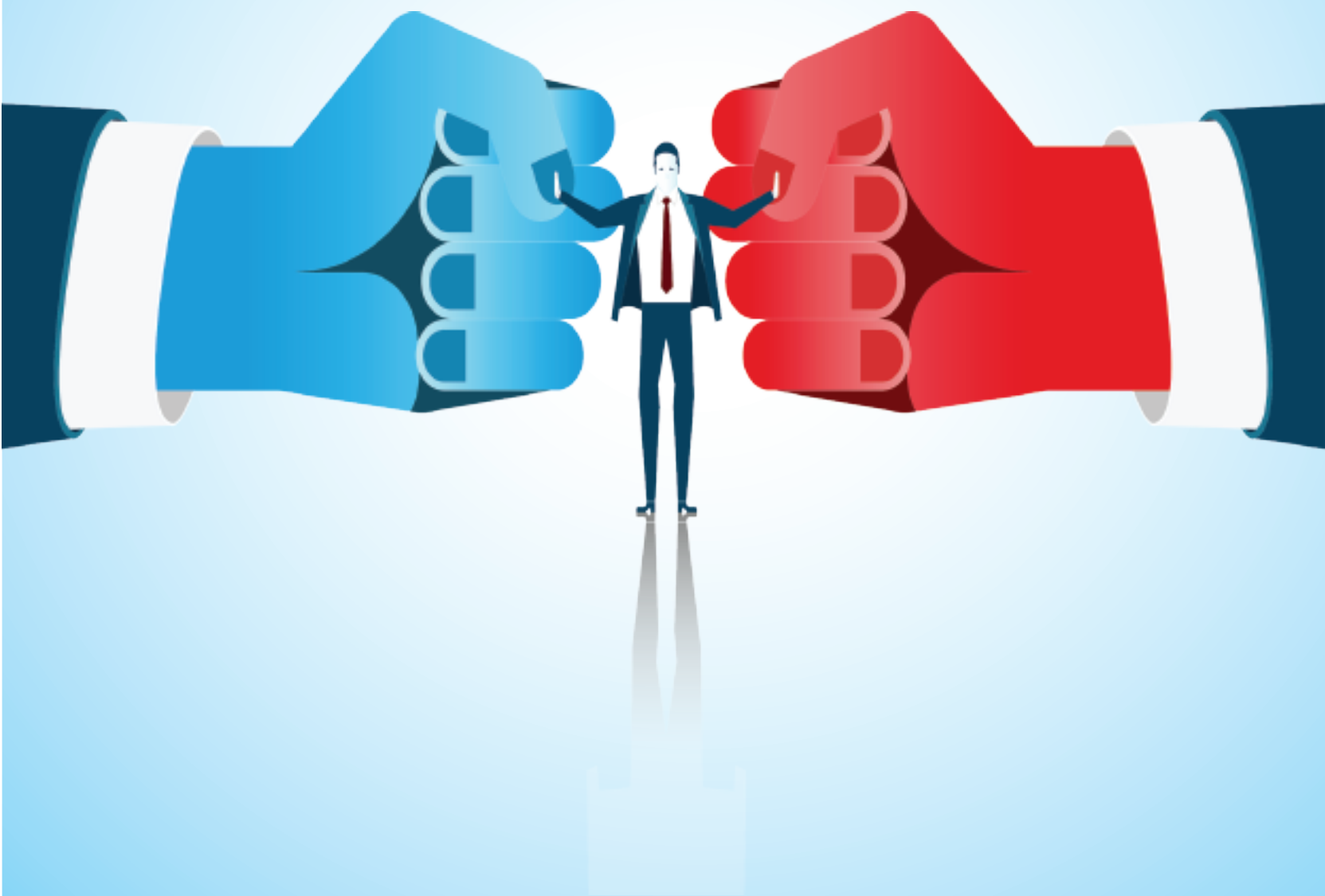


# A Guide on Dispute Resolution in Singapore

2018-2019

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# A GUIDE ON DISPUTE RESOLUTION IN SINGAPORE

## Introduction

A conflict is virtually inevitable wherever there is human interaction. Some of these conflicts may erupt a dispute in any structure of interaction or relationship, and others may perhaps result in a multifarious international hostility and confrontation.

Successively, dispute resolution processes have developed over a period of time to intervene and manage various types of disputes. Resultantly, there is a high diversity in fields in which non-profit organization and conflict resolution professionals take on a broad array of roles. In simple terms, dispute resolution is the process of resolving disagreements and arguments between individuals or different parties. There are various types of negotiations and resolutions which include but is not limited to, litigation, conciliation, arbitration, mediation, etc.

This article delves into the court structure in Singapore as well as their mechanisms for solving different types of disputes and the options available to distressed individuals or parties.

## Introduction to Dispute Resolution Methods in Singapore

The main type of dispute resolution method practiced in Singapore is litigation. However, with the growth of expertise in arbitration in Singapore, alternative dispute resolution mechanisms are largely being used in place of litigation.

The civil justice system in Singapore has stemmed from the Common Law adversarial model. Generally, the applicable standard of proof for any civil claim to succeed depends on the balance of probabilities. There is an active case management system which has been established by the Registry of the Courts, which allows the courts in Singapore to play a greater role essentially in minimizing all unnecessary delays in proceedings.

Further, SICC, short for *Singapore International Commercial Court*, was established in January 2015, primarily for the expansion of the scope of internationalization as well as the export of Singapore laws. Furthermore, with the increasing emphasis on the alternative dispute resolution, the *Singapore International Mediation Institute (SIMI)* and *Singapore International Mediation Centre (SIMC)* were established.



## Structure of the Courts

The court system in Singapore is two-tiered:

- I. The Supreme Court (which is made up of the Court of Appeal and High Court)
- II. The State Courts

### The Supreme Court

The High Court in Singapore is comprised of the judges of the High Court as well as the Chief Justice. In 1994, the Court of Appeal embarked at being the apex appellate court in Singapore. The Court of Appeal takes cognizance of appeals on judgements from the High Court in both criminal and civil matters. A civil claim of a value greater than SG\$ 250,000 must be commenced in the High Court in the first instance. Consequently, large valued commercial claims are directly brought before the High Court in Singapore. There are not any specific divisions within the High Court to hear a specific type of dispute. However, in order to deal with complex commercial cases, there is



*"It isn't that they can't see a solution.  
It is that they can't see the problem."*

– G K Chesterton

a specialized list of judges that deal with specific areas of law that have been set up within the High Court of Singapore. Some of the specialized areas set up in the High Court include: -

- I. Securities, finance and banking;
- II. Insolvency, trusts and company;
- III. Arbitration;
- IV. Insurance and shipping;
- V. Construction, shipbuilding, etc.

The above list is not exhaustive, but only intends to give a gist of the classifications.

### **The State Courts**

The State Courts in Singapore comprise of the Family Justice Court, the District Court and the Magistrates' Court. For claims that do not exceed the value of SG\$ 60,000, it is the Magistrates' Court that hears the disputes. On the other hand, the District Court takes cognizance of the claims whose value does not exceed SG\$ 250,000.

Further, the Family Justice Courts which consists of both, the Youth Courts as well as Family Courts, hears all cases related to family disputes including but not limited to, guardianship cases, divorce matters, family violence cases, applications for deputyship as under the Mental Capacity Act, successions matters, etc.

### **Litigation**

#### **Starting Proceedings**

Generally, there are two ways to commence a civil proceeding in Singapore:

- I. **Writ of Summons:** These are for actions that are likely to include a substantial dispute of facts;
- II. **Originating Summons:** These are actions that are unlikely to include a substantial dispute of fact, or where it may be prescribed by law. For example, pursuant to **Section 124(1)** of Building Maintenance and Strata Management Act, it is clearly mentioned that all applications made to the court must be commenced by originating summons only.

#### **Notice to the defence**

The originating summons and writ of summons have to be personally served on each of the defendants. In the case where the defendant is within the jurisdiction, the same must be served within 6 months from the date of the issue.

#### **Pre-trial Stage**

After the summons has been filed, a *Pre-Trial Conference (PTC)* gets scheduled first. At this stage, the registrar enquires about the status of the action which has been commenced. Additionally, adequate direction is given to parties in order to proceed with litigation in a fair and expeditious manner. Further, at this stage, an application for either final or interim relief may also be made. Furthermore, each party discloses their documents which are relevant to the case, and in advance of trial, the parties exchange affidavits, which states the evidence that supports each party's case.

#### **Trial**

In the case where the matter is resolved by way of terminated summarily, settlement or any other way of interim judgement, the matter proceeds to trial. At this stage, witnesses for each party (if applicable) state their evidence with regards to the affidavits submitted.

#### **Post-trial**

Once the court proceeding has ended, the solicitor or the advocate for the party that wins the case must submit a breakdown of the bill of costs incurred on behalf of the client, or the list of costs as ordered by the relevant authority or court to be paid by a party to the other. It is pertinent to note that litigation may continue even after the trial in case a party seeks to enforce the judgement, or when the judgement is appealed.

#### **Interim Remedies**

One of the party may bring the case to be dismissed even prior to a full trial in the ways mentioned below:

- I. In the case where the defendant does not appear or fails to file his/her defence within the specified time, a judgement in default can be claimed by the claimant.

*"The minute that you go to arbitration,  
it's 100% confidential, so nobody ever hears about it."*

– Gretchen Carlson

II. In the case where the defendant appears as well as files the defence though there happens to be no real defence to claim, summary judgement can be applied for by the claimant against the defendant.

III. Pleadings are struck out if it:

- i. Does not disclose an adequate cause of action;
- ii. Is frivolous, scandalous or vexatious;
- iii. Tends to embarrass, delay or prejudice the fair trial;
- iv. Is otherwise considered an abuse of the procedures of the court.

### Appeals

The appeals from SICC are heard by the Court of Appeal. It is pertinent to note that the Chief Justice may appoint an International Judge since it is at his discretion, who may sit in the Court of Appeal for an order or judgement of the SICC which has been challenged. Essentially, the time limit for the appeal a month (30 days) from the date of the judgement which needs to be challenged or appealed.

### Arbitration

#### Introduction

Indubitably, Singapore is essentially pro-arbitration and has additionally adopted a policy which practices minimal intervention with regards to arbitration proceedings. Maxwell Chambers has been set up as the world's very first integrated dispute resolution complex which houses topnotch hearing facilities including Singapore International Arbitration Centre (SIAC), International Chamber of Commerce's International Court of Arbitration as well as World Intellectual Property Organisation's Arbitration and Mediation Centre.

The most relevant legislation for arbitration in Singapore is the **Arbitration Act**, as well as the **International Arbitration Act (IAA)**. Through the IAA, both UNCITRAL Model Law which is on the International Commercial Arbitration as well as the Convention on the Recognition and Enforcement of Foreign Awards have force in Singapore as Singapore is a party to the same.



The Arbitration Act essentially governs the domestic arbitration while the IAA takes cognizance of arbitrations.

#### Arbitration Agreement

Essentially, an arbitration agreement is a written agreement or contract wherein two or more parties agree to settle a conflict that may arise outside of court. The Arbitration Act and the IAA comprehensively state the requirements of a valid arbitration agreement. First and foremost, it is essential that the agreement should be in writing, and it is regardless of whether such agreement was concluded by conduct, orally or by other means.

Principally, the concept of separability of such agreement from the main contract is well recognized in Singapore. Particularly, the Arbitration Act, as well as the IAA, allow a tribunal(arbitral) to rule on its own jurisdiction which includes any objections with regards to the existence of validity of the agreement; and the state, therefore, considers an arbitration clause (which is a part of a contract) to treated independently of the other conditions and terms of such contract.

#### Procedure

In accordance with the provisions of the Arbitration Agreement and the IAA, the mode through which an arbitration proceeding is commenced includes the claimant sending a request to the respondent entailing that the dispute has been referred to arbitration. If the commencement has been otherwise agreed between the parties, the same must be followed. When we talk about non-ad hoc arbitration, the commencement procedure is encompassed within the rules and regulations of such arbitration institutions.

Reiterating the essence of the above paragraph, the IAA and the Arbitration Act have broadly worded provisions which encompass requisites of the arbitration proceedings. For instance, what is common between the two acts is that both entail provisions with regards to how the parties must be treated with equality coupled with the parties being given full opportunity to present their case.



***"Mandatory arbitration clauses I think,  
more often than not,  
work to the detriment of working people."***

***– Tom Perez***

### **Arbitrators**

Unless otherwise agreed by the parties, the IAA, as well as the Arbitration Act, clearly mention that no person shall be precluded from acting as an arbitrator by reason of his nationality. The parties are to agree on the terms of the appointment of an arbitrator(s). Unless otherwise agreed upon, the statutory provisions provide that:

**I.** In cases of arbitration with 3 arbitrators, each party may appoint arbitration, and the parties must jointly agree on the third arbitrator. In case the parties for whatever reason fail to agree on the third arbitrator within a period of 30 days from the receipt of the request to refer the dispute to arbitration, the appointment of the third arbitrator may be done by the relevant appointing authority.

**II.** In case of arbitration with a sole arbitrator, the same shall be appointed by the relevant appointing authority upon the request by a party.

There are times the appointment of an arbitrator may be challenged if the circumstances give rise to justifiable doubts on his independence, biasedness or impartiality, to name a few.

### **Interim Relief**

The arbitral tribunal generally has the powers to give directions as well as make orders towards a party with regards to various matters like:

- I.** Discovery of interrogatories and documents;
- II.** Security for costs;
- III.** Interim custody, the preservation or sale of any property that forms a part of the subject matter of such disputes;
- IV.** Giving evidence by way of affidavit;
- V.** Interim custody or preservation of evidence for the purpose of the proceeding;
- VI.** An interim injunction or any other interim measures.

The above list is not exhaustive, but only a gist of the interim relief that can be sought by the parties.

### **Arbitration Award**

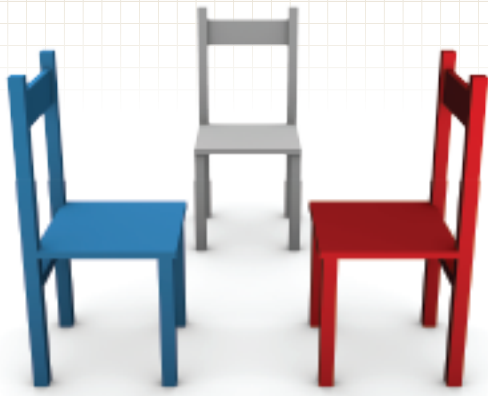
It is essential that an award post an arbitration proceeding must be in writing. Additionally, such award must be signed by the arbitral tribunal. In the case of a dissenting arbitrator, the awards would generally be signed by the majority arbitral members. The arbitration must ensure that the award entails the reasons for the award. Essentially, there is no such time limit for making an award, however, some arbitral institutions may have fixed timelines within which they are required to make an award.

### **Challenging an award**

When we talk about arbitration awards, it is essential that we differentiate international arbitrations from domestic arbitrations. In accordance with the Arbitration Act, a domestic arbitration award may be appealed to the Singapore Courts in case the same derives from the question of law that arises out of an award. It is pertinent to note that similar appeal is not available under the IAA. When an arbitration party challenged the award of jurisdiction, the Singapore Court conducts a de novo review of such award in case it is not possible for a party to bring forth fresh evidence. Apart from the above, a party may challenge an award only through submitting a setting aside application.

### **Enforcement**

In terms of an enforcement procedure, it is required by a party to seek leave from the High Court for enforcing such an award. Such an application is made ex parte, and it has to be additionally supported by an affidavit. An award is not immediately enforceable; the debtor has a limitation period of 14 days to apply for setting aside the order. In case the order is served outside the jurisdiction, the limitation period is 21 days usually.



*"Mediation is one of the most effective tools of non-violence. It can turn parties away from conflict, towards compromise."*

*- Daryl White*

## Mediation

The Singaporean Government has always encouraged and promoted potential litigants to employ mediation before referring the matter to litigation to the courts.

Formal or standardized mediation was built up during the 1990s with the setting up of the Court Mediation Center, which was renamed as the Primary Dispute Resolution Center, the Singapore Mediation Center (SMC), the Community Mediation Centers and different offices and councils. As it were, mediation is drilled in the different parts of society, taking into account the various ethnic and social foundations of Singaporeans, from the grassroots network to government and business. Mediation sets aside time and cash and ensures classification as well as confidentiality.

In April 2013, against the background of a considerable development of trade, business and investments inside Asia and the relating requirement for cross-border commercial dispute resolution services, the Ministry of Law proposed plans for developing the international mediation service providers for offering a quality panel of global expertise mediators and negotiators, also the user-friendly services and products.

The above recommendations and suggestions have initiated the formation of the Singapore International Mediation Institute (SIMI) and the Singapore International Mediation Centre (SIMC). These organisations were launched on 5 November 2014 and were marked as the milestone in the development of Singapore's domestic dispute resolution centre.

Currently, the legislation that has explicitly dealt with mediation are as under:

### I. Mediation Act 2017

### II. Community Mediation Centres Act

To grow itself as an international dispute resolution centre, Singapore is the signatory to the United Nations

Convention on International Settlement Agreements Resulting and the admissibility and confidentiality of the communications in the process of mediation.

To grow itself as an international dispute resolution centre, Singapore is the signatory to the United Nations Convention on International Settlement Agreements Resulting from Mediation (the Treaty). This Treaty has been named after Singapore and is also called as the Singapore Convention on Mediation. The Treaty provides for cross-border enforcements of the mediated settlement agreements.

To take an example, the formalisation of mediation as the primary form of dispute resolution in over 3,600 cases have undergone intervention at the SIMC. The success rate is of about 70% whereas, over 90% of cases have been mediated at the SMC within one working day. Since its operations have been commenced, the SIMC has handled about SD\$ 3.3 billion worth of disputes.

### Mediation in the State Courts:

The courts have always approached holistically for resolving any dispute, as under:-

#### I. Criminal matter

#### ii. Small claims tribunal

#### III. Other civil matters

#### IV. Family matters

#### Ad Hoc Mediation

The parties to a dispute resolution agreement are also given the opportunity of arranging for an ad hoc mediation via the means of law firms or other private service providers. The mediators are obliged to settle the matter.

#### Neutral Evaluation

Neutral Evaluation is a structured process which is conducted informally. In this, both the parties along with their representative lawyers will put forward their side of the case and the critical evidence and findings to each other and the evaluator, in which case is the settlement judge.

*"I enjoy mediation. I think the artist's position is often to mend the things we feel are broken.*

*Whether that's between two cultures or two thoughts. We're always trying to reach, trying to expand something."*

*– Philip Zimmermann*



In the process of Neutral Evaluation, the evaluator will review the case and will provide a detailed assessment of the merits which will stand as the best estimate of the likelihood of the parties' for the success of the procedures.

Neutral Evaluation is used for either entering into a settlement or based on settlement via negotiations.

### **Adjudication**

The process of adjudication is somewhat similar to arbitration. The outstanding feature of an adjudicator is that he is bound by a fixed timeframe where he must make a decision and the parties are fully responsible for the costs, which can be agreed otherwise. Awards in an adjudication process are binding unless they are appealed for by arbitration or the judgement of the court.

The most common form of dispute resolution is adjudication when ensuring the payment and resolution of other kinds of disputes. In this matter, it is aimed to be faster and cost-efficient as compared to arbitration or litigation.

Generally, the flexible nature of the alternative dispute resolution and the other options that are available permits the parties to choose the most efficient method to resolve the disputes without incurring costs or delay that are not required.

### **Settlement Conferences**

Settlement Conferences are meetings where the judge or the appointed volunteer assists the opposing parties in order to reach an amicable settlement without the need to proceed to refer the matter for a trial. The volunteer or the judge who evaluated the parties also analyses the weaknesses and the strength of the matter by not deciding the merits of the case.

The settlement conferences are usually initiated via either of the parties, or it can be ordered by the court for holding a trial. The parties are, in most cases represented by their lawyers, at such conferences.

The services that are provided by the SMIC are inclusive of mediation, mediation-arbitration (Med-Arb), neutral evaluation as well as the Singapore Domain Name dispute resolution. It is pertinent to note that the resolution of disputes via alternate means are also made available through the online dispute manager website.

The SMIC has also made provision for the Small Case Commercial Mediation Scheme (SCCMS). The SCCMS as been designed for providing cost-effective mediation services when the claim quantum is SD 60,000 or less.

The panel of the mediators and the neutrals are inclusive of leaders across various professions and industries. These leaders have undergone extensive training for mediation and evaluation.

### **Conclusion**

It is pertinent to note that arbitration has always remained the most favourable adjudicatory process. It entails the determination of the opposing entitlements and rights, which is not still the desirable method of resolution. Private mediation has now become the viable option for resolving the valued commercial disputes where the parties might incur extra costs in case the matter goes for litigation. It can not be avoided that judiciary has undoubtedly played an important role in embedding mediation as a simultaneous process. Appropriate cases are referred to resolve during the pre-trial meetings and case management conferences by the registrars and the judges. The underlying theme of mediation is that it does not serve as the misleading function away from court litigation.

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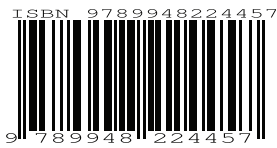
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