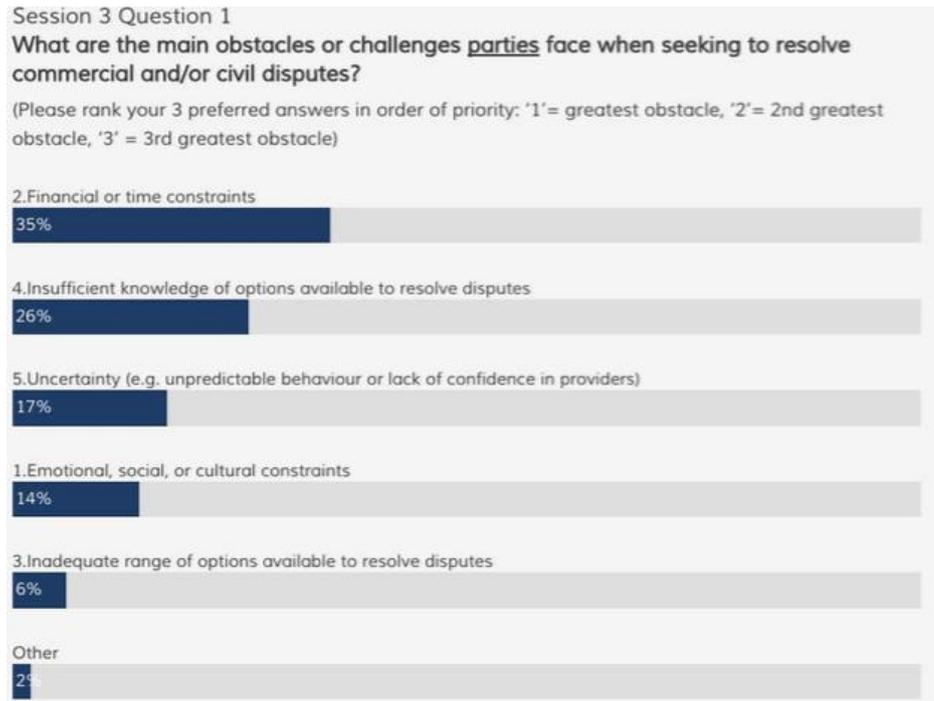


**Global Pound Conference Series Singapore 2016 (17-18 March 2016):
Shaping the Future of Dispute Resolution & Improving Access to Justice**

**Session 3 of GPC Core Questions – Interactive Voting & Discussion:
How can dispute resolution be improved? (Overcoming obstacles and challenges)**

Voting Results

Question 1



Session 3 Question 1
What are the main obstacles or challenges parties face when seeking to resolve commercial and/or civil disputes?
(Please rank your 3 preferred answers in order of priority: '1' = greatest obstacle, '2' = 2nd greatest obstacle, '3' = 3rd greatest obstacle)

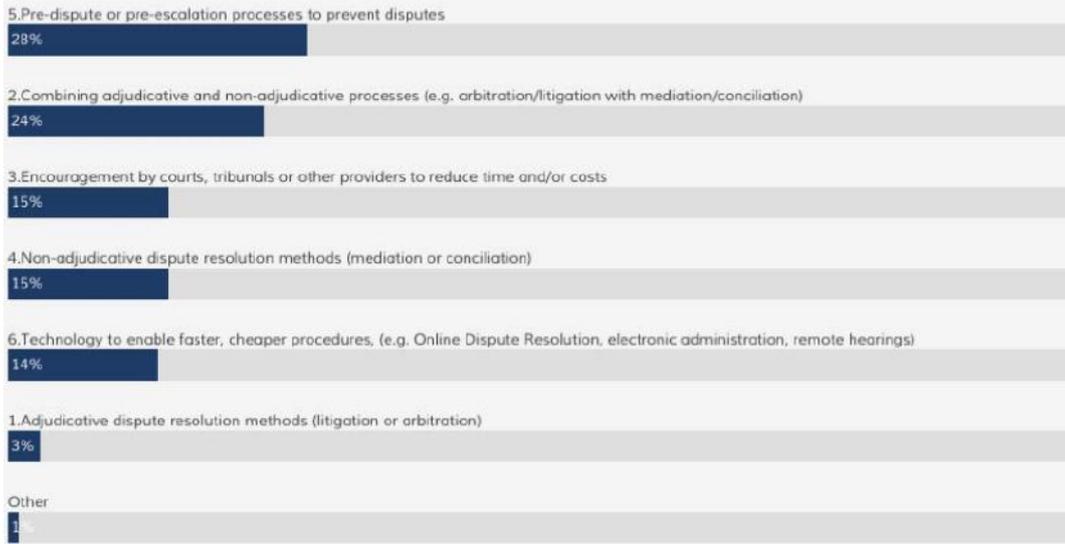
AVG Rank	Party (user of dispute...)	Advisor: An external lawyer...	Adjudicative Provider: A judge,...	Non-Adjudicative Provider: A conciliator,...	Influencer: A researcher, educator,...
1	2. Financial or time constraints 37%	2. Financial or time constraints 39%	2. Financial or time constraints 38%	2. Financial or time constraints 32%	4. Insufficient knowledge of options... 32%
2	5. Uncertainty (e.g. unpredictable behaviour...) 27%	4. Insufficient knowledge of options... 19%	4. Insufficient knowledge of options... 26%	4. Insufficient knowledge of options... 29%	2. Financial or time constraints 31%
3	4. Insufficient knowledge of options... 15%	5. Uncertainty (e.g. unpredictable behaviour...) 18%	5. Uncertainty (e.g. unpredictable behaviour...) 16%	1. Emotional, social, or cultural... 18%	5. Uncertainty (e.g. unpredictable behaviour...) 18%
4	3. Inadequate range of options... 10%	1. Emotional, social, or cultural... 15%	1. Emotional, social, or cultural... 13%	5. Uncertainty (e.g. unpredictable behaviour...) 12%	1. Emotional, social, or cultural... 11%
5	1. Emotional, social, or cultural... 9%	Other 5%	3. Inadequate range of options... 6%	3. Inadequate range of options... 7%	3. Inadequate range of options... 4%

Question 2

Session 3 Question 2

To improve the **future** of dispute resolution and access to justice, which of the following **processes and tools** should be prioritised?

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



Session 3 Question 2

To improve the **future** of dispute resolution and access to justice, which of the following **processes and tools** should be prioritised?

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

AVG Rank	Party (user of dispute...)	Advisor: An external lawyer...	Adjudicative Provider: A judge,...	Non-Adjudicative Provider: A conciliator,...	Influencer: A researcher, educator,...
1	2.Combining adjudicative and non-adjudicative... 25% 5.Pre-dispute or pre-escalation processes... 25%	5.Pre-dispute or pre-escalation processes... 29%	5.Pre-dispute or pre-escalation processes... 30%	5.Pre-dispute or pre-escalation processes... 29%	5.Pre-dispute or pre-escalation processes... 28%
2	3.Encouragement by courts, tribunals... 19%	2.Combining adjudicative and non-adjudicative... 27%	2.Combining adjudicative and non-adjudicative... 25%	4.Non-adjudicative dispute resolution methods... 22%	2.Combining adjudicative and non-adjudicative... 22%
3	4.Non-adjudicative dispute resolution methods... 15%	3.Encouragement by courts, tribunals... 19%	6.Technology to enable faster,... 14%	2.Combining adjudicative and non-adjudicative... 21%	4.Non-adjudicative dispute resolution methods... 16% 6.Technology to enable faster,... 16%
4	6.Technology to enable faster,... 13%	6.Technology to enable faster,... 14%	3.Encouragement by courts, tribunals... 13% 4.Non-adjudicative dispute resolution methods... 13%	3.Encouragement by courts, tribunals... 16%	3.Encouragement by courts, tribunals... 13%
5	1.Adjudicative dispute resolution methods... 4%	4.Non-adjudicative dispute resolution methods... 9%	1.Adjudicative dispute resolution methods... 4%	6.Technology to enable faster,... 12%	1.Adjudicative dispute resolution methods... 4%
6		1.Adjudicative dispute resolution methods... 1%			Other 1%

Question 3

Session 3 Question 3

Which of the following areas would most improve dispute resolution and access to justice?

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

3.Legislation or conventions that promote recognition and enforcement of settlements, including those reached in mediation

33%

5.Use of protocols promoting non-adjudicative processes before adjudicative processes (e.g. opt-out)

24%

2.Cost sanctions against parties for failing to try non-adjudicative processes (e.g. mediation or conciliation) before litigation/arbitration.

22%

1.Accreditation or certification systems for dispute resolution providers

11%

4.Quality control and complaint mechanisms applicable to dispute resolution providers

10%

Other

1%

Session 3 Question 3

Which of the following areas would most improve dispute resolution and access to justice?

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

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.Legislation or conventions that... 42%	3.Legislation or conventions that... 30%	3.Legislation or conventions that... 31%	3.Legislation or conventions that... 35%	3.Legislation or conventions that... 31%
2	5.Use of protocols promoting... 24%	5.Use of protocols promoting... 26%	2.Cost sanctions against parties... 29%	5.Use of protocols promoting... 23%	5.Use of protocols promoting... 22%
3	2.Cost sanctions against parties... 17%	2.Cost sanctions against parties... 19%	5.Use of protocols promoting... 26%	2.Cost sanctions against parties... 22%	2.Cost sanctions against parties... 19%
4	1.Accreditation or certification systems... 10%	4.Quality control and complaint... 17%	1.Accreditation or certification systems... 9%	1.Accreditation or certification systems... 14%	1.Accreditation or certification systems... 15%
5	4.Quality control and complaint... 7%	1.Accreditation or certification systems... 7%	4.Quality control and complaint... 6%	4.Quality control and complaint... 5%	4.Quality control and complaint... 1%

Question 4

Session 3 Question 4

Which stakeholders are likely to be most resistant to change in dispute resolution practice?

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



Session 3 Question 4

Which stakeholders are likely to be most resistant to change in dispute resolution practice?

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

AVG Rank	Party (user of dispute...)	Advisor: An external lawyer...	Adjudicative Provider: A judge,...	Non-Adjudicative Provider: A conciliator,...	Influencer: A researcher, educator,...
1	2.External lawyers 44%	2.External lawyers 39%	2.External lawyers 46%	2.External lawyers 44%	2.External lawyers 48%
2	1.Adjudicative Providers: judges and...	6.Parties (non-legal personnel) 20%	6.Parties (non-legal personnel) 20%	1.Adjudicative Providers: judges and... 18%	1.Adjudicative Providers: judges and... 15%
3	3.Governments/ministries of justice 14%	1.Adjudicative Providers: judges and... 19%	4.In-house lawyers 14%	4.In-house lawyers 15%	4.In-house lawyers 13% 6.Parties (non-legal personnel) 13%
4	5.Non-Adjudicative Providers: mediators and... 7%	4.In-house lawyers 11%	1.Adjudicative Providers: judges and... 11%	6.Parties (non-legal personnel) 13%	3.Governments/ministries of justice 7%
5	6.Parties (non-legal personnel) 9%	3.Governments/ministries of justice 6%	3.Governments/ministries of justice 9%	3.Governments/ministries of justice 9%	5.Non-Adjudicative Providers: mediators and... 5%
6	4.In-house lawyers 1%	Other 1%	5.Non-Adjudicative Providers: mediators and... 4%	5.Non-Adjudicative Providers: mediators and... 1%	Other 1%

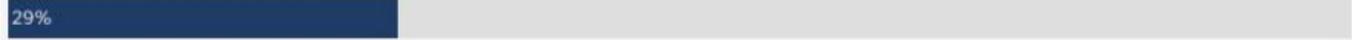
Question 5

Session 3 Question 5

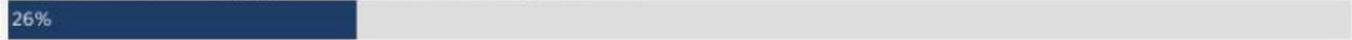
Which **stakeholders** have the potential to be most influential in bringing about **change** in dispute resolution practice?

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

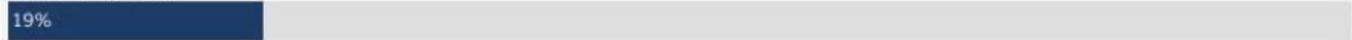
3.Governments/ministries of justice



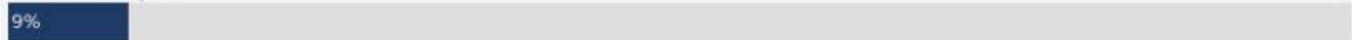
1.Adjudicative Providers: judges and arbitrators or their organisations



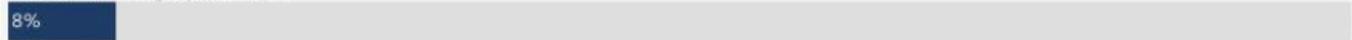
2.External lawyers



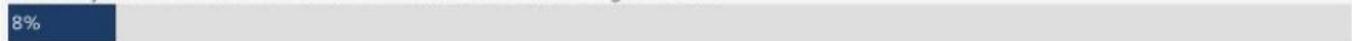
4.In-house lawyers



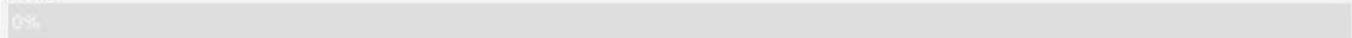
6.Parties (non-legal personnel)



5.Non-Adjudicative Providers: mediators and conciliators or their organisations



Other



Session 3 Question 5

Which **stakeholders** have the potential to be most influential in bringing about **change** in dispute resolution practice?

(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.Governments/ministries of justice 31%	2.External lawyers 31%	3.Governments/ministries of justice 34%	3.Governments/ministries of justice 29% 1.Adjudicative Providers: judges and... 29%	3.Governments/ministries of justice 31%
2	1.Adjudicative Providers: judges and... 25%	1.Adjudicative Providers: judges and... 25%	1.Adjudicative Providers: judges and... 28%	2.External lawyers 18%	1.Adjudicative Providers: judges and... 23%
3	4.In-house lawyers 12	3.Governments/ministries of justice 23%	2.External lawyers 15%	5.Non-Adjudicative Providers: mediators and... 11	2.External lawyers 17
4	2.External lawyers 11 5.Non-Adjudicative Providers: mediators and... 11	4.In-house lawyers 9	6.Parties (non-legal personnel) 9	4.In-house lawyers 7	4.In-house lawyers 1 6.Parties (non-legal personnel) 1
5	6.Parties (non-legal personnel) 9	6.Parties (non-legal personnel) 8	5.Non-Adjudicative Providers: mediators and... 8	6.Parties (non-legal personnel) 6	5.Non-Adjudicative Providers: mediators and... 8
6		5.Non-Adjudicative Providers: mediators and... 4	4.In-house lawyers 6		

Summary of Discussion by Panelists:

Speakers:

- **Andre Yeap S.C. (Moderator)**, Senior Partner, Dispute Resolution and Head, International Arbitration, Rajah & Tann Asia
- **Eunice Chua**, Deputy Chief Executive Officer, Singapore International Mediation Centre and Assistant Professor of Law, Singapore Management University
- **Loong Seng Onn**, Executive Director, Singapore Mediation Centre
- **Jannet Regalado**, General Counsel, Pilipinas Shell Petroleum Corporation
- **Thio Shen Yi S.C.**, President, Law Society of Singapore
- **Irena Vanenkova**, Executive Director, International Mediation Institute

1. **Question 1** was about the main challenges parties face when seeking to resolve commercial and civil disputes.
 - 1.1. The top three challenges were: (1) financial and time constraints; (2) knowledge of options available to resolve disputes; and (3) uncertainty.
 - 1.2. Ms Regalado noted that Shell is a heavy user of all types of dispute resolution mechanisms. Shell's main concerns concerning dispute resolution mechanisms are the lack of confidence in the courts, as well as the rule of law and enforcement in particular jurisdictions. However, the best dispute resolution strategy depends primarily on the business objectives, which could include a variety of factors such as cost constraints, outcomes, and the balance of powers between parties.
 - 1.3. Mr Thio S.C. felt that the main impediment is cost. The current inflexible fee structure, in which costs do not mirror the outcome (e.g. time costs), makes costs uncertain for parties. Costs are also generated by things such as massive discovery processes. The solution would be a change in process by reducing the importance of discovery or eliminating it altogether.
 - 1.4. Ms Chua noted that it is interesting that emotional, social and cultural constraints may not be as prominent as challenges in today's modern world. Mr Yeap S.C. added that, in his experience, clients from certain countries tend to be slower to move on to any form of real litigation or arbitration proceedings. Ms Chua responded that cultural constraints nevertheless prove to be challenges, but could be ranked lower in the face of the other more prominent challenges in this poll.
 - 1.5. Mr Thio added that there needs to be greater sensitivity to cultural differences (direct/confrontational vs indirect/non-confrontational). For example, a U.S. party looks at contracts very differently than a Chinese party. These cultural differences impact the manner in which parties resolve disputes.
 - 1.6. Mr Yeap noted that there has been a focus on costs as being the main impediment to traditional dispute resolution, in terms of quantum and uncertainty. This drives the rise of other appropriate dispute resolution systems. In terms of mediation, cultural differences could prove to be helpful to outcomes, or it could act as a wedge between parties.
 - 1.7. Mr Loong noted that a reason costs has emerged to be the most prominent obstacle to dispute resolution could be that people look at dispute resolution only in terms of litigation. For mediation, the culture of lawyers (who are steeped in adversarial ways to resolve disputes) and users present the largest impediment to the progress of mediation.
 - 1.8. Ms Vanenkova agreed with Mr Loong, but added that the problem should more aptly be labelled as one of *mindset* rather than *culture*.

2. **Question 2** asks which processes and tools should be prioritised in order to improve the future of dispute resolution and access to justice.
 - 2.1. The top three processes/tools were: (1) pre-dispute or pre-escalation processes that prevent disputes in; (2) combining adjudicative and non-adjudicative processes; and (3) non-adjudicative dispute resolution methods.

3. **Question 3** asks which areas would most improve dispute resolution and access to justice.
 - 3.1. The top three areas were: (1) legislation or conventions that promote recognition and enforcement of settlements; (2) use of protocols promoting non-adjudicative processes before adjudicative processes; and (3) cost sanctions against parties for failing to try non-adjudicative processes before litigation/arbitration.
 - 3.2. Concerning legislation, Ms Chua noted that there is a move towards mediation legislation in Asia in order to facilitate the development of mediation (especially in Hong Kong, The Philippines). The commonality between these frameworks is that they provide for confidentiality of parties, as well as (for Singapore) certainty of enforcement without having to commence a court proceeding. There is also a change in perspective of the value of mediation – where mediation in the State Courts used to be free, there is now a small fee levied on parties. Higher value disputes are also increasingly being resolved at the Singapore Mediation Centre.
 - 3.3. Mr Thio highlighted the importance of not presenting the issue in a binary manner, in terms of either mediation or litigation. It is in the interest of lawyers to build the mediation culture, because it serves a segment of the market that is far less willing to proceed to an adversarial process. One way to enlarge the mediation sector is to legislate for mandatory mediation prior to or within adversarial proceedings, though this is not suitable for all kinds of disputes.
 - 3.4. Ms Vanenkova added that rather than making mediation mandatory, it is more important to make mandatory and available information regarding the availability of meditation platforms, as well as the professional qualifications of mediators for clients.
 - 3.5. A member of the audience, John West QC from Sydney, commented that in Australia, every court in the country has the power to direct parties into mediation, regardless of whether parties support it. When the court makes an order for mediation, mediators will have to report to the court as to the time at which mediation started, and the time mediation finished. He added that this has been an effective legislation and questions why this has not been implemented in Singapore.
 - 3.6. Mr Thio agreed, noting that while we cannot force parties to agree with each other, the adversarial litigation process often brings parties to extreme opposite ends. However, when they come together at the doorstep of the court on the first day of trial, many settlements occur – this shows that the physical presence of parties is helpful for dispute resolution.
 - 3.7. Assist. Prof Dorcas Quek Anderson cautioned against looking at legislation as a quick fix, instead of taking a holistic view of how mediation can be promoted. It is important to look at how we can co-opt the different stakeholders in the mediation field in order to change culture itself. While culture takes a long time to develop, it might be the best way of making real progress. Legislation can only achieve so much. Additionally, given importance of developing pre-litigation dispute resolution, and availability of many mediators, mediators need to be co-opted to play a role in promoting pre-litigation mediation.
 - 3.8. Another member of the audience, a retired Superior Court Judge in California, commented that 94% of cases in United States settle. Often, parties only settle when judges mandate that they have to do so – judges play a key role in promoting mediation.

4. **Question 4** was about the stakeholders who are likely to be most resistant to change in dispute resolution practice.
 - 4.1. The top three stakeholders voted as being likely to be most resistant to change were: (1) external lawyers; (2) adjudicative providers; (3) parties (non-legal personnel).
 - 4.2. Mr Yeap noted that there is a perception that lawyers are most resistant to change. This is also reflected in public perception that lawyers are reluctant to advise clients to take up mediation because it might not be the best option financially for the lawyers.
 - 4.3. Mr Thio pointed out that lawyers earn their money by fighting disputes and naturally will support the status quo. However, lawyers have to change their mindsets – in settling their cases more quickly or by using mediation, they earn lesser, but can take on more cases and therefore could become more profitable.
 - 4.4. Mr Loong noted that end users must decide, and they must be in the position to decide on the tools of dispute resolution. The statuses of all professions are being eroded by information and technology, and we may reach a situation in which sophisticated users question their lawyers as to why mediation is not being used.

5. **Question 5** was about the stakeholders which have the potential to be most influential in bringing about change in dispute resolution practice.
 - 5.1. The top three stakeholders voted as having the potential to be most influential in bringing about change were: (1) governments/ministries of justice; (2) adjudicative providers; and (3) external lawyers.

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

