

**Global Pound Conference Series Singapore 2016 (17-18 March 2016):
Shaping the Future of Dispute Resolution & Improving Access to Justice**

Session 1 of GPC Core Questions – Interactive Voting and Discussion:

Access to Justice and Dispute Resolution Systems: What do parties want, need and expect?

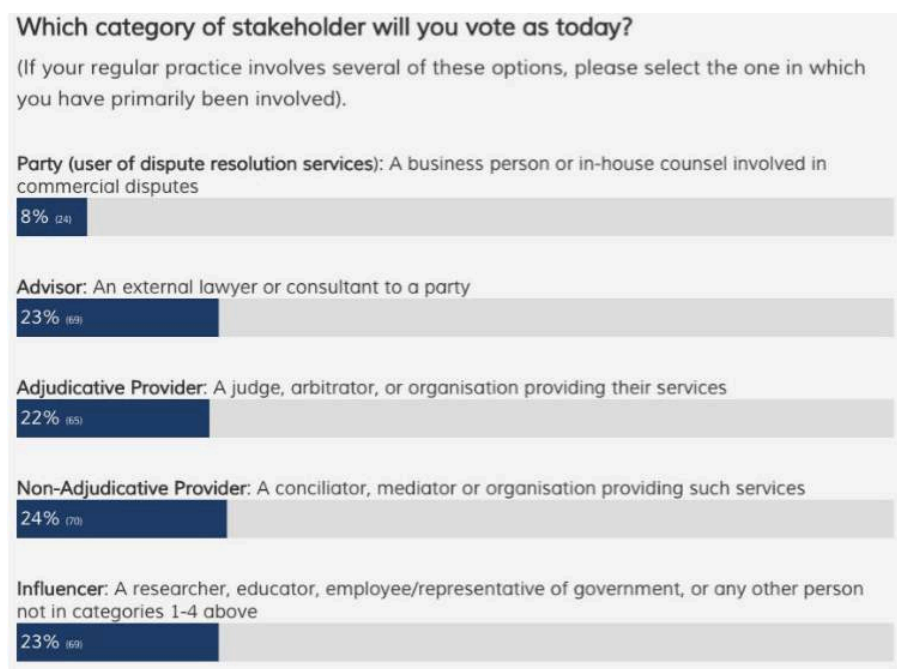
This year's Global Pound Conference (GPC) marks the 40th anniversary of this series of conferences, where Professor Frank Sander envisioned his multi-door courthouse. Having made significant developments and progress in Alternate Dispute Resolution (ADR), various stakeholders convened at this year's conference to discuss how we could better encourage and facilitate the use of ADR methods in dispute resolution.

There was lively conversation and active engagement at the GPC sessions where the various stakeholders brainstormed and discussed the current state of ADR and the way forward. These stakeholders were grouped as follows:

- Parties – the users of dispute resolution services like business persons or in-house counsels involved in commercial disputes)
- Advisors – external lawyers or consultants
- Adjudicative providers – judges, arbitrators or organizations providing dispute resolution services
- Non-adjudicative providers – conciliators, mediators or organizations providing such services
- Influencers – researchers, educators, employees/representatives of government or any other persons not in the first four categories.

These stakeholders identified themselves on their electronic devices before proceeding to vote on the GPC Core Questions, the responses and breakdowns were then debated during a panel discussion featuring various speakers representing the different stakeholders.

Composition of voters:

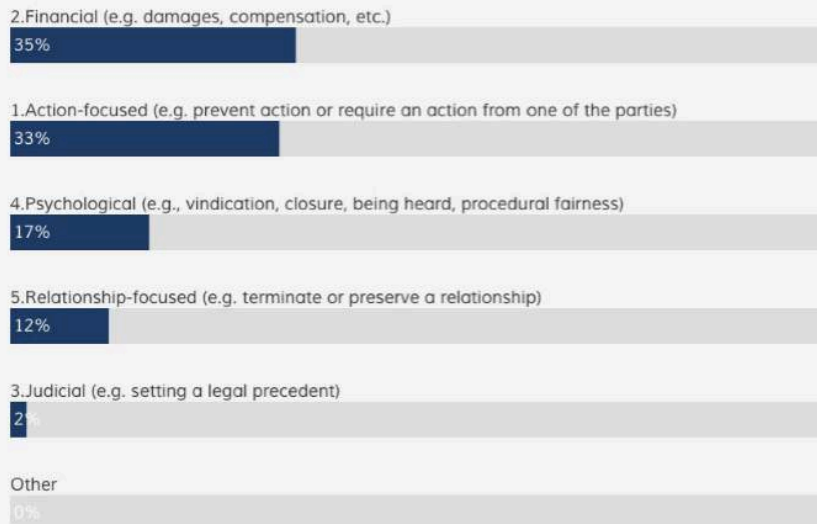


Voting Results:

Question 1

What outcomes do parties most often want before starting a process in commercial and/or civil dispute resolution?

(Please rank your 3 preferred answers in order of priority: '1' = most wanted, '2' = 2nd most wanted, '3' = 3rd most wanted.)



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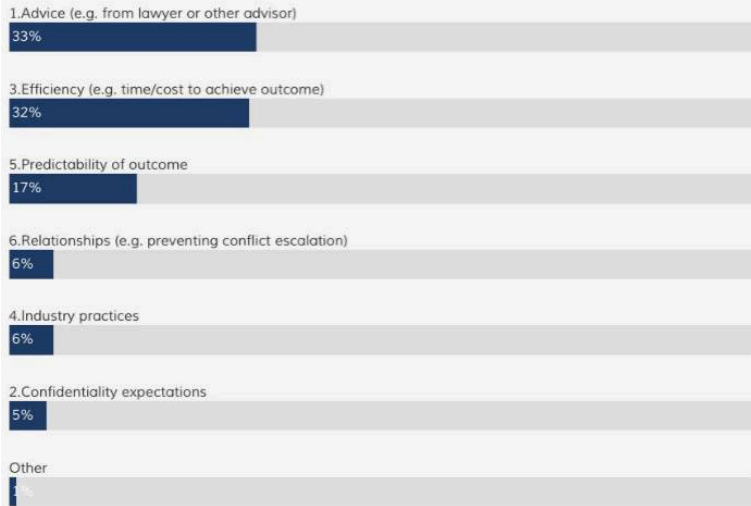
(Please rank your 3 preferred answers in order of priority: '1' = most wanted, '2' = 2nd most wanted, '3' = 3rd most wanted.)

AVG Rank	Party (user of dispute...)	Advisor: An external lawyer...	Adjudicative Provider: A judge,...	Non-Adjudicative Provider: A conciliator, ...	Influencer: A researcher, educator,...
1	1.Action-focused (e.g. prevent action...) 36%	2.Financial (e.g. damages, compensation,...) 42%	2.Financial (e.g. damages, compensation,...) 38%	1.Action-focused (e.g. prevent action...) 35%	1.Action-focused (e.g. prevent action...) 36%
2	2.Financial (e.g. damages, compensation,...) 35%	1.Action-focused (e.g. prevent action...) 29%	1.Action-focused (e.g. prevent action...) 31%	2.Financial (e.g. damages, compensation,...) 30%	2.Financial (e.g. damages, compensation,...) 30%
3	5.Relationship-focused (e.g. terminate or...) 21%	4.Psychological (e.g., vindication, closure,...) 15%	4.Psychological (e.g., vindication, closure,...) 16%	4.Psychological (e.g., vindication, closure,...) 21%	4.Psychological (e.g., vindication, closure,...) 20%
4	4.Psychological (e.g., vindication, closure,...) 7%	5.Relationship-focused (e.g. terminate or...) 13%	5.Relationship-focused (e.g. terminate or...) 11%	5.Relationship-focused (e.g. terminate or...) 11%	5.Relationship-focused (e.g. terminate or...) 11%
5	3.Judicial (e.g. setting a...) 1%		3.Judicial (e.g. setting a...) 1%	3.Judicial (e.g. setting a...) 1%	3.Judicial (e.g. setting a...) 1% Other 1%

Question 2

When parties are choosing which type(s) of dispute resolution process(es) to use, which of the following has the most influence?

(Please rank your 3 preferred answers in order of priority: '1' = most influential, '2' = 2nd most influential, '3' = 3rd most influential)



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(Please rank your 3 preferred answers in order of priority: '1' = most influential, '2' = 2nd most influential, '3' = 3rd most influential)

AVG Rank	Party (user of dispute...)	Advisor: An external lawyer...	Adjudicative Provider: A judge,...	Non-Adjudicative Provider: A conciliator,...	Influencer: A researcher, educator,...
1	3. Efficiency (e.g. time/cost to...) 32%	1. Advice (e.g. from lawyer...) 38%	3. Efficiency (e.g. time/cost to...) 34%	3. Efficiency (e.g. time/cost to...) 32%	1. Advice (e.g. from lawyer...) 36%
2	1. Advice (e.g. from lawyer...) 20%	3. Efficiency (e.g. time/cost to...) 33%	1. Advice (e.g. from lawyer...) 30%	1. Advice (e.g. from lawyer...) 31%	3. Efficiency (e.g. time/cost to...) 31%
3	5. Predictability of outcome 16%	5. Predictability of outcome 18%	5. Predictability of outcome 20%	5. Predictability of outcome 16%	5. Predictability of outcome 19%
4	6. Relationships (e.g. preventing conflict...) 13%	6. Relationships (e.g. preventing conflict...) 13%	2. Confidentiality expectations 5% 4. Industry practices 5%	6. Relationships (e.g. preventing conflict...) 9%	4. Industry practices 9%
5	2. Confidentiality expectations 1%	2. Confidentiality expectations 3% 4. Industry practices 1%	6. Relationships (e.g. preventing conflict...) 1% Other 1%	2. Confidentiality expectations 6% 4. Industry practices 6%	2. Confidentiality expectations 1% 6. Relationships (e.g. preventing conflict...) 1%
6	4. Industry practices 9%	Other 2%	Other 2%		Other 1%

Question 3

When lawyers (whether in-house or external) make recommendations to parties about procedural options for dispute resolution, which of the following has the most influence?

(Please rank your 3 preferred answers in order of priority: '1' = most influential, '2' = 2nd most influential, '3' = 3rd most influential)

5.The type of outcome requested by the party (e.g. money, an injunction, etc.)



1.Familiarity with a particular type of dispute resolution process



3.Impact on costs/fees the lawyer can charge



2.Industry practices



4.The party's relationships with the other party(ies) or stakeholders



Other



When lawyers (whether in-house or external) make recommendations to parties about procedural options for dispute resolution, which of the following has the most influence?

(Please rank your 3 preferred answers in order of priority: '1' = most influential, '2' = 2nd most influential, '3' = 3rd most influential)

AVG Rank	Party (user of dispute...)	Advisor: An external lawyer...	Adjudicative Provider: A judge,...	Non-Adjudicative Provider: A conciliator, ...	Influencer: A researcher, educator,...
1	1.Familiarity with a particular... 34%	5.The type of outcome... 40%	5.The type of outcome... 32%	1.Familiarity with a particular... 32%	1.Familiarity with a particular... 34%
2	5.The type of outcome... 30%	1.Familiarity with a particular... 20%	1.Familiarity with a particular... 28%	5.The type of outcome... 29%	5.The type of outcome... 29%
3	3.Impact on costs/fees the... 17%	3.Impact on costs/fees the... 15%	3.Impact on costs/fees the... 24%	3.Impact on costs/fees the... 20%	3.Impact on costs/fees the... 20%
4	4.The party's relationships with... 13%	4.The party's relationships with... 12%	2.Industry practices 8%	2.Industry practices 1%	2.Industry practices 9%
5	2.Industry practices 6%	2.Industry practices 1%	4.The party's relationships with... 7%	4.The party's relationships with... 9%	4.The party's relationships with... 8%

Question 4

What role do parties want providers to take in dispute resolution processes?

(Please rank your 3 preferred answers in order of priority: '1' = most wanted role, '2' = 2nd most wanted role, '3' = 3rd most wanted role)

5.The parties initially do not have a preference but seek guidance from the providers regarding optimal ways of resolving their dispute

35%

2.The providers decide on the process and the parties decide how the dispute is resolved

20%

4.The providers decide on the process and how the dispute is resolved

16%

1.The parties decide how the process is conducted and how the dispute is resolved (the providers just assist)

15%

3.The parties decide on the process and the providers decide how the dispute is resolved

15%

Other

1%

What role do parties want providers to take in dispute resolution processes?

(Please rank your 3 preferred answers in order of priority: '1' = most wanted role, '2' = 2nd most wanted role, '3' = 3rd most wanted role)

AVG Rank	Party (user of dispute...)	Advisor: An external lawyer...	Adjudicative Provider: A judge,...	Non-Adjudicative Provider: A conciliator, ...	Influencer: A researcher, educator,...
1	5.The parties initially do... 35%	5.The parties initially do... 28%	5.The parties initially do... 35%	5.The parties initially do... 37%	5.The parties initially do... 37%
2	1.The parties decide how... 21%	3.The parties decide on... 21%	2.The providers decide on... 20%	2.The providers decide on... 25%	2.The providers decide on... 19%
3	3.The parties decide on... 19%	4.The providers decide on... 18%	4.The providers decide on... 17%	1.The parties decide how... 13% 4.The providers decide on... 13%	4.The providers decide on... 17%
4	2.The providers decide on... 14%	2.The providers decide on... 17%	1.The parties decide how... 14% 3.The parties decide on... 14%	3.The parties decide on... 11%	1.The parties decide how... 15%
5	4.The providers decide on... 10%	1.The parties decide how... 16%			3.The parties decide on... 12%

Question 5

What role do parties typically want lawyers (i.e., in-house or external counsel) to take in dispute resolution processes?

(Please rank your 3 preferred answers in order of priority: '1'= most wanted role, '2'= 2nd most wanted role, '3' = 3rd most wanted role)



What role do parties typically want lawyers (i.e., in-house or external counsel) to take in dispute resolution processes?

(Please rank your 3 preferred answers in order of priority: '1'= most wanted role, '2'= 2nd most wanted role, '3' = 3rd most wanted role)

AVG Rank	Party (user of dispute...)	Advisor: An external lawyer...	Adjudicative Provider: A judge,...	Non-Adjudicative Provider: A conciliator,...	Influencer: A researcher, educator,...
1	4. Working collaboratively with parties... 41%	5. Speaking for parties and/or... 43%	4. Working collaboratively with parties... 36%	4. Working collaboratively with parties... 35%	4. Working collaboratively with parties... 37%
2	5. Speaking for parties and/or... 30%	4. Working collaboratively with parties... 35%	5. Speaking for parties and/or... 35%	5. Speaking for parties and/or... 34%	5. Speaking for parties and/or... 36%
3	2. Acting as advisors and... 16%	2. Acting as advisors and... 12%	2. Acting as advisors and... 12%	3. Participating in the process... 13%	3. Participating in the process... 11%
4	3. Participating in the process... 10%	3. Participating in the process... 8%	3. Participating in the process... 9%	2. Acting as advisors and... 12%	2. Acting as advisors and... 10%
5	1. Acting as coaches, providing... 2%	1. Acting as coaches, providing... 1% Other 1%	6. Parties do not normally... 1%	1. Acting as coaches, providing... 1% 6. Parties do not normally... 1%	6. Parties do not normally... 1%
6			1. Acting as coaches, providing... 1% Other 1%	Other 1%	1. Acting as coaches, providing... 1%

Summary of Discussion by Panel of Speakers:

Speakers:

- **Alastair Henderson (Moderator)**, Managing Partner, Southeast Asia and Head of International Arbitration Practice, Southeast Asia, Herbert Smith Freehills LLP
- **Sok-Theng Cheng**, Executive Director/SE Asia Legal Counsel, Morgan Stanley
- **Gerard Ee**, President, Institute of Singapore Chartered Accountants
- **Josephine Hadikusumo**, Regional Legal Counsel (Asia), Texas Instruments
- **Michael McIlwrath**, Global Chief Litigation Counsel (Litigation), GE Oil & Gas and Chair, Global Pound Conference Series
- **Sue Lynn Neoh**, VP, Singapore Corporate Counsel Association, Legal Director, Xilinx Asia Pacific

1. **Question 1** was in relation to the outcomes parties most often desire before starting a process.
 - 1.1 Financial-based (e.g. damages, compensation) and action-focused (e.g. preventing action or requiring action from other party) outcomes topped the responses at 35% and 33% respectively.
 - 1.2 The panelists noted that the breakdown in the various responses were quite interesting. Financial outcomes ranked highest for advisors and adjudicative providers at 42% and 38% respectively, whereas action-focused outcomes were ranked highest for other stakeholders.
 - 1.3 There was also a significant difference between the perceptions of users and advisors concerning the importance of relationship-based remedies, which obtained 21% of votes from users and only 13% from advisors.
 - 1.4 Concerning relationship-based outcomes:
 - 1.4.1 Ms Neoh noted that this preserving relationships in her experience is an important factor for users though it was ranked third amongst users. Ms Hadikusumo, another legal counsel, agreed, stating that relationships should probably rank higher than action-based or financial outcomes. Relationships are especially important in a specialized industry when business relationships must be preserved.
 - 1.4.2 Mr Ee, who said that his background is with civil disputes, concurred that relationships are fundamental in such cases. He was not surprised that lawyers voted for financial outcomes as a top factor, given the need to justify their fees.
 - 1.4.3 Ms Cheng commented that depending on what the dispute involves, the focus may be on an action-based remedy as opposed to a financial outcome. It is notable that the users' top three preferred outcomes did not include psychological outcomes like vindication, whereas this factor was given more weight by providers and advisors. However, this result could be due to there being many commercial users within this particular group of users.
 - 1.4.4 Mr Henderson highlighted that there may be situations in which counsel recommend the use of mediation to preserve relationships, but their clients disagree with their advisors, wanting to punish their opponent as much as possible. Relationships may not always be a priority for clients.
2. **Question 2** was about factors which influence the choice of dispute resolution process:
 - 2.1 Advice from lawyers or other advisors, and efficiency (e.g. time and cost) ranked the highest at 33% and 32% respectively.
 - 2.2 The panelists expressed surprise that the factor of predictability of outcome was not ranked higher in the voting results, as it appeared to them to be an important consideration. Ms Cheng remarked that this is a key factor for her industry, especially when needing to explain and justify a certain

dispute resolution option to internal stakeholders. Similarly, Ms Hadikusumo stated that she will rate this as the most important factor. In her experience, it is important to have transparency and certainty in the outcome. While she was unsure about the situation for small and medium companies, she was rather certain that large companies are willing to pay substantially to obtain control over outcome.

- 2.3 Ms Neoh expressed surprise that many users chose efficiency as a factor, even rating it higher than predictability of outcome. While she recognised that time and costs are important to many users, the rating was higher than expected.
 - 2.4 On the same point of efficiency, Mr McIlwrath commented that many users choose arbitration more for this reason than for confidentiality. Confidentiality as a factor featured in the results at the bottom 10% in respect of users. Mr McIlwrath also highlighted how lawyers seemed to think that their advice had the most impact on users' decisions on dispute resolution processes, but the users' voting did not correspond to this belief.
 - 2.5 Mr Ee pointed out that confidentiality expectations could have been ranked poorly (at 5%) because of the relatively low proportion of users amongst voters. Most users in civil disputes tend to choose outcomes in which the outcome is predictable when their emotions are heightened. However, when emotions subside, they may subsequently prefer a confidential process.
3. **Question 5** was on the role that the parties wanted lawyers to play.
- 3.1 The top two ranked options were speaking/advocating for the party and working collaboratively with the parties to navigate the process, both garnering 36% of the overall votes.
 - 3.2 Ms Hadikusumo observed the disconnect between expectations of lawyers about what they should do and what parties want. Lawyers thought that it was most important to advocate for their client. However, it is not uncommon for more sophisticated clients in companies to prefer their lawyer to play a more supportive role from behind, and lawyers can add value by being willing to fulfil such a role. Ms Neoh reiterated that it was interesting that lawyers thought that played an advocacy role, when everyone else disagreed. She noted though that most of the users who voted may be from multi-national companies with in-house counsel with sufficient ADR knowledge. Other companies may place greater reliance on external counsel's advice.
 - 3.3 Ms Cheng stressed that we should recognise that the option to this question was phrased as acting as advisors but not interacting with other party, and thus most voters may have been put off by this option. Users do expect lawyers to both advise and act collaboratively. There is substantial value that experienced external counsel can add especially when they understand the dynamic of the particular industry they are advising.
 - 3.4 Mr Ee stated that external counsel are always useful for advising users as to where they stood in their legal positions. However, he has found it challenging when there is one set of counsel that are conciliatory and the other is intent only on getting the best deal for their clients. It may be almost impossible to mediate in such circumstances.

Summarised by Singapore International Mediation Institute (SIMI):

- Associate Professor Joel Lee
- Assistant Professor Dorcas Quek Anderson
- Kelly Zhang
- Walter Seow
- Jun Jin Sei
- Lim Shen-nen

