

SMU FORUM – EXPANDING THE SCOPE OF DISPUTE RESOLUTION AND ACCESS TO JUSTICE: THE USE OF MEDIATION WITHIN THE COURTS

**Opening Remarks by
The Honourable Justice Belinda Ang Saw Ean
Judge of the Supreme Court of Singapore**

Introduction

1. Associate Professor Goh Yihan, Dean of SMU School of Law, distinguished guests, ladies and gentlemen, I wish you a pleasant morning.

2. Since mediation was introduced in Singapore in the 1990s, it has developed and grown into a unique and diverse ecosystem. Today, mediation is an integral part of Singapore's justice system, in private commercial dispute resolution and in community dispute resolution. I will focus on the first two in my address today.

3. The Singapore Judiciary was an early driver of the mediation movement. In its quest to establish a world class Judiciary upholding the Rule of Law and administering a public justice system, it was important that the delivery of effective civil justice incorporated ADR options as part of dispute resolution. Indeed, in the World Justice Project Rule of Law Index that was published in 2018¹, Singapore emerged 13th in ranking out of 113 countries worldwide, and was the top Asian country. One of the factors that the index considers is civil justice, which measures whether ordinary people can resolve their grievances peacefully and effectively through the civil justice system, and which recognises the value of Alternative Dispute Resolution mechanisms, including mediation, as a sub-component.² One thing is clear, in modern litigation, mediation is an essential part of dispute resolution and it is used at various levels of the civil justice system as my comments below will show.

¹ <http://www.straitstimes.com/singapore/spore-top-asian-nation-in-rule-of-law-ranking-and-13th-globally> (accessed 7 March 2018).

² <https://worldjusticeproject.org/our-work/wjp-rule-law-index/wjp-rule-law-index-2017%E2%80%932018/factors-rule-law/civil-justice-factor-7> (accessed 9 March 2018).

4. The State Courts began offering mediation services in 1994. To give you a sense of how mediation is now used in the State Courts, between 2012 and 2017, 6,700 cases were mediated at the State Courts annually,³ and settlement rates were maintained at above 85%.⁴ A Court User Survey conducted in 2015 had 98% of respondents agreeing that dispute resolution services provided by the courts met their expectations in providing satisfactory resolution of disputes.⁵

5. The Supreme Court, on the other hand, frequently refers cases to the Singapore Mediation Centre (“SMC”), Singapore’s first private mediation centre, as it does not offer mediation services like the State Courts. The introduction of private mediation for civil disputes in the High Court was the brainchild of Mr Chan Sek Keong, who was then Attorney General when

³ This excludes cases that are disposed of via other avenues such as judgment in default, summary judgment, automatic discontinuance as well as discontinuance by parties etc: information from State Courts Centre for Dispute Resolution.

⁴ Civil suits comprise approximately 95%, while the remaining 5% were Magistrate’s Complaints, Protection from Harassment Act and Community Disputes Resolution Tribunal cases.

⁵ As there was a reduction in time spent and an improvement in relationships between the parties: Information provided by State Courts Centre for Dispute Resolution. From early surveys conducted in 1997, there was an overwhelming preference for District Judges to act as mediators because of the public confidence and respect they command, as well as the convenience enjoyed by parties who were able to directly enforce a court-mediated settlement by means of a court order (*Jonathan Lock v Jesseline Goh* [2008] 2 SLR 455 at [28]).

he first mooted this at the Opening of Legal Year in 1996.⁶ In August 1997, SMC was inaugurated by then Chief Justice Yong Pung How, who expressed the hope that mediation would be integrated into the dispute resolution system so that parties could resolve their conflicts fairly, at an affordable cost, and with due despatch.⁷ The integration of mediation into the dispute resolution system was slow at the start as disputants were lukewarm to the idea of mediation. Fast forward to 2017, 538 mediation matters worth over \$2.7 billion, both record figures, were filed at SMC; more than half of the cases that proceeded to mediation originated in the Supreme Court.⁸

6. As an illustration of the importance the Supreme Court has placed on mediation as a key component of dispute resolution, a High Court Judge sits as Chairperson of SMC and it has assigned two Assistant Registrars to serve as Assistant Directors of SMC. I am privileged to presently occupy the

⁶ Chan Sek Keong, former Attorney General, "Speech delivered at the Opening of the Legal Year" (6 January 1996).

⁷ Yong Pung How, former Chief Justice, "Address at the Official Opening of the Singapore Mediation Centre" (16 August 1997).

⁸ Statistics provided by SMC.

position of Chairperson of SMC and it is from this perspective that I discuss the Singapore Judiciary's journey with mediation under three broad themes:

- (i) increasing access to justice through mediation;
- (ii) employing mandatory mediation alongside the encouragement of voluntary mediation; and
- (iii) partnering private mediation providers.

I hope these comments will be helpful to your discussions over the course of this Forum.

Increasing Access to Justice

7. Chief Justice Sundaresh Menon recently emphasised that mediation was one of the best ways to increase access to justice.⁹ In substantiating the incorporation of such “access to justice” initiatives to complement the traditional underpinnings of the Rule of Law, he identified that the conceptual basis of such an extension would be to address the needs, rights and

⁹ Chief Justice Sundaresh Menon, Address at the Joint Launch of the State Courts Centre for Dispute Resolution and “Mediation in Singapore: A Practical Guide” (4 March 2015) at para 5 <<https://www.statecourts.gov.sg/Lawyer/Documents/State%20Courts%20-%20Launch%20of%20State%20Courts%20Centre%20for%20Dispute%20Resolution%20Speech%20on%204%20March%202015.pdf>> (accessed 2 February 2018).

interests of the disputant. In doing so, he drew out the core attributes of such a user-centric approach, these being affordability, efficiency, accessibility, flexibility and effectiveness.¹⁰

8. In the same continuum, it is important to remember that the offering of access to justice through mediation should be balanced with the protection of legal rights and entitlements of disputants that a public civil justice system provides, as well as its function in providing guidance on the law and in making new law. This is because the mediation process does not develop outcomes based solely on the entitlements and legal rights of parties, unlike adjudication before the court; rather it focusses on problem solving.

9. Ultimately, parties and the lawyers are the beneficiaries of our dynamic legal landscape for dispute resolution. Parties need to thoroughly assess their case, align their legal strategy

¹⁰ Chief Justice Sundaresh Menon, Keynote Address at the Law Society Mediation Forum, "Mediation and the Rule of Law" [2017] Asian JM 1, at para 15.

with their business strategy and choose the most appropriate tool to achieve their aim.

10. Let me then start by highlighting how the State Courts and Family Justice Courts (“FJC”)’ mediation services facilitate access to justice. These courts hear the largest volume of cases in the country with approximately 90%¹¹ of the Singapore Judiciary’s¹² caseload heard in the State Courts.

State Courts

11. The State Courts include the District Courts and Magistrates’ Courts; the Small Claims Tribunals; the Community Dispute Resolution Tribunals and the Employment Claims Tribunals.¹³

12. In the State Courts, Alternative Dispute Resolution (“ADR”), chiefly, mediation, is required to be seriously

¹¹ Statistics provided by the State Courts.

¹² Comprising the Supreme Court, State Courts and Family Justice Courts.

¹³ Section 3 State Courts Act (Cap 321).

considered by court users as a “first stop” or “at the earliest stage” in addressing any type of conflict between parties.¹⁴

13. The State Courts Centre for Dispute Resolution

(“SCCDR”)¹⁵ provides ADR services for cases originating from the District and Magistrates’ Courts, and adopts a holistic approach in dealing with disputes which may involve different aspects of the law and even cut across the civil / criminal divide. The mediation of civil and criminal processes under the Protection from Harassment Act (Cap 256A)¹⁶ is one such example. To promote the ideal of access to justice and propagate the mindset of mediation amongst disputants, the State Courts’ dispute resolution services are largely free. However, with mediation gaining acceptance amongst court users, since 1 May 2015, civil cases filed pursuant to the

¹⁴ Chief Justice Sundaresh Menon, Speech delivered at the Joint Launch of the State Courts Centre for Dispute Resolution and *Mediation in Singapore: A Practical Guide*, A Publication by Thomson Reuters (4 March 2015) at para 11; see also the State Courts Practice Directions 35(2) and 35(9).

¹⁵ Established on 4 March 2015.

¹⁶ See Kee Oon JC, Presiding Judge of the State Courts, Address at the Launch of the Community Justice and Tribunals Division (24 April 2015) at para 5, see <https://www.statecourts.gov.sg/NewsAndEvents/Documents/Launch%20of%20CJTD%20-%20Speech%20by%20Presiding%20Judge.pdf> (accessed 2 February 2018).

District Court jurisdiction attract Court ADR fees of S\$250 per party.¹⁷

14. At the other end of the spectrum we have the Small Claims Tribunals (“SCT”) where mediation is used extensively¹⁸ to provide speedy and inexpensive resolution of small claims between consumers and suppliers without legal representation.¹⁹ Between 2014 and 2017, an average of 10,700 cases were filed at the SCT annually and half of these were mediated²⁰ with settlement rates of above 75%.²¹

15. For greater convenience to disputants, SCT has since 2017 implemented an electronic case filing and management system²² which has been extended to the Community Dispute

¹⁷ See O 90A r 5A of the Rules of Court (Cap 322, R5, 2006 Rev Ed) and State Courts Practice Directions 35(7), however, this excludes motor accident, personal injury and harassment claims.

¹⁸ At the first consultation stage of proceedings, and even if the case is not resolved at that juncture, at the next stage, the referee may explore the possibility of settlement before adjudicating the claim. An order of the Tribunal is binding on parties and enforceable as an order of the Magistrate’s Court.

¹⁹ Established in 1985: <https://www.statecourts.gov.sg/SmallClaims/Pages/GeneralInformation.aspx> (accessed 2 February 2018).

²⁰ SCT claims are disposed of *via* other avenues such as judgment in default, withdrawal by parties etc.

²¹ Statistics provided by SCT.

²² Since 10 July 2017. CJTS (Community Justice and Tribunals System) has the following features:

- eAssessment to check whether the matter is within the jurisdiction of the Tribunal;
- eNegotiation: helps settle the dispute without filing a case;
- eFiling: for filing a case online;
- eMediation: an online platform to conduct mediations;

Resolution Tribunals (“CDRT”)²³ and soon, the Employment Claims Tribunals (“ECT”).

16. Community disputes and employment claims also have to go through mediation before reaching CDRT and ECT respectively. Community disputes are first mediated at the Community Mediation Centre.²⁴ If unsuccessful, the case will be referred to a Judge who may give further directions in the matter, including referring the case for further mediation at SCCDR in the hope that “greater harmony will be promoted in society through conciliatory resolution of community disputes ... under a common venue with specialised judges and trained court administrators [to] enable such matters to be dealt with

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- eHearing: an online platform to conduct hearings;
 - eCasefile: helps manage proceedings online;
 - eServe: an online platform to serve documents to the other party;
 - eOrders: helps extract orders online; and
 - ePayment: for online payment.

²³ On 5 February 2018.

²⁴ Under s 12 of the Community Mediation Centres Act (Cap 49A), mediations are voluntary and parties cannot be compelled to attend. S 13 states that only settlement agreements reduced to writing and signed by parties will be binding.

more expediently and appropriately”.²⁵ If still unresolved, the matter proceeds to adjudication before the CDRT.²⁶

17. The ECT²⁷ is a recent creation which provides employees²⁸ and employers a speedy, low-cost forum to resolve their salary-related disputes.²⁹ It covers workers at all salary levels³⁰ and seeks to meet the growing demand for access to affordable and expeditious means to resolve salary-related disputes. Cases are first registered at the Tripartite Alliance for Dispute Management (“TADM”) for compulsory mediation and if unresolved, these disputes are then referred to the ECT.³¹

²⁵ <https://www.channelnewsasia.com/news/singapore/state-courts-launches-new-community-justice-and-tribunal-divisio-8266054>

²⁶ Established pursuant to the Community Disputes Resolution Act 2015 (Act No 7 of 2015), it is part of the Community Justice and Tribunals Division established on 24 April 2015. The Small Claims Tribunals falls within the purview of this Division too: See Kee Oon JC, Presiding Judge of the State Courts, Address at the Launch of the Community Justice and Tribunals Division (24 April 2015) at para 5, see <<https://www.statecourts.gov.sg/NewsAndEvents/Documents/Launch%20of%20CJTD%20-%20Speech%20by%20Presiding%20Judge.pdf>> (accessed 2 February 2018). The Community Disputes Resolution Tribunals commenced operations on 1 October 2015: https://www.mccy.gov.sg/en/news/press-releases/2015/cdrt_starts.aspx (accessed 5 February 2018).

²⁷ Established on 1 April 2017 under the Employment Claims Act 2016 (Act 21 of 2016).

²⁸ Professionals, Managers and Executives (PMEs) who earn more than S\$4,500 per month and are currently beyond the coverage of the Employment Act.

²⁹ [https://www.statecourts.gov.sg/ECT/Pages/An-Overview-of-the-Employment-Claims-Tribunals-\(ECT\).aspx](https://www.statecourts.gov.sg/ECT/Pages/An-Overview-of-the-Employment-Claims-Tribunals-(ECT).aspx) (accessed 5 February 2018).

³⁰ Including the professionals, managers and executives (PMEs) earning more than \$4,500 a month who would otherwise have to file claims with the civil courts: <http://www.straitstimes.com/politics/parliament-employment-claims-tribunal-will-start-in-april-2017-with-more-salary-protection>.

³¹ Successful cases (even those settled at TADM) may be recorded and signed as settlement agreements then registered at the District Courts within 4 weeks from the date of the signing of the settlement agreement, thus becoming enforceable as a court orders. Unresolved cases are heard by the Tribunal and an order is made. Parties unsatisfied with the Tribunal’s order may file an appeal under s 23 of the Employment Claims Act 2016 (Act No 21 of 2016).

18. By providing no or low-cost mediation services prior to the adjudication of disputes, the State Courts, where most disputants first meet the judicial system, increase access to justice by allowing the parties to reach a resolution of their dispute in a quicker and cheaper manner compared to if only adjudication was offered.

Family Justice Courts³²

19. Significant strides have also been made towards embracing a more amicable and multi-disciplinary approach to the resolution of family disputes through community support schemes and simplified court processes.³³ The FJC is committed to “making justice accessible to families and youth through effective counselling, mediation and adjudication.”³⁴

³² The Family Justice Courts (previously the Family Courts under the former Subordinate Courts) were established as a separate judicial entity in October 2014³² and comprises the Family Division of the High Court, the Family Courts and the Youth Courts.

³³ Chief Justice Sundaresh Menon, Address at the Opening of the Legal Year (9 January 2018) at para 26, see [https://www.supremecourt.gov.sg/Data/Editor/Documents/Response%20by%20Chief%20Justice%20%20\(Checked%20against%20Delivery%20version%20-%20080118\).pdf](https://www.supremecourt.gov.sg/Data/Editor/Documents/Response%20by%20Chief%20Justice%20%20(Checked%20against%20Delivery%20version%20-%20080118).pdf) (accessed on 7 February 2018) and “More divorces being settled by mediation”, Straits Times (1 March 2018).

³⁴ <https://www.familyjusticecourts.gov.sg/AboutFamilyJusticeCourts/Pages/Vision,-Mission,-Values-Statement.aspx> (accessed 9 February 2018).

20. Mediation was first introduced in the Family Courts in 1995 to minimize acrimony in family disputes and together with counselling, have today become core dispute resolution processes in family proceedings.³⁵ Mediation is now accepted by legal practitioners as the first step in divorce matters.³⁶ Even where parties have commenced legal proceedings, there will always be the possibility of mediation or non-litigious resolution at all stages in the divorce process.³⁷

21. There are two main types of family mediation in Singapore: court-based and private mediation.³⁸ Court-based family mediation takes place at the FJC³⁹ and offers parties a forum for holistic negotiation and settlement through counselling and mediation. Such counselling and mediation services are provided free-of-charge for parties. Private

³⁵ Teh Hwee Hwee, "Mediation Practices in ASEAN: The Singapore Experience", speech delivered at the 11th ASEAN Law Association General Assembly Conference, Bali (February 2012).

³⁶ Kevin Ng, "Family Mediation – The Perspective of the Family Court" in *Mediation in Singapore: A Practical Guide* (Sweet & Maxwell, 2017) at [13.010].

³⁷ "More divorces being settled by mediation", Straits Times (1 March 2018).

³⁸ Kevin Ng "Family Mediation – The Perspective of the Family Court" in *Mediation in Singapore: A Practical Guide* (Sweet & Maxwell, 2017) at [13.011].

³⁹ And the Syariah Courts.

mediation, on the other hand, takes place mainly at SMC and I will elaborate on this later.

22. At the FJC, a total of 6,471 matters were mediated in 2017,⁴⁰ with a 86% settlement rate.⁴¹ A simplified track had also been introduced for uncontested divorces, to reduce parties' pain and acrimony. For cases that proceed to trial, a judge-led approach has been adopted to mitigate the excesses of adversarial litigation. In 2016, less than 7% of divorce hearings were contested on the reasons for divorce or on ancillary matters. This can be attributable, to a large extent, to the greater use of counselling and mediation and slew of measures introduced over the years to encourage parties to resolve their differences harmoniously.⁴² Last year, about seven in ten divorce cases were fully resolved through mediation.⁴³

⁴⁰ Includes mediations at the Maintenance Mediation Chambers (fresh, variation and enforcement of mediation matters) and Family Dispute Resolution (divorce and ancillary matters, child custody disputes, mental capacity, probate and adoption disputes. Statistics provided by the Family Justice Courts.

⁴¹ Includes mediations at the Maintenance Mediation Chambers (fresh, variation and enforcement of mediation matters) and Family Dispute Resolution (divorce and ancillary matters, child custody disputes, mental capacity, probate and adoption disputes. Statistics provided by the Family Justice Courts.

⁴² Chief Justice Sundaresh Menon, CJ, Address at the Opening of the Legal Year (9 January 2018) at para 27, see [https://www.supremecourt.gov.sg/Data/Editor/Documents/Response%20by%20Chief%20Justice%20%20\(Check%20ed%20against%20Delivery%20version%20-%2020080118\).pdf](https://www.supremecourt.gov.sg/Data/Editor/Documents/Response%20by%20Chief%20Justice%20%20(Check%20ed%20against%20Delivery%20version%20-%2020080118).pdf) (accessed on 7 February 2018).

⁴³Debbie Ong J, Opening Address at the Family Justice Courts Workplan 2018 (28 February 2018) at para 62.

23. An online dispute resolution system which allows non-litigious resolution for child maintenance claims is also in the pipeline.⁴⁴ Aside from divorces, the FJC's role in meeting the needs of various family members embroiled in disputes is being studied, particularly those of the elderly and vulnerable court users.⁴⁵

24. The FJC has also been working closely with the Family Bar which is developing a Best Practice Guide for Family Practice to institutionalise a practice that promotes the new ethos required in the current child-focused family system.⁴⁶ The FJC will also work with the Law Society to developing a "low bono" model to increase access to legal services for those in the sandwich class, that is, those who do not qualify for legal

⁴⁴ It will include a simulator to help parties understand the possible outcome of a maintenance claim, and a forum for both parties to negotiate. If negotiation fails, online mediation of the claims will be provided. It is envisaged that ODR will help parties to resolve their child maintenance claims earlier and with less costs, ultimately benefiting the children: Debbie Ong J, Opening Address at the Family Justice Courts Workplan 2018 (28 February 2018) at para 32.

⁴⁵ "More divorces being settled by mediation", Straits Times (1 March 2018).

⁴⁶ An inter-agency committee has been formed to review existing reforms and identify areas for further improvement: Chief Justice Sundaresh Menon, CJ, Address at the Opening of the Legal Year (9 January 2018) at paras 29:

[https://www.supremecourt.gov.sg/Data/Editor/Documents/Response%20by%20Chief%20Justice%20%20\(Checked%20against%20Delivery%20version%20-%200080118\).pdf](https://www.supremecourt.gov.sg/Data/Editor/Documents/Response%20by%20Chief%20Justice%20%20(Checked%20against%20Delivery%20version%20-%200080118).pdf) (accessed on 7 February 2018) and see Debbie Ong J, Opening Address at the Family Justice Courts Workplan 2018 (28 February 2018).

aid but cannot afford a lawyer.⁴⁷ I expect to see the use of mediation by lawyers participating in the low bono model.

These various initiatives provide family justice to the man-in-the-street, where the interests of the child form its core focus.⁴⁸

25. To increase their ability to offer mediation services and involve the community in the resolution of community and family disputes, the pool of mediators at the State Courts and FJC has been expanded⁴⁹ to include volunteer mediators, largely legally qualified individuals with at least three years of post-qualification experience who have been trained by SMC. Social workers, court interpreters and other lay persons trained as counsellors or mediators are also part of the pool and share their expertise in family, criminal and relational disputes.

⁴⁷ Chief Justice Sundaresh Menon, Address at the Opening of the Legal Year (9 January 2018) at para 32, see [https://www.supremecourt.gov.sg/Data/Editor/Documents/Response%20by%20Chief%20Justice%20%20\(Checked%20against%20Delivery%20version%20-%20080118\).pdf](https://www.supremecourt.gov.sg/Data/Editor/Documents/Response%20by%20Chief%20Justice%20%20(Checked%20against%20Delivery%20version%20-%20080118).pdf) (accessed on 7 February 2018).

⁴⁸ Debbie Ong J, Opening Address at the Family Justice Courts Workplan 2018 (28 February 2018).

⁴⁹ In 2009.

Mandatory Mediation and the Encouragement of Voluntary Mediation

26. Mandatory mediation has been introduced for the efficient resolution of high volume, low value cases, and in family justice, to protect the interests of the child by encouraging amicable resolutions. For the types of claims described, mediation is not an option but is an essential part of dispute resolution.

27. In 2011, amendments to s 50(1) of the Women's Charter empowered FJC to order counselling and mediation for divorcing parties with minor children.⁵⁰ Court-based counselling and mediation became mandatory for divorcing couples with at least one child under 8 years of age.⁵¹ Gradually, the age of the child was increased to 13 years,⁵² and currently, mediation is mandatory for parties with children under the age of 21.⁵³

⁵⁰ See also s 26(9) Family Justice Act 2014 which is wider in scope as it applies to any proceedings in Family Court, and is also referred to in Family Justice Courts Practice Directions, Part V, para 11(1).

⁵¹ FJC Practice Directions, Part V, para 12(1).

⁵² In 2013.

⁵³ Since 2014.

28. This afternoon, you will hear more about the impact of mandatory mediation. To further ensure that divorcing parents have considered the needs of their children before starting divorce proceedings, as of this year,⁵⁴ parents with at least one child below 21 years of age, and who have not agreed on the divorce and all ancillary matters have to attend the Mandatory Parenting Programme⁵⁵ by the Ministry of Social and Family Development.

29. At the State Courts, mediation is mandatory at SCT, and the ECT. The State Courts have implemented various practice directions and procedures in support of mediation.

30. In 1996, pre-trial conferences⁵⁶ were introduced to ensure that ADR was used at the earliest opportunity to facilitate the

⁵⁴ 18 January 2018.

⁵⁵ S 94A Women's Charter (Cap 353). This is a two hour counselling session to help parents understand the importance of co-parenting and the practical issues arising from a divorce. See <https://www.channelnewsasia.com/news/singapore/mandatory-parenting-programme-extended-to-divorcing-parents-with-9845512> (accessed 12 February 2017).

⁵⁶ Order 34A of the Rules of Court.

early settlement of cases. Then in 2002, non-injury motor accident cases were automatically referred for Court Dispute Resolution⁵⁷ (unless parties opted out). This was extended to medical negligence⁵⁸ and personal injury cases.⁵⁹ Pre-action protocols developed for these types of cases stipulate a series of steps to be taken including the exchange of documents and negotiation, before a case is filed in court. This had the benefit of saving parties' time and costs and improving their chances of settlement through negotiation without the need for court proceedings; it also freed up judicial resources to deal with competing demands.⁶⁰

31. The year 2010 was a watershed year for the State Courts with the introduction of the ADR Form⁶¹ and costs sanctions where parties unreasonably refused to consider mediation.

⁵⁷ A summary form of neutral evaluation is conducted by a judge, followed by negotiations between the parties based on the evaluation: State Courts Practice Directions 37 and 38.

⁵⁸ In 2006.

⁵⁹ In 2011: James Leong & David Lim, "An Overview of Court Mediation in the State Courts of Singapore" in *Mediation in Singapore: A Practical Guide* (Danny McFadden & George Lim SC gen eds) (Sweet & Maxwell, 2nd Ed, 2017) ch 9 at pp 232-233.

⁶⁰ Judge of Appeal, Andrew Phang, "Mediation and the Courts - The Singapore Experience" [2017] Asian JM 14 at para 29.

⁶¹ The former Subordinate Courts Practice Directions No 2 of 2010.

Parties in all civil cases were now required to consider using ADR (primarily mediation).⁶²

32. Order 59 r 5(1)(c) of the Rules of Court, which applies to proceedings in both the State Courts and Supreme Court, mandates that the Court in exercising its discretion as to costs shall, where appropriate in the circumstances, take into account the parties' conduct in relation to any attempt at resolving the matter by mediation or any other means of dispute resolution. A successful defendant may be deprived of a portion of the costs they would otherwise have been awarded if found to have unreasonably refused to engage in mediation.

33. In 2012, the presumption of ADR was introduced in the State Courts⁶³ and this has since been extended to all civil

⁶² Then complete the ADR Form and submit it before the Case Management Conference (for Magistrate Court Suits, now governed by the simplified process set out in O 108 of the Rules of Court (Cap 322) implemented in 2015: see the State Courts Practice Directions 36(4). Case Management Conferences are convened within 50 days of filing of the Defence pursuant to O 108, r 3 of the Rules of Court: see the State Courts Practice Directions 36(2)) or Pre-Trial Conference ("PTC") (for District Court Suits: State Courts Practice Directions 36(10). The State Courts Practice Directions 36(6) requires PTCs to be convened within 4 months after the writ is filed), along with a certification that their respective lawyers had explained the different ADR options available to them. The parties are also to indicate whether or not they would attempt ADR.

⁶³ The former Subordinate Courts Practice Directions Amendment No 2 of 2012.

cases.⁶⁴ Under this presumption, the Court will refer appropriate matters to ADR, unless parties opt-out.⁶⁵ It also introduced Skype mediations to facilitate the resolution of the disputes where one party is overseas.⁶⁶ This early referral of cases to mediation is crucial in stemming escalating legal costs, and avoids parties becoming too entrenched in their respective positions.

34. Other initiatives such as the Primary Justice Project⁶⁷ further encourage the public to seek pre-writ settlement through negotiation and other modes of ADR such as mediation. For claims under \$60,000 and divorce matters where ancillaries are close to settlement, the Primary Justice Project panel lawyers assist clients in the resolution of their disputes without commencing legal action.⁶⁸

⁶⁴ State Courts Practice Directions 35(9).

⁶⁵ State Courts Practice Directions 35(9).

⁶⁶ State Courts Practice Directions 35(22).

⁶⁷ In 2014.

⁶⁸ See <https://www.statecourts.gov.sg/NewsAndEvents/Pages/Media-Release--Launch-of-The-Primary-Justice-Project.aspx> (accessed 9 February 2018).

35. At the High Court, in 2014, the ADR Offer process was implemented.⁶⁹ Where parties indicate an interest to explore mediation in the High Court, the court will first direct parties to file and serve their respective ADR forms, as this formalizes the parties' intention. Where parties opt for mediation, the court supports this election by giving directions to facilitate mediation such as fixing court timelines to enable parties to initiate and complete mediation.⁷⁰ Although mediation can be attempted at any time during the litigation process, the two most suitable intervening periods to try mediation would be at the close of pleadings or after general discovery. In some instances, the court can also provide directions for specific discovery of certain documents to aid parties to take the step towards mediation; this usually happens when the court is faced with either party having some reservations on the timing of conducting a mediation.

⁶⁹ A party receiving an ADR Offer has 14 days to file a Response to an ADR Offer stating whether or not the party was agreeable to ADR, or to otherwise state reasons for their unwillingness or make counter-proposals (Supreme Court Practice Directions 35B, 35C, Forms 28 and 29). An ADR Offer could be made by any party at any time of the proceedings (Part IIIA Supreme Court Practice Directions 35C(3)).

⁷⁰ Part IIIA Supreme Court Practice Directions 35C(4).

36. At the same time, the Supreme Court Practice Directions were amended to encourage lawyers to embrace ADR by requiring that ADR “be considered at the earliest possible stage in order to facilitate the just, expeditious and economical disposal of civil cases”.⁷¹ This was later expanded to state 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.” Adverse costs implications for unreasonable refusal to engage in ADR similarly apply to the ADR Offer process.⁷²

37. Lawyers were further nudged towards ADR in 2016 when the Supreme Court Practice Directions were further amended⁷³ 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 also have to advise their clients on

⁷¹ Supreme Court Practice Directions 35B(4).

⁷² Supreme Court Practice Directions 35B(5).

⁷³ Amendment No 1 of 2016.

potential adverse costs orders for unreasonable refusal to engage in ADR.⁷⁴

38. To check the misuse of the ADR Offer process for mediation, in 2017, the Legal Profession (Professional Conduct) Rules were amended to ensure that mediations proceeded in good faith and proceedings were not abused⁷⁵ by lawyers fishing for information and documents for later use at trial. Additionally, a legal practitioner must, in an appropriate case, together with his or her client, evaluate whether any consequence of a matter justifies the expense of, or the risk involved in pursuing the matter, and to evaluate the use of ADR processes.⁷⁶

39. The differentiated approach towards mandating mediation for certain categories of cases in the State Courts and FJC and

⁷⁴ Detailed guidelines for advocates and solicitors on advising clients about ADR were also issued which, in particular, highlighted the essential differences between litigation and mediation as a means of resolving commercial disputes (Appendix I, Supreme Court Practice Directions). The Response to ADR Offer was amended to include a section for clients to certify that they had been advised of ADR options, the benefits of settling by ADR as well as the potential of an adverse costs order (Part IIIA, Supreme Court Practice Directions (Amendment No 1 of 2016)).

⁷⁵ Rule 8A.

⁷⁶ Rule 17(2)(e).

encouraging it in the Supreme Court and other State Courts cases through less coercive means demonstrates the judiciary's commitment to find a solution that best suits different types of disputes and litigants. There are also various measures in place to ensure the quality of the mediation services offered, with lawyers being expressly identified as playing a crucial and necessary role to advise their clients about mediation and other ADR options.

Partnering with Private Mediation Providers

40. In line with the differentiated approach, the Singapore Courts' way of promoting access to justice is also nuanced and includes having disputants with higher value claims pay for private mediation. The Supreme Court comprises the High Courts, the Court of Appeal, and the Singapore International Commercial Court.⁷⁷ As mentioned at the start, the judges of the Supreme Court do not conduct mediation, instead cases are referred to SMC.

⁷⁷ Since 2015.

41. As stated, SMC was established in 1997 to provide and promote mediation and ADR services. Initially, only cases from the High Courts were referred to SMC.⁷⁸ Gradually, cases from the Court of Appeal have also been referred to SMC.⁷⁹

42. From 1997 till 31 January 2018, a total of 2,285 matters from the High Court and 79 cases from the Court of Appeal⁸⁰ were mediated at SMC.⁸¹ Of the High Court cases, 69.3% of these cases were settled, and for Court of Appeal cases, the settlement rate was 40.79%.⁸² The lower settlement rate for Court of Appeal cases reflects the difficulty in settlement where parties have engaged in protracted litigation and one party would already have “won” at first instance.

⁷⁸ After the memorandum of appearance is filed in the High Court, cases (excluding those for which default judgment has been entered, a Notice of Discontinuance has been filed, the matter has been sealed or where a stay of proceedings has been granted) are referred to SMC. SMC then issues parties/their lawyers a letter explaining the benefits of mediation, inviting them to consider mediation. Thereafter, cases are again referred to SMC when they reach their 14-month mark. Additionally, during pre-trial conferences, the judges and registrars of the Supreme Court may suggest mediation to the parties on an *ad hoc* basis where a case appears suitable.

⁷⁹ Since 2014.

⁸⁰ Since 2014 only.

⁸¹ Statistics provided by SMC.

⁸² Statistics provided by SMC.

43. In addition to facilitating the resolution of civil disputes from the Supreme Court, SMC also provides Family Services including the Family Mediation Scheme⁸³ and Collaborative Family Practice.⁸⁴ Unless parties have agreed upon a private mediator, SMC is also the default private mediation service provider for FJC. It may order divorces matters (with no contested child issues) and estate proceedings that are contested, where the gross asset value is \$3m and above.⁸⁵

44. Private mediations were greatly given a boost by the enactment of the Mediation Act 2017 (Act No 1 of 2017), under which settlement agreements, for which no proceedings have been commenced in a court, may by consent of all parties, be recorded as an order of court.⁸⁶ This ability to directly enforce a mediated settlement agreement enhances the parties'

⁸³ In 2010.

⁸⁴ In 2013.

⁸⁵ Since 1 October 2016. Family Justice Courts Practice Directions (Amendment No 3 of 2016), paras 11(2)-(3). Para (1A) states that it is the responsibility of advocates and solicitors to advise their clients of mediation as a form of ADR for proceedings in the FJC.

⁸⁶ If criteria in s 12(3) of Mediation Act 2017 is met.

confidence in the mediation process and its outcomes, and is also an endorsement of the effectiveness of mediation.

45. Incidentally, the Mediation Act⁸⁷ was the product of a Working Group established by Chief Justice Sundaresh Menon and the Ministry of Law in 2013, another instance of the Judiciary's hand in developing mediation.

Conclusion

46. I hope I have provided you with a useful glimpse into the mediation landscape in Singapore. Through various policies, legislation and practice directions, the use of mediation in the Courts has been calibrated to “fit the forum to the fuss”,⁸⁸ to tailor the needs of different types of cases and disputants. It is a uniquely Singapore system that works, consistent with the broader approach of offering different options to people with varying social and economic needs. The Singapore Judiciary

⁸⁷ As well as the Singapore International Mediation Institute (“SIMI”) and tax exemptions and incentives for mediators.

⁸⁸ Frank EA Sander and Stephen R Goldberg, “Fitting the Forum to the Fuss: A User-Friendly Guide to Selecting an ADR Procedure”, *Negotiation Journal* (January 1994).

remains committed to using mediation for the critical role that it plays in the dispute resolution eco-system and in maintaining the Rule of Law.

47. Looking to the future, online dispute resolution (“ODR”) is being explored in our court dispute resolution system. You will all know the oft-quoted aphorism "Not only **must justice be done**; it **must** also be **seen to be done**." I leave this to you to deliberate as my final comment today – while ODR will give parties increased accessibility to have their disputes resolved, will ODR also satisfy the justice component of this maxim?

48. Thank you and I wish you a fruitful Conference.