



Building Bridges: Innovations in cross-border dispute resolution and access to justice

Mediation: Developments, Trends and the Road Forward

Sharon Ong, Director-General, International & Advisory Group, Ministry of Law, Singapore
11 November 2022

1 Looking Back

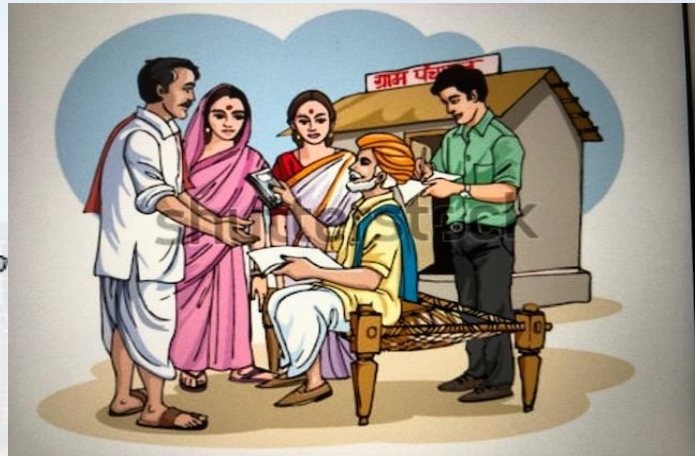
2 The Ascent of Mediation

3 Singapore Convention

4 Looking Forward: Emerging Issues



1 Looking Back

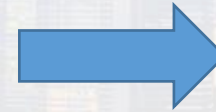


Mediation Decades Ago

UNCITRAL Conciliation Rules



UNCITRAL Model Law on International Commercial Conciliation with Guide to Enactment and Use 2002



UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation with Guide to Enactment and Use (2018)



2 The Ascent of Mediation



Mediation on the Ascent

CHINA-BRITAIN BUSINESS
FOCUS



NEWS CONSUMER EDUCATION ENVIRONMENT HEALTHCARE INFRASTRUCTURE MANUFACTURE

Home > Services > Law > Why China's adoption of an international settlement agreement will help dispute resolution

LAW

WHY CHINA'S ADOPTION OF AN INTERNATIONAL SETTLEMENT AGREEMENT WILL HELP DISPUTE RESOLUTION

 SINGAPORE
INTERNATIONAL
MEDIATION CENTRE

The value and number of disputes filed at SIMC has risen substantially over the years.

In 2021 alone, the total value of disputes heard amounted to over US\$3 billion, equalling the US\$3 billion total dispute value for the previous six years (2014-2020) since SIMC's inception.

Kluwer Arbitration Blog

ARBITRATION, JAPAN, JCAA, MEDIATION

Arbitration and Mediation in Japan: Is the Sun Rising?

Michael McErlaine (Herbert Smith Freehills LLP) / September 26, 2022 / Leave a comment
Herbert Smith Freehills

The Rise of Global Mediation: A New Treaty Portends Growth

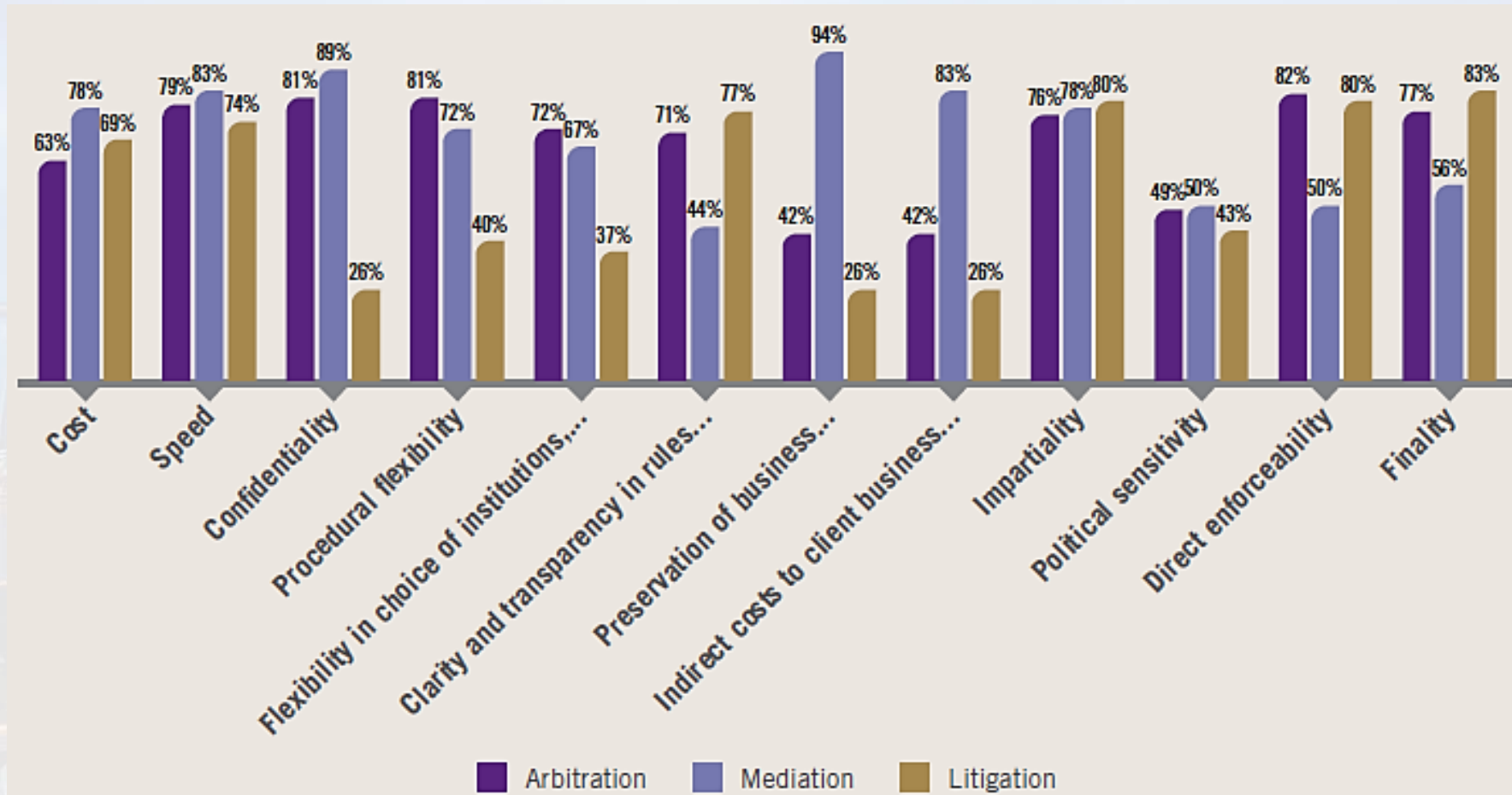
White & Case LLP

International Mediation: The New Mode of the Future?

June 4, 2021 | By Mica Nguyen Worthy

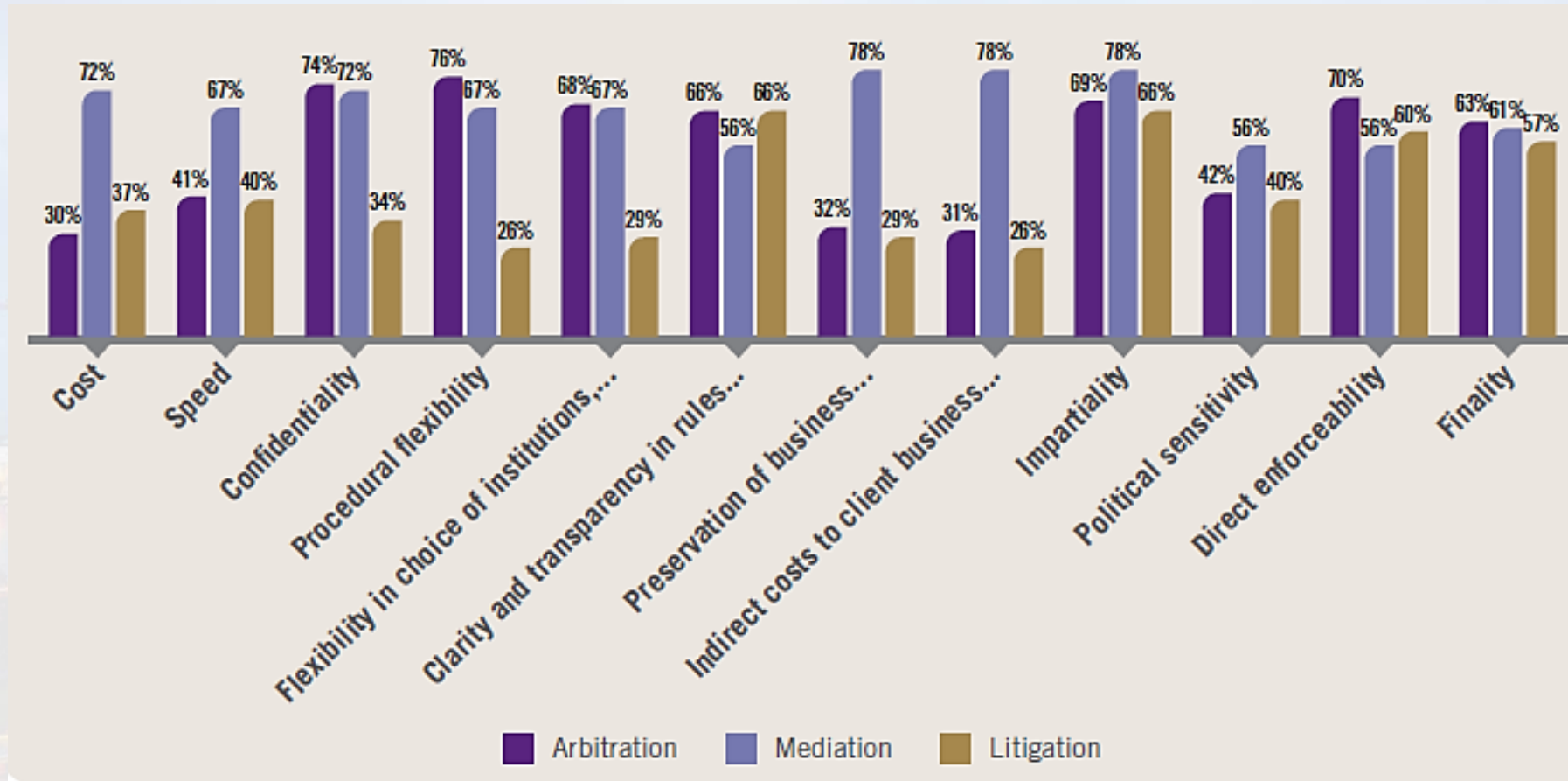
As global businesses have had to adapt to the curveballs thrown by COVID-19, innovation has sprung from adversity and the future of international trade is bright. One area of innovation is the continued development and adoption of the Singapore Convention on Mediation ("Singapore Convention"), which if ratified more widely in the coming years will provide an enforceable framework for international mediation.

Comparing User Perspectives of Factor Importance



Source: SIDRA International Dispute Resolution Survey: 2022 Final Report

Comparing User Satisfaction



Source: SIDRA International Dispute Resolution Survey: 2022 Final Report

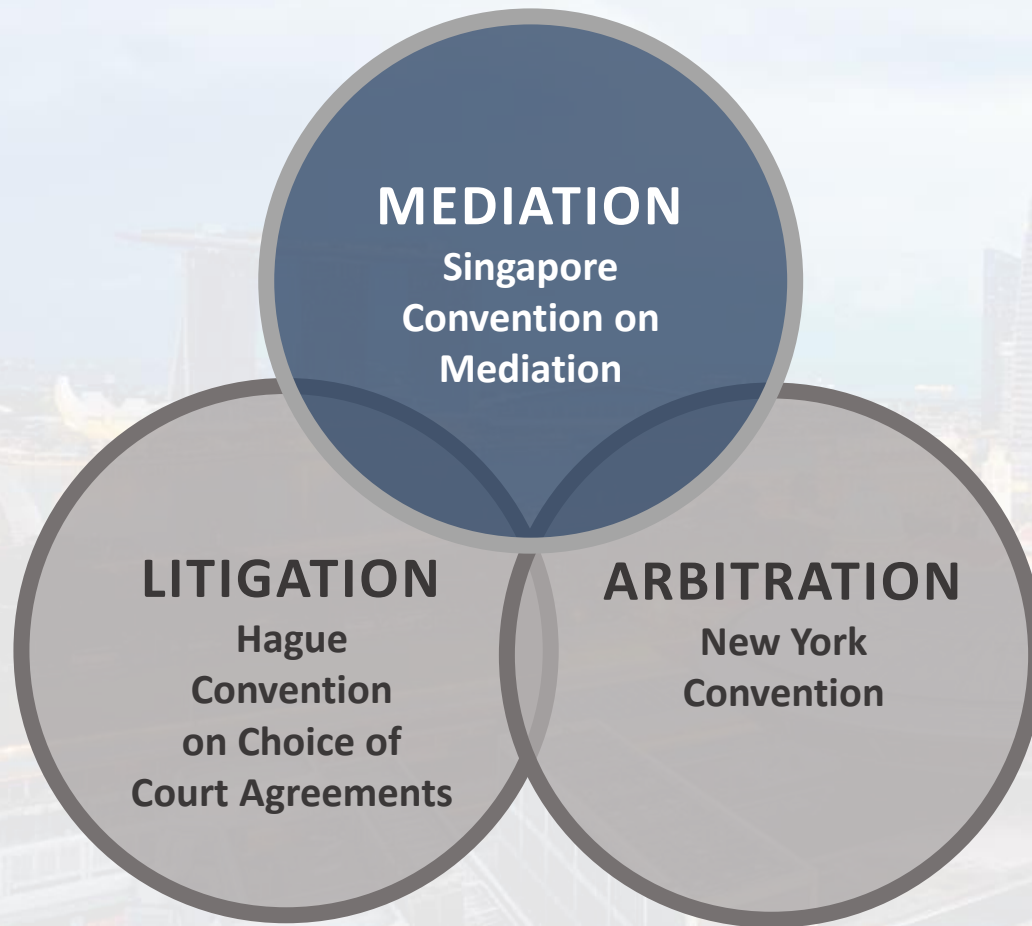
3 The Singapore Convention



**SINGAPORE
CONVENTION**
ON MEDIATION

Singapore Convention on Mediation

Missing third piece in international dispute resolution enforcement framework



Enforcement ("Sword")

To enforce the obligations of the other party under the settlement agreement

Invocation ("Shield")

Where there is a dispute concerning a matter that the party to the settlement agreement claims was already resolved by the agreement, in order to prove that the matter has already been resolved

Road to the Convention

2002

UNCITRAL Model Law on International Commercial Conciliation left enforcement to countries' domestic laws

**2015
to
2018**

Over 6 sessions, the UNCITRAL Working Group II (Dispute Resolution) discussed a framework for enforcing mediated settlement agreements

**Dec
2018**

UN General Assembly adopted the Singapore Convention on Mediation

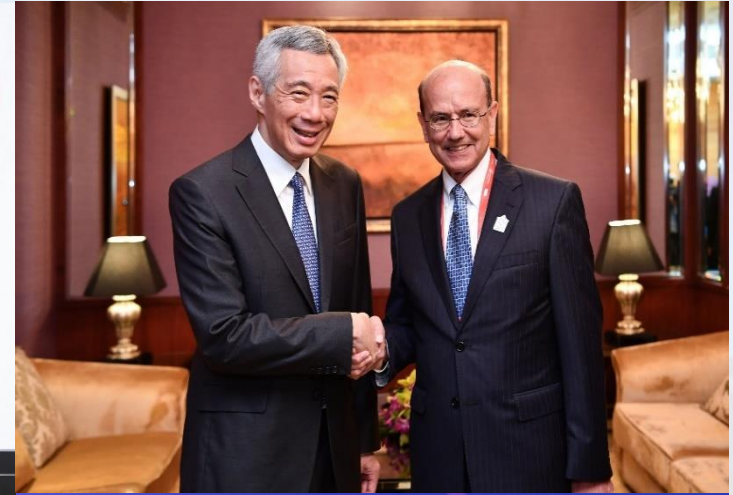
UNCITRAL Working Group II (Dispute Settlement)



Singapore Convention Signing Ceremony (7 Aug 2019)

THE STRAITS TIMES

UN mediation treaty shows countries' support for rules-based international order: Heng Swee Keat



Current Status - 10 Parties, 55 Signatories



Afghanistan | Armenia | Australia | Belarus | Benin | Brunei Darussalam | Chad | Chile | China | Colombia | Congo | Democratic Republic of the Congo | Ecuador | Eswatini | Fiji | Gabon | Georgia | Grenada | Guinea-Bissau | Haiti | Honduras | India | Iran (Islamic Republic of) | Israel | Jamaica | Jordan | Kazakhstan | Lao People's Democratic Republic | Malaysia | Maldives | Mauritius | Montenegro | Nigeria | North Macedonia | Palau | Paraguay | Philippines | Qatar | Republic of Korea | Rwanda | Samoa | Saudi Arabia | Serbia | Sierra Leone | Singapore | Sri Lanka | Timor-Leste | Turkey | Uganda | Ukraine | United States of America | Uruguay | Venezuela (Bolivarian Republic of)

Singapore's Capacity-Building Efforts

MinLaw will continue to participate in exchanges on the bilateral and international fronts, to support the growth of international commercial mediation and commerce.

#TrustedSingapore #sgmediates



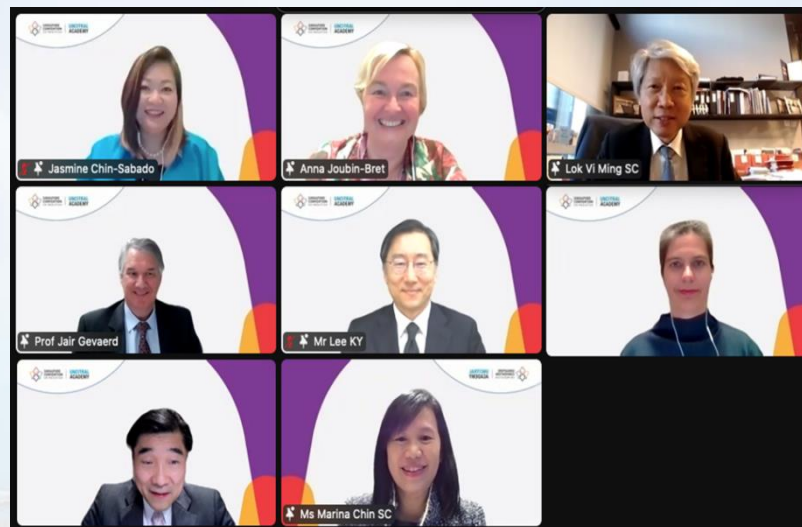
Like

Comment

Share



Singapore Convention Week and UNCITRAL Academy



4 Emerging issues: Online Mediation



Online Mediation in Singapore

THE BUSINESS TIMES

551.30 S\$ A SINGAPORE PRESS HOLDINGS PUBLICATION | businesstimes.com.sg | @businesstimes | CO REGD NO 19840234KE | MCI (P) 029/12/2019 Monday, June 1, 2020

TENSIONS AT THE MOUTH OF THE DRAGON
How will HK's new security law impact the city's financial hub status?
VIEWS FROM THE TOP / 14

TOPLINE
Ho Bee bolsters recurring income shield COMPANIES & MARKETS / 4

NEWS ANALYSIS
Temasek sold off NOL, so why save PIL? TOP STORIES / 2

MARK TO MARKET
IndoAgri directors who recommended lowball privatisation offer to seek re-election at AGM TOP STORIES / 2

MARKETS

	Monday	Change
STI	2,519.75	+10.95
KL COMP	1,473.25	+36.49
Nikkei 225	21,877.89	+1,889.73
HANG SENG	22,961.47	+31.33
SHENZHEN B	849.69	-3.48
DOW	25,383.11	+97.95

LAW.COM
INTERNATIONAL

ASIA PACIFIC
NOT FOR REPRINT

Click to print or Select 'Print' in your browser menu to print this document.

Page printed from: <https://www.law.com/international-edition/2020/05/19/singapore-international-mediation-centre-implements-faster-lower-cost-process-during-covid-19-pandemic/>

Singapore International Mediation Centre Implements Faster, Lower-Cost Process During COVID-19 Pandemic

DAILY
DIGEST

The Fed's policy of tamping down yields on bond markets and back-stopping risky markets, has resulted in what Wall Street strategists have dubbed "Tina". If investors want any return at all, there is no alternative to risky stocks and junk bonds. COMPANIES & MARKETS / 6

For the four local trading sessions from May 22-26, the Straits Times Index declined 1.6 per cent with the Nikkei 225, Hang Seng and S&P/ASX 200 indexes averaging a 2.8 per cent gain. COMPANIES & MARKETS / 8



New home sales in the United States posted a surprise gain in April, while stocks of homebuilders have surged in recent weeks. REAL ESTATE / 14

Financial stress since the "circuit breaker" was imposed appears to have caused many Singaporeans to shelve or reduce their retirement savings, a survey by OCBC has found. BANKING & FINANCE / 15

Singapore has agreed to further suspend the High-Speed Rail project till the end of the year. GOVERNMENT & ECONOMY / 18

New fronts for mediation as preferred form of dispute resolution amid Covid-19

Singapore International Mediation Centre rolls out new protocol – including online sessions – as business confidence takes beating in changed climate

BT EXCLUSIVE

By Kelly Ng
kellyng@ph.com.sg
@kellyng87

Singapore
A TALENTED joint venture, strained communication and both parties – an American and a Korean – at loggerheads on how to move on.

This was the tense situation senior counsel George Lim was in as a mediator several years ago. To ease the tension, he called for a break, with tea served from a teapot he picked up just a day before the mediation session in Seoul.

"When I first stepped into the room, the atmosphere was very tense. More than just serving tea, the gesture gave me an opportunity to talk to the parties separately, and then together," said Mr Lim, who chairs the Singapore International Mediation Centre (SIMC).
"I managed to build some trust and rapport with them during the private sessions, which made them more comfortable expressing their concerns and needs."

After a full day of talking things out, the American party agreed – at midnight – to buy the former partner's shares while keeping all jobs.

As the Covid-19 pandemic continues to jolt financial markets and redefines business globally, the number and types of cross-border commercial disputes will inevitably shoot up. Yet this may not lead to more court cases.

Encouraged by a new business climate ushered in by the fall of the

pandemic, along with a protocol for more efficient and economical dispute resolution just introduced, many of the parties in disputes could now turn to mediation, instead of litigation, to settle their differences.

"Covid-19 is a special situation," Mr Lim said. "All over the world, we will see more disputes. More will have to be faced with this decision: Do you want to fight it out, or talk it out?"

Civil litigation, which involves going to court, has been the traditional course taken to resolve disputes. The lesser and alternative platforms are arbitration and mediation, which require neutral third parties to adjudicate or serve as referees.

But arbitration and mediation also have their differences. The biggest is that while an arbitrator in an arbitration makes a final, binding decision, the aim of mediation is for parties to come to an agreement voluntarily.

Mediation itself is also likely to take on a new guise in the time of an infectious pandemic; it will look quite different from Mr Lim's teapot approach.

The new protocol for mediation, including a new set of fees, was rolled out two weeks ago by the SIMC. Essentially it sets all mediation to be conducted online, with fees estimated at between \$53,000 and \$510,000 per party, depending on dispute value.

Prior to this, a mediation session with the SIMC cost \$56,000 each, regardless of dispute type.

"We hope to make mediation accessible to a wider group of firms and individuals," said SIMC chief executive Chan Yee Mong.



SIMC's Mr Lim (left) expects more disputes all over the world amid Covid-19. SIMC's Mr Chan hopes to make mediation accessible to a wider group of firms and individuals with the new protocol.

His team has designed the protocol in line with regulations that took effect in April, which provide temporary relief to people and businesses unable to meet their contractual obligations.

Francis Goh, partner and head of international arbitration at Eversheds Harry Elias, noted that on average, a trial litigation case in Singapore's courts would take about six to nine months to conclude, while an arbitration takes about 11 to 13 months.

With various jurisdictions halting

certain court hearings in recent months, the backlog of cases is likely to further drag out such proceedings – possibly driving more to seek mediation.

"Prior to Covid-19, a mediation at the SIMC can be arranged in about one month and the average hearing takes one day for the parties to reach a mutually agreed mediation settlement of their dispute . . . This timeline is expedited under the new protocol, with SIMC aiming to organise the session within 10 working days," said Mr Goh, who has been a mediator for nearly two decades.

He said one misconception of mediation is that it constitutes a "sign of weakness". "Litigation in the courts was the established norm, hence the popular phrase 'I will see you in court'. In that climate, if a party tries to 'settle', it is perceived as weakness."

But the climate is changing, according to Mr Goh. And with business confidence already taking a beating, parties may not want to be saddled with hefty legal fees.

Mediation also opens the door for firms to preserve relationships and goodwill, he added.

Another common myth is that mediation is suitable only for low-value matters, or for smaller firms, said law professor Joel Lee, who also chairs the Singapore International Mediation Institute.

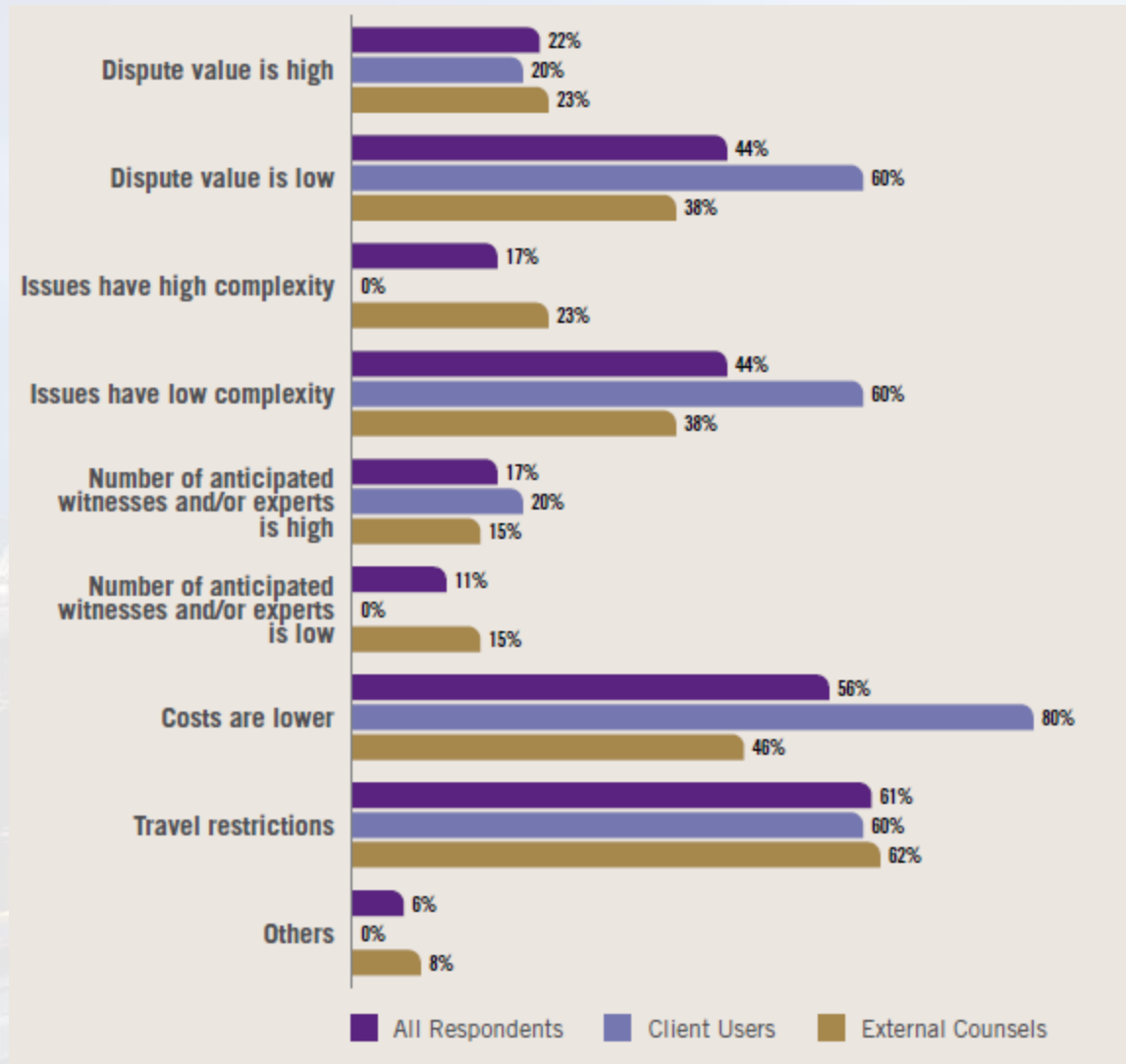
International experience has been that high-value, international commercial disputes, which in the past may have gone to arbitration or litigation, are being resolved by mediation," he said.

Continued on Page 2

IIMC – SIMC Joint Protocol
Expedited mediation for business relationships with a Japanese connection

SIMC – CAMP Joint Covid-19 Protocol
Expedited mediation to preserve relationships along the India-Singapore business corridor

Is Online Mediation Here to Stay?



Source: SIDRA International Dispute Resolution Survey: 2022 Final Report

THE STRAITS TIMES

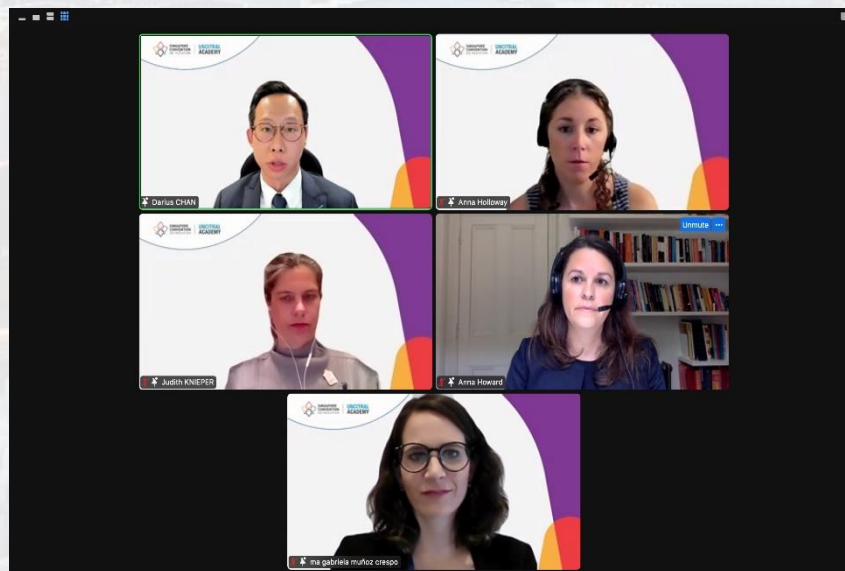
Online mediation here to stay, say Singapore, Japan legal experts



4 Emerging issues: Investor-State Dispute Settlement



Increasing institutional readiness for investor-State mediation



Singapore and Investor-State Mediation

Article 3.4

Mediation and Alternative Dispute Resolution

1. The disputing parties may at any time, including prior to the delivery of a notice of intent, agree to have recourse to mediation.
2. Recourse to mediation is voluntary and without prejudice to the legal position of either disputing party.
3. Recourse to mediation may be governed by the rules set out in Annex 6 (Mediation Mechanism for Disputes between Investors and Parties) or such other rules as the disputing parties may agree. Any time limit mentioned in Annex 6 (Mediation Mechanism for Disputes between Investors and Parties) may be modified by mutual agreement between the disputing parties.
4. The mediator shall be appointed by agreement of the disputing parties or in accordance with Article 3 (Selection of the Mediator) of Annex 6 (Mediation Mechanism for Disputes between Investors and Parties). Mediators shall comply with Annex 7 (Code of Conduct for Members of the Tribunal, the Appeal Tribunal and Mediators).
5. The disputing parties shall endeavour to reach a mutually agreed solution within sixty days from the appointment of the mediator.
6. Once the disputing parties agree to have recourse to mediation, paragraphs 3 and 4 of Article 3.3 (Consultations) shall not apply between the date on which it was agreed to have recourse to mediation, and thirty days after the date on which either party to the dispute decides to put an end to the mediation, by way of a letter to the mediator and the other disputing party.
7. Nothing in this Article shall preclude the disputing parties from having recourse to other forms of alternative dispute resolution.



4 Emerging issues: Third-party Funding for Mediation



Third-Party Funding in Singapore

LAW.COM
INTERNATIONAL

ASIA PACIFIC
NOT FOR REPRINT

Click to print or Select 'Print' in your browser menu to print this document.

Page printed from: <https://www.law.com/international-edition/2021/06/21/singapore-extends-third-party-funding-framework-to-include-domestic-arbitrations/>

Singapore Extends Third-Party Funding Framework to Include Domestic Arbitrations

The extension offers businesses, especially those facing financial constraints, an alternative avenue to fund claims.

By **Jessica Seah** | June 21, 2021



THE
GLOBAL LEGAL POST

MENU

What would you like to know?

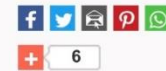
SEARCH

Powered by *SimSage*

News

> Singapore to allow no-win, no-fee agreements to boost appeal as global disputes hub

25 Jan 2022



Singapore to allow no-win, no-fee agreements to boost appeal as global disputes hub

Latest reforms follow the relaxation of litigation funding rules in 2017

By **Ben Rigby**

THE STRAITS TIMES

Law amended to allow 'no win, no fee' agreements between lawyers and clients for certain proceedings



Conditional fee agreements, which were prohibited in Singapore, will now be allowed after the law was amended Jan 12. PHOTO: ST FILE



Thank You

Contact: sharon_ong@mlaw.gov.sg