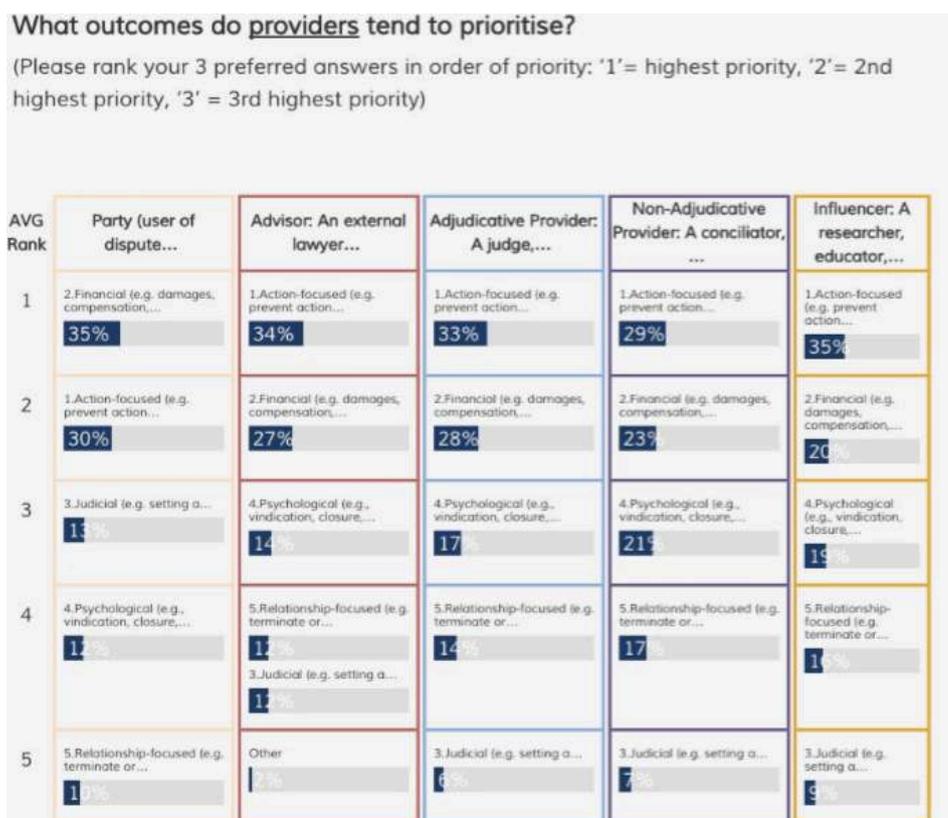
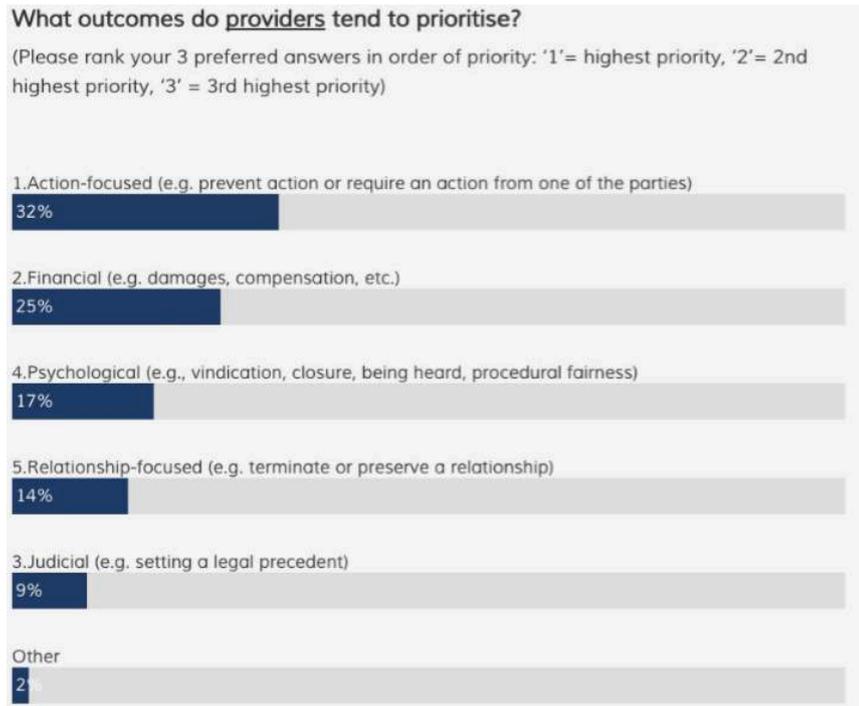


**Global Pound Conference Series Singapore 2016 (17-18 March 2016):  
Shaping the Future of Dispute Resolution & Improving Access to Justice**

**Session 2 of GPC Core Questions – Interactive Voting and Discussion:  
How is the market currently addressing parties' wants, needs and expectations?**

**Voting Results**

***Question 1***



## Question 2

In my own experience, the outcome of a commercial and/or civil dispute is determined primarily by:

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

4. Rule of Law: findings of fact and law or other norms

33%

1. Consensus: the parties' subjective interests

29%

3. Equity: general principles of fairness

28%

5. Status: deferring to authority/hierarchies

6%

2. Culture: based cultural and/or religious norms

4%

Other

1%

In my own experience, the outcome of a commercial and/or civil dispute is determined primarily by:

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

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. <u>Rule of Law</u> : findings of fact and law or other norms 35%	4. <u>Rule of Law</u> : findings of fact and law or other norms 40%	4. <u>Rule of Law</u> : findings of fact and law or other norms 38%	1. <u>Consensus</u> : the parties' subjective interests 37%	1. <u>Consensus</u> : the parties' subjective interests 31%
2	1. <u>Consensus</u> : the parties' subjective interests 30%	3. <u>Equity</u> : general principles of fairness 30%	3. <u>Equity</u> : general principles of fairness 29%	3. <u>Equity</u> : general principles of fairness 26%	4. <u>Rule of Law</u> : findings of fact and law or other norms 29%
3	3. <u>Equity</u> : general principles of fairness 25%	1. <u>Consensus</u> : the parties' subjective interests 21%	1. <u>Consensus</u> : the parties' subjective interests 28%	4. <u>Rule of Law</u> : findings of fact and law or other norms 25%	3. <u>Equity</u> : general principles of fairness 26%
4	2. <u>Culture</u> : based cultural and/or religious norms 6%	5. <u>Status</u> : deferring to authority/hierarchies 7%	2. <u>Culture</u> : based cultural and/or religious norms 1%	5. <u>Status</u> : deferring to authority/hierarchies 7%	5. <u>Status</u> : deferring to authority/hierarchies 1%
5	5. <u>Status</u> : deferring to authority/hierarchies 1%	2. <u>Culture</u> : based cultural and/or religious norms 2%	5. <u>Status</u> : deferring to authority/hierarchies 1%	2. <u>Culture</u> : based cultural and/or religious norms 5%	2. <u>Culture</u> : based cultural and/or religious norms 1%

### Question 3

What is achieved by participating in a non-adjudicative process (mediation or conciliation) (whether voluntary or involuntary - e.g. court ordered)?

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

4.Reduced costs and expenses

28%

5.Retaining control over the outcome

27%

3.Improving or restoring relationships

19%

1.Better knowledge of the strengths/weaknesses of the case or likelihood of settlement

18%

2.Compliance (e.g. avoiding cost sanctions, meeting contractual obligations)

6%

6.Tactical/strategic advantage (e.g. delay)

3%

What is achieved by participating in a non-adjudicative process (mediation or conciliation) (whether voluntary or involuntary - e.g. court ordered)?

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

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.Reduced costs and expenses 31%	4.Reduced costs and expenses 29%	4.Reduced costs and expenses 27%	5.Retaining control over the... 31%	5.Retaining control over the... 27%
2	5.Retaining control over the... 27%	5.Retaining control over the... 27%	3.Improving or restoring relationships 24%	4.Reduced costs and expenses 29%	4.Reduced costs and expenses 24%
3	3.Improving or restoring relationships 26%	1.Better knowledge of the... 24%	1.Better knowledge of the... 21% 5.Retaining control over the... 21%	3.Improving or restoring relationships 18%	3.Improving or restoring relationships 22%
4	1.Better knowledge of the... 9%	3.Improving or restoring relationships 11%	2.Compliance (e.g. avoiding cost... 11%	1.Better knowledge of the... 16%	1.Better knowledge of the... 15%
5	2.Compliance (e.g. avoiding cost... 7%	2.Compliance (e.g. avoiding cost... 5%	6.Tactical/strategic advantage (e.g. delay) 10%	2.Compliance (e.g. avoiding cost... 8%	2.Compliance (e.g. avoiding cost... 9%
6		6.Tactical/strategic advantage (e.g. delay) 11%		6.Tactical/strategic advantage (e.g. delay) 11%	6.Tactical/strategic advantage (e.g. delay) 11%

## Question 4

Who is primarily responsible for ensuring parties understand their process options, and the possible consequences of each process before deciding which one to use?

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

2.External lawyers

31%

4.In-house lawyers

30%

1.Adjudicative Providers: judges and arbitrators or their organisations

12%

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

11%

6.Parties (non-legal personnel)

9%

3.Governments/ministries of justice

6%

Who is primarily responsible for ensuring parties understand their process options, and the possible consequences of each process before deciding which one to use?

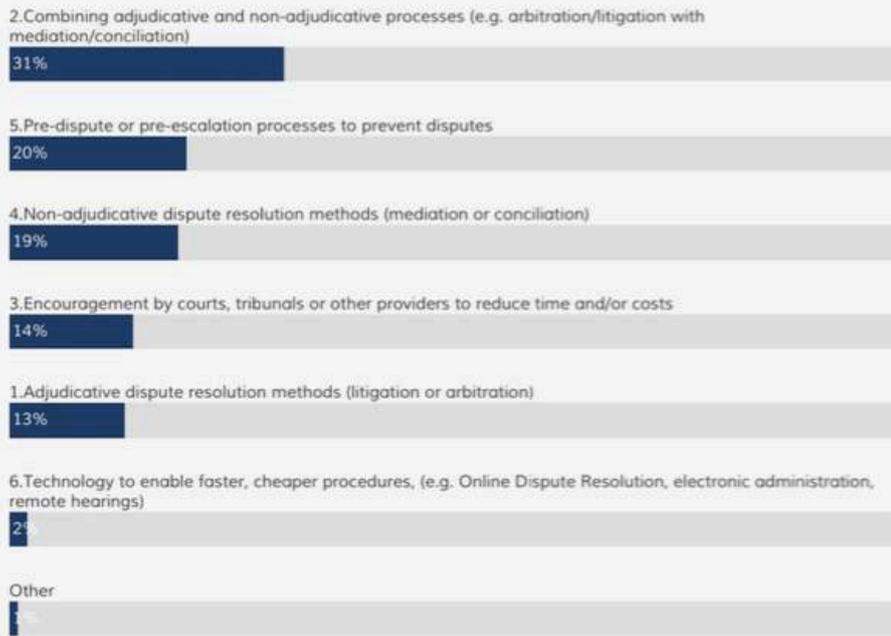
(Please rank your 3 preferred answers in order of priority: '1' = most responsible, '2' = 2nd most responsible, '3' = 3rd most responsible)

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.In-house lawyers 34%	2.External lawyers 44%	2.External lawyers 33%	2.External lawyers 30%	4.In-house lawyers 28%
2	2.External lawyers 25%	4.In-house lawyers 33%	4.In-house lawyers 32%	4.In-house lawyers 25%	2.External lawyers 22%
3	5.Non-Adjudicative Providers: mediators and... 15%	1.Adjudicative Providers: judges and... 9%	1.Adjudicative Providers: judges and... 14%	5.Non-Adjudicative Providers: mediators and... 17%	6.Parties (non-legal personnel) 17%
4	1.Adjudicative Providers: judges and... 14%	6.Parties (non-legal personnel) 8%	5.Non-Adjudicative Providers: mediators and... 1%	3.Governments/ministries of justice 1%	1.Adjudicative Providers: judges and... 14%
5	6.Parties (non-legal personnel) 8%	5.Non-Adjudicative Providers: mediators and... 1%	6.Parties (non-legal personnel) 9%	1.Adjudicative Providers: judges and... 1%	5.Non-Adjudicative Providers: mediators and... 1%
6	3.Governments/ministries of justice 1%	3.Governments/ministries of justice 1%	3.Governments/ministries of justice 1%	6.Parties (non-legal personnel) 1%	3.Governments/ministries of justice 6%

## Question 5

Session 2 Question 5 **Currently, the most effective dispute resolution processes usually involve which of the following?**

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



Session 2 Question 5 **Currently, the most effective dispute resolution processes usually involve which of the following?**

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

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... 33%	2. Combining adjudicative and non-adjudicative... 38%	2. Combining adjudicative and non-adjudicative... 32%	2. Combining adjudicative and non-adjudicative... 30%	2. Combining adjudicative and non-adjudicative... 26%
2	5. Pre-dispute or pre-escalation processes... 24%	1. Adjudicative dispute resolution methods... 19%	5. Pre-dispute or pre-escalation processes... 23%	4. Non-adjudicative dispute resolution methods... 27%	5. Pre-dispute or pre-escalation processes... 24%
3	4. Non-adjudicative dispute resolution methods... 16%	5. Pre-dispute or pre-escalation processes... 17%	4. Non-adjudicative dispute resolution methods... 18%	5. Pre-dispute or pre-escalation processes... 17%	3. Encouragement by courts, tribunals... 17%
4	3. Encouragement by courts, tribunals... 13%	3. Encouragement by courts, tribunals... 14%	1. Adjudicative dispute resolution methods... 15%	3. Encouragement by courts, tribunals... 14%	1. Adjudicative dispute resolution methods... 11%
5	1. Adjudicative dispute resolution methods... 11%	4. Non-adjudicative dispute resolution methods... 11%	3. Encouragement by courts, tribunals... 11%	1. Adjudicative dispute resolution methods... 8%	6. Technology to enable faster... 7%
6	6. Technology to enable faster... 1%	Other 1%	6. Technology to enable faster... 1%	6. Technology to enable faster... 1%	Other 1%

## Summary of Discussion by Panelists:

### Speakers:

- **Deborah Masucci (Moderator)**, Chairperson, International Mediation Institute (User)
- **Daniel Ee**, Vice-Chairman, Singapore Institute of Directors (User)
- **Vincent Hoong**, Registrar, Supreme Court of Singapore (Provider)
- **Joan Janssen**, Second Director-General, Ministry of Law
- **George Lim S.C.**, Co-Chair, Singapore International Mediation Centre (Provider)
- **Lim Seok Hui**, CEO, Singapore International Arbitration Centre and Singapore International Mediation Centre (Provider)
- **Gregory Vijayendran**, Partner, Commercial Litigation, Rajah & Tann Asia (Advisor)

### 1. **Question 1** was in relation to outcomes that providers tend to prioritise.

- 1.1 The top three outcomes were action-focused, financial and psychological outcomes. From an arbitration standpoint, Ms Lim agreed with the top two factors. She observed that users usually want to use the most time and cost efficient way.
- 1.2 Mr Lim S.C. noted that relationships ranked higher for mediators than users. This reflects the reality that parties often feel hostile towards each other at the start of the dispute, whereas mediators are aware of the importance of facilitating understanding and preserving relationships.
- 1.3 Mr Vijayendran, an advisor, noticed that advisors recognised that providers focused on psychological outcomes. He expressed some surprise though that factors such as setting precedents ranked lowly for voters from adjudicative providers.

### 2. **Question 2** was in relation to factors determining the outcome of a dispute.

- 2.1 The top three factors were rule of Law, consensus and Equity (general principles of fairness).
- 2.2 Ms Masucci agreed with these outcomes, commenting that most users initially react by using adjudication to enforce the rule of law, and later consider a more consensus-based approach.
- 2.3 Ms Janssen found it interesting that culture played an underrated role in affecting outcomes, as other factors were ranked as overwhelmingly important. Mr Lim agreed, stating that culture is important to Asians and that culture will play an important role with the increase of globalisation and interaction of individuals from different nationalities. Mr Ee concurred, commenting that mediators have to be conversant with cultural differences.
- 2.4 Registrar of Supreme Court noted the 10% gap between the users' rating of rule of law and equity, indicating that they did not see them as synonymous. Also, consensus seems to be preferred over fairness.
- 2.5 There were discussions about what will be the most used dispute resolution process in the future. Mr Vijayendran, an advisor, thought that there remains a need for formal dispute resolution as the rule of law and equity tend to rank higher, and these generally relate to traditional resolution methods like the courts. Ms Lim agreed, but added that users also want to settle disputes and therefore ranked consensus as second. However, they want the assurance that if consensus failed, they could fall back on something else. Thus, the blended mechanism of arb-med-arb would probably gain traction if users buy into it.

### 3. **Question 3** was on what is being achieved through non-adjudicative processes.

- 3.1 The top three points were reduced costs and expenses, retaining control over the outcome, and improving or restoring relationships. Some panelists thought that this response was expected, as all three factors are generally deemed important.
  - 3.2 Commenting on using ADR for tactical advantage or to know one's case better, Ms Janssen observed that some would say that the tactical advantages in mediation actually give mediation an edge. Registrar of Supreme Court, when asked if he observed parties using mediation to delay matters, said he had limited insight since most mediations in High Court occur externally.
  - 3.3 Registrar highlighted that the users' response corresponds with the courts' motivation in promoting mediation to reduce costs and preserve relationships. Further, since January 2016, the Supreme Court Practice Directions have been amended to state that lawyers have a professional duty to discuss ADR options with clients.
  - 3.4 Mr Vijayendran observed a disconnect between users and advisors on the importance of restoring relationships. Lawyers may need to dialogue with clients to meaningfully ascertain whether conciliation is important to them, and keep abreast of mediation developments to understand how it can meet this need. While cost-benefit analysis is important, perhaps lawyers need to pay more attention to the relationship aspect and consider how conciliation may be significant to their client.
4. **Question 4** concerned who is primarily responsible for educating parties on their dispute resolution.
- 4.1 The top three choices were external lawyers, in-house lawyers and adjudicative providers.
  - 4.2 The panelists acknowledged that the top two choices depended on whether an entity had funds to hire in-house counsel. Smaller users may rely more on external counsel.
  - 4.3 In considering whether results affect education of lawyers, Ms Janssen mentioned the need for continual legal education and change of law school curriculum to ADR procedure and skills learning. The government plays a role in this, though advisors were ranked highly for this question.
  - 4.4 The panelists discussed the role of external lawyers. Given that their role was valued highly, we need to ensure that external counsel buy into ADR and do not see it as a poor cousin to litigation. Registrar called on external lawyers to explore ADR at the earliest opportunity and not settle cases late.
  - 4.5 Mr Lim spoke about the "elephant in the room" – the tension between lawyer's billing and client's interests. He appealed to lawyers to look out for the best interests of their clients. Mr Vijayendran agreed that this is a real issue, and added that experience shows that if the lawyer does the right thing, the satisfied client will return in the future.
5. **Question 5** asked voters about what most effective processes involved.
- 5.1 The top three choices were combining adjudicative and non-adjudicative processes, pre-dispute or pre-escalation processes to prevent disputes, and non-adjudicative dispute resolution methods (mediation/conciliation).
  - 5.2 Mr Vijayendran suggested that the future lawyer needs to be skilled in all types of dispute resolution skills, so as to use the appropriate tool to assist the client. This is especially so with the rise of use of multi-tiered dispute resolution clauses.

**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