their need for time- and cost-effective dispute resolution, with an emphasis on finding mediated

⁴⁸ The Clause reads:

"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') in force at the time.

Following the commencement of arbitration, the parties agree to make a good faith effort to resolve the dispute through mediation at the Singapore International Mediation Centre ('SIMC') in accordance with the SIAC-SIMC Arb-Med-Arb Protocol in effect at the time. Any settlement reached during the mediation shall be referred to the SIAC-appointed arbitral tribunal and may be made a consent award on agreed terms."

⁴⁹ See Paul TAN & Kevin TAN, Kinks in the SIAC-SIMC Arb-Med-Arb Protocol, *Law Gazette*, Jan 2022, available at <https://lawgazette.com.sg/feature/kinks-in-the-siac-simc-arb-med-arb-protocol/>.

solutions to business disputes that look forward rather than backwards. As a result, it could be exactly what users have been looking for.

Separately, SIMC and SCIA have collaborated to establish the SIMC SIMC-SCIA Med-Arb Protocol (“MA Protocol”) to allow the recording of any settlement agreement resulting from mediation at SIMC as an arbitral award of the SCIA, which would then be enforceable under the New York Convention. This is beneficial for parties with disputes in China or whether the location of the subject matter is in China.⁵⁰ Parties may adopt the MA Protocol to obtain greater finality in mediation outcomes if enforcement of settlement agreements is required.⁵¹

SIMC has also partnered with the Singapore International Arbitration Centre (SIAC) and the Singapore Chamber of Maritime Arbitration (SCMA) to offer Arb-Med-Arb (AMA) procedures under their respective Arbitration Rules.⁵²

E.2 Mediation & Litigation

Another option in multi-tier dispute resolution clauses is to use mediation alongside litigation, such as through a litigation-mediation-litigation (“Lit-Med-Lit”) protocol. The biggest advantage of such a Lit-Med-Lit protocol, relative to hybrid mechanisms that combine mediation and arbitration, is that it addresses the concerns of ‘defensive arbitration’ –⁵³ where the arbitrator may succumb to poor practices like not enforcing the timeline or excessively allowing evidence and submissions to be admitted, which may stem from the arbitrator’s fear of facing a challenge on the grounds of natural justice. While there may be other safeguards provided by the arbitration institution, like the SIAC Rules 2016 Rule 19.1, to deter arbitrators from engaging in defensive arbitration, it nevertheless remains a possibility, and the only viable recourse in such a situation would be litigation. This is because actions to set aside or to enforce arbitral awards can only be heard by the courts. In Singapore, this is further aggravated by the fact that the grounds for

⁵⁰ See Jonathan Yuen, Yu Zheng, Ang Leong Hao and Ang Tze Phern, Singapore: New Med-Arb Protocol: SIMC Mediation Settlement Agreements To Be Enforceable As SCIA Arbitral Awards, 14 December 2022, available at <https://www.mondaq.com/arbitration-dispute-resolution/1260546/new-med-arb-protocol-simc-mediation-settlement-agreements-to-be-enforceable-as-scia-arbitral-awards> (last accessed June 7, 2023)

⁵¹ SIMC, *Med-Arb*, <https://simc.com.sg/disputeresolution/medarb/#:~:text=The%20Singapore%20International%20Mediation%20Centre,arbitral%20award%20of%20the%20SCIA> (last accessed May 2, 2023).

⁵² SIMC, Arb-Med-Arb, <https://simc.com.sg/dispute-resolution/arb-med-arb/> (last accessed June 7, 2023).

⁵³ See Honourable Justice Philip Jeyaretnam, Judge of the Supreme Court of Singapore and President of the Singapore International Commercial Court, Address at Launch of Litigation-Mediation-Litigation Protocol & SICC Model Jurisdiction Clause for International Arbitration Matters on “Appropriate Dispute Resolution” (Jan. 12, 2023) (transcript available at https://www.sicc.gov.sg/docs/default-source/modules-document/news-and-article/launch-of-litigation-mediation-litigation-protocol-sicc-model-jurisdiction-clause-for-international-arbitration-matters-address-on-appropriate-dispute-resolution_30348675-f929-42b1-b648-3af900a330e2.pdf) (last accessed Apr. 27, 2023).

such an action are exhaustive under the Arbitration Act 2001 and the International Arbitration Act 1994.

In January 2023, SIMC and SICC jointly established a Lit-Med-Lit framework with a view to promoting the amicable resolution of international commercial disputes (“LML Protocol”).⁵⁴ It operates similarly to the SIAC-SIMC AMA Protocol, such that litigation started at the SICC is first stayed to allow the parties to see if they can settle their dispute through mediation at SIMC. This stay will last for either eight weeks from the mediation commencement date or until the date on which the mediation ended as set out in SIMC’s notification – whichever date is earlier. The mediation will be administered in accordance with the Mediation Rules of SIMC. Should the stay have expired, a case management conference will be convened by the SICC Registry for parties to seek directions to either extend the stay or to adjourn subsequent mediation sessions. If parties are able to arrive at a settlement agreement, the parties can then agree to have the settlement agreement recorded by the SICC as an order of court. If there is no settlement at the end of the mediation, the litigation at SICC resumes. Parties may choose to adopt the LML Protocol when contracts are being negotiated by incorporating the model LML Clause into their agreements. Alternatively, parties may, by a separate agreement, adopt the LML Protocol at any other time, such as after a dispute has arisen.⁵⁵

During this period, parties may make an application to SICC for interim or supplementary orders so as to preserve their rights and notify SIMC of its application and SICC’s subsequent decision. The power to grant interim orders, such as an injunction ensures that any judgment or order made in the SICC proceedings, or in any subsequent mediated settlement agreement is not rendered ineffectual by the dissipation of assets by a party.

Similar to the model clause for the SIMC-SIAC AMA Protocol, the model clause for the LML Protocol offers parties some room for deviation.⁵⁶ While the

⁵⁴ Joint Media Release, Singapore International Commercial Court and Singapore International Mediation Centre, Singapore International Commercial Court Launches Mediation-Friendly Protocol with Singapore International Mediation Centre to Advance Singapore as Asian Hub for Dispute Resolution (Jan. 12, 2023) (available at <https://www.judiciary.gov.sg/news-and-resources/news/news-details/joint-media-release-singapore-international-commercial-court-launches-mediation-friendly-protocol-with-singapore-international-mediation-centre-to-advance-singapore-as-asian-hub-for-dispute-resolution>) (last accessed Apr. 27, 2023).

⁵⁵ SIMC, *Singapore International Commercial Court Launches Mediation-Friendly Protocol with Singapore International Mediation Centre to Advance Singapore as Asian Hub for Dispute Resolution*, <https://simc.com.sg/blog/2023/01/13/singapore-international-commercial-court-launches-mediation-friendly-protocol-with-singapore-international-mediation-centre-to-advance-singapore-as-asian-hub-for-dispute-resolution> (last accessed May 2, 2023).

⁵⁶ The Clause reads: “The parties agree that any dispute, controversy or claim arising out of or in connection with the present contract (including any question regarding its existence, validity or termination) (the “Dispute”) shall first be referred to the [Singapore International Mediation Centre] for mediation in accordance with the [Singapore International Mediation Centre Mediation Rules] for the time being in

LML Protocol only came into effect in early January 2023, this development is highly welcomed as it offers parties another hybrid dispute resolution mechanism that allows for greater efficiency, reduced time and financial costs as well as the registrability and enforceability of a mediated settlement agreement as an order of court.⁵⁷ While recording the mediated settlement agreement as an order of court will require all parties to consent,⁵⁸ it is hypothesised that the LML Protocol will be well-received and increasingly adopted, especially for disputes relating to insolvency and far-reaching assets, or those involving multiple parties. Additionally, where the mediated settlement agreement is recorded as an order of court, it would have the status of an order from the Singapore High Court. This may be preferred by parties who require the ‘bite’ of enforcement within Singapore or jurisdictions that typically enforce Singaporean judgments with confidence.

F Mediation Infrastructure in Singapore

Another crucial component of the robust legal ecosystem is the supporting physical infrastructure. In 2002, a Legal Services Working Group of the Economic Review Committee emphasised the need for “good infrastructure and facilities” to turn Singapore into a regional ADR service centre. Planning for this followed, and Maxwell Chambers, an integrated ADR complex, was opened in 2010. Apart from the state-of-the-art rooms that were custom-designed and fully equipped to meet the needs of ADR, the building was expanded in 2017 so as to house international institutions as well as dispute chambers and practices. Mediation organisations housed in Maxwell Chambers Suites include SMC, SIMC and the WIPO Arbitration and Mediation Center amongst other leading dispute resolution institutions.

To boost connectivity and reduce physical barriers, Maxwell Chambers has also entered the International Arbitration Centre Alliance with Arbitration Place (Toronto and Ottawa, Canada), International Dispute Resolution Centre (London, United Kingdom), Abu Dhabi Global Market Arbitration Centre (Abu Dhabi, United Arab Emirates) and the International Arbitration Centre Chambers (Astana,

force. Suppose the dispute cannot be resolved through mediation within [8 weeks] after commencement of mediation at the [Singapore International Mediation Centre], or within such other period as may be agreed by the parties. In that case, the parties shall submit the dispute to the exclusive jurisdiction of the Singapore International Commercial Court.”

⁵⁷ SIMC, *supra* note 51.

⁵⁸ Section 12 of the Mediation Act 2017.

Kazakhstan).⁵⁹ Through this alliance, parties can attend a hybrid mediation or hearing at the closest partner facility.⁶⁰

G Capacity Building and Accreditation

The efforts to promote cross-border commercial mediation have resulted in the formation of SIMI, which sets national mediation standards. Since its establishment following recommendations from the ICMWG in 2014, SIMI has promoted the growth of both national and international mediators in Singapore through a strong accreditation system. SIMI is an accrediting body that maintains the standard of mediators in Singapore. SIMI offers Registered Training Programs, which are carried out by centres such as SIMC and SMC. In addition to the 40 hours of accredited training, the centres make sure that the quality of standards of mediators is maintained at a high level. SIMC is one of the centres that offers mediator training for accreditation by SIMI and, as one of the first international mediation centres in the world, it also supports the development of mediation globally. SIMC has trained senior judges, lawyers, and businessmen from both developed and developing countries in Asia and beyond. In addition to the trainings for accreditation, SIMC has customised a special mediation program for experienced legal and business professionals interested in mediating cross-border commercial disputes in its key markets. SIMC is stringent in carefully selecting the participants for the program who are later empanelled as SIMC's Specialist Mediators who assist in co-mediating complex cross-border disputes. Beyond the conventional programs, SIMC supports in capacity building projects in South and Central Asia in collaboration with other international agencies, such as the Commercial Law Development Program, a division of the U. S. Department of Commerce.

With the strict standards and these institutions in place, mediation will continue to develop and make its mark as an appealing dispute resolution process. Such standards will uphold the legitimacy and effectiveness of the mediation process, increasing the demand for domestic and international mediation cases.

In Singapore, the professional mediator standards set by SIMI have resulted in a growing pool of qualified mediators in Singapore and Asia. However, there has been limited training of advocates for mediation. While seemingly small, this is an important issue as lawyers still play an important role in promoting mediation,⁶¹

⁵⁹ The International Arbitration Centre Alliance. Retrieved from: <https://www.iacaglobal.com>. Accessed on: Apr. 27, 2023.

⁶⁰ The International Arbitration Centre Alliance. Retrieved from: <https://www.iacaglobal.com>. Accessed on: Apr. 27, 2023.

⁶¹ See QUEK ANDERSON, *supra* note 13 on the duty to advise clients on the mediation process and its benefits.

preparing their clients ahead of and advising during mediation. They are in a position to contribute collaboratively and constructively to the mediation and thereby assist their clients in reaching an agreement that reflects their interests and needs. Parties can negotiate more effectively with legal representation, which can help speed up the mediation process. With lawyers increasingly participating in mediation as a result of court-ordered mediation, it is strongly believed that mediation advocacy standards would help to propel Singapore's mediation services internationally while also further promoting it at home. Educating lawyers on mediation advocacy will greatly dispel the misconception that mediation advocacy skills are a given if lawyers are trained litigators.

To fill this lacuna in training, SIMC is actively working with IMI to offer Mediation Advocacy Qualifying Assessment Programs ("MA-QAPs"). In Asia, apart from the Institute for Certification and Training of Lusophone Mediators which offers the programme through its Macau office, MA-QAPs are only offered by Singaporean ADR organisations that partnered with IMI, as of May 2023.⁶²

H Future of Mediation

With mediation in Singapore steadily growing, especially that of international mediation, there is much to look forward to. Domestically, after the rise of industry-specific tribunals, it is believed that there will be more mediators specialising in their chosen areas. This will likely be strengthened through making mediation a compulsory element before the matter is heard by the tribunal. The strategic establishments of institutions such as SMC and SIMC, contributed to the growth of mediation and provided a platform for parties to seek quality mediation-related services. The country's strong legal framework, impartial judiciary, and commitment to upholding the rule of law provide a conducive environment for parties from around the world to engage in mediation.

In relation to international mediation, it is hypothesised that Singapore will see an increase in matters relating to the Belt Road Initiative. As economies recover from the disruptions caused by the Covid-19 pandemic and as borders reopen, widespread international cooperation on the Belt Road Initiative is expected to grow, notwithstanding the pessimistic global economic outlook. Singapore is uniquely positioned to be the heart of mediation not only because it has a developed and robust legal eco-system and is known to be where 'the East meets the West.' While the Belt Road Initiative involves 151 countries and 32 international organisations, much of the spotlight will invariably be on China as it leads this project. With that

⁶² They are SIMC, Singapore International Dispute Resolution Academy, Sage Mediation, See IMI, *Find a Program*, <https://imimediation.org/orgs/find-program/> (last accessed May 9, 2023).

in mind, it is heartening that China has affirmed its close links with Singapore and its trust in the Singaporean legal system. On 1 April 2023, a MOU on the Management of International Commercial Disputes in the Context of the Belt and Road Initiative through a Litigation-Mediation-Litigation Framework was signed between the Supreme Court of Singapore and the PRC Supreme People's Court.⁶³ As such, there will be two LML frameworks developed by the respective courts, and they shall run in parallel. In Singapore's context, this framework triggers the LML Protocol of SICCC, where parties adopt the Model Clause.⁶⁴

Lastly, technology will also play a significant role in shaping the future of mediation in Singapore. The advancement of online mediation platforms and virtual dispute resolution mechanisms has the potential to enhance accessibility and convenience for parties involved in cross-border disputes, which realised remarkably during the worldwide Covid-19 lockdown. The government's support, the growing demand for alternative dispute resolution, Singapore's global reputation, and the integration of technology are all factors that contribute to the positive future of mediation.

Access to justice and effective resolution of disputes are important to be in line with the constant economic and social changes occurring globally. Development of mediation, though it being one of the oldest methods of dispute resolution, is considered to be latest of all the processes. Mediation's growth and development has accelerated as a result of Singapore's continuous collaborative efforts – and growth only comes through continuous efforts. Mediation is about making an effort, and I would like to end by a line by Mick Jagger – “you can't always **get what you want**, but if you **try sometimes**, you might find, you **get what you need**.”

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⁶³ Memorandum Of Understanding Between The Supreme Court Of Singapore And The Supreme People's Court Of The People's Republic Of China (Apr. 1, 2023) (available at <https://www.sicc.gov.sg/docs/default-source/memorandum-of-guidance/lml-mou-factsheet-and-details.pdf>) (last accessed Apr. 27, 2023).

⁶⁴ The Model Clause reads: “Each party irrevocably submits to the exclusive jurisdiction of Singapore International Commercial Court any dispute arising out of or in connection with this contract (including any question relating to its existence, validity or termination). The parties agree that after the commencement of court proceedings, they will attempt in good faith to resolve any such dispute through mediation in accordance with the Litigation-Mediation-Litigation Protocol of the Singapore International Commercial Court.”

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