



MEDIATION MOVES

A note from Indranee Rajah S.C., Senior Minister of State for Law

The Mediation Bill (“the Bill”) was passed in Parliament on 10 January 2017. The Bill can be found [here](#).

The full text of my Second Reading speech in Parliament can be found at www.mlaw.gov.sg.

The Bill is part of our on-going efforts to strengthen Singapore’s position as a premier international commercial dispute resolution hub.

A PREMIER DISPUTE RESOLUTION HUB

Over the years, we have taken steps to establish ourselves as a global brand name for international commercial dispute resolution. These have borne fruit and today, Singapore stands out as a trusted and neutral venue buttressed by an efficient legal regime and high-quality legal expertise.

We offer the full array of dispute resolution services.

- We are a leading venue for international arbitration, and will continue to improve on this. We have just amended the Civil Law Act to pave the way for third party funding for arbitration, a move that will further boost the arbitration sector.

- We are rapidly growing as a jurisdiction of choice for international commercial litigation, led by the Singapore International Commercial Court and the High Court.
- To complete the troika of dispute resolution offerings, we have taken bold steps to develop Singapore as a place for international commercial mediation. In 2014, we set up the Singapore International Mediation Centre (SIMC), to provide world-class mediation services, and the Singapore International Mediation Institute (SIMI), to ensure high professional standards for mediation.

With strong mediation institutions in place, the next step is to establish a sound legislative framework for mediation.¹ This we have done with the passing of the Bill.

FRAMEWORK UNDER THE MEDIATION BILL

The Bill applies:

- to mediations conducted partly or wholly in Singapore; or
- where the mediation agreement stipulates that Singapore law applies.

To avoid inconsistency with domestic mediation schemes already in existence under other legislation and which have their own processes and rules, the Mediation Bill excludes mediations covered under other written laws e.g. community mediations.

The key provisions of the Bill are as follow:

Enforceability of mediated settlement agreements (clause 12 of the Bill)

One main reason often cited by parties for not mediating is that the resultant settlement agreement cannot be enforced right away. Thus if one party breaches the settlement, the other party has to sue on the settlement agreement as a fresh cause of action. This is frustrating because not only would the aggrieved party have lost time from not proceeding with the original action, he now has to incur further time and costs of a new action.

The Bill short-cuts this. Now mediating parties have the option, by consent (and subject to certain requirements²), to have their mediated settlement agreement recorded as an order of court (Clause 12 of the Bill). This makes the settlement agreement directly and immediately enforceable as an order of court. This is a mirror of the Arb-Med-Arb protocol that we have today in the arbitration sphere.



Official opening of the Singapore International Mediation Centre (SIMC) on 5 Nov 2014.

Images courtesy of SIMC.

¹ The Bill implements the last of the recommendations made by an International Commercial Mediation Working Group, set up in 2013 by the Chief Justice and the Ministry of Law to look into developing the international commercial mediation space in Singapore. Other recommendations had included the setting up of SIMC and SIMI.

² This includes that the mediation must have been administered by a designed mediation service provider or conducted by a certified mediator.

Restrictions on disclosure and admissibility (clauses 9, 10 and 11 of the Bill)

The Bill preserves the confidentiality of mediation proceedings and clarifies the circumstances in which mediation communications³ can be disclosed or admitted into court as evidence. Currently, such rules are based on common law principles, which could be subject to different interpretations.

Stay of court proceedings (clause 8 of the Bill)

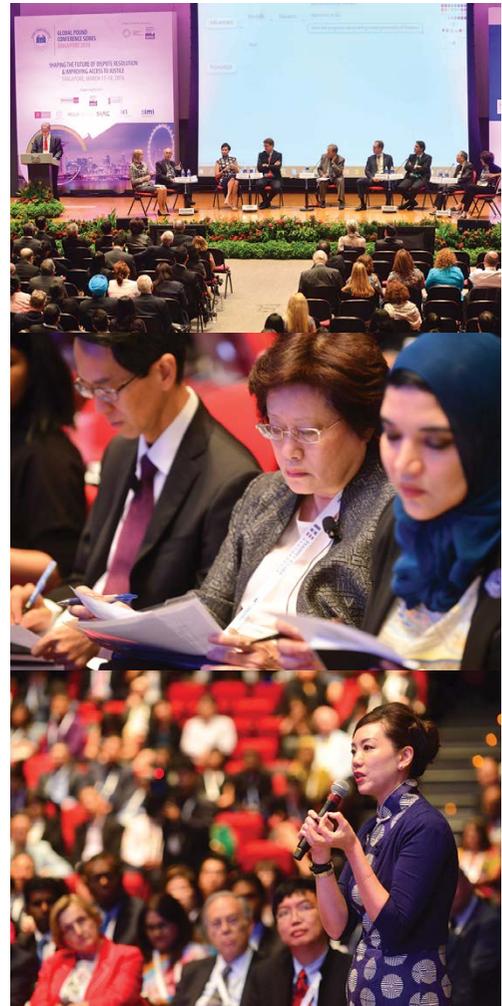
The Bill provides a statutory basis to apply to court for a stay of proceedings pending the outcome of mediation. The court has the power to make interim or supplementary orders to preserve the rights of parties pending the mediation.

RELATED AMENDMENTS IN THE LPA

The Legal Profession Act has also been amended to make it clear that under certain circumstances, participation by foreign mediators and foreign-qualified counsel in mediation sessions will not amount to the unauthorised practice of Singapore law.⁴ This will further enhance support for international commercial mediation in Singapore by providing flexibility for parties to mediate with their own mediators and counsel, and by encouraging foreign mediators and counsel to use Singapore as a venue for mediation.

Singapore has a strong base of legal talent, high-quality dispute resolution service providers, and standard-setting professional bodies. The Bill will create an even more conducive environment in Singapore for international commercial mediation, and reinforce Singapore's position as a premier international commercial dispute resolution venue. This will bolster Singapore's overall attractiveness as a business hub, and create value for other parts of the economy.

– *Indranee Rajah S.C., Senior Minister of State for Law*
31 January 2017



Participants at the recent Global Pound Conference (Singapore) 2016.

Images courtesy of GPC Singapore 2016.

³ The term “mediation communication” is defined in section 2(1) of the Act.

⁴ These are similar to the exceptions in the Legal Profession Act that make it clear that restrictions on the practice of Singapore law do not apply in the context of arbitration proceedings.