



Closing Address by Ms Indranee Rajah, Senior Minister of State for Law and Finance, at the Global Pound Conference Singapore 2016

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Honourable judges,

Fellow lawyers,

Dispute resolution practitioners,

1. Thank you very much for inviting me to do the closing address.
2. You were having such a lively discussion just now, I was really very loath to put an end to it and to come up; I felt that you were unduly constrained to come to an untimely end on my account. But it was a wonderful discussion and I'm glad to see that there has been such an excellent exchange of ideas.
3. I think that the topics discussed over these two days involved the traditional questions, which are still important, but you've obviously ventured into new and refreshing topics of discussion – online dispute resolution and the role of neurobiology and psychology in dispute resolution, all groundbreaking areas. Obviously, having looked at the online mechanisms that you were using, that's generated some interesting, and perhaps even surprising, data.
4. And the use of the GPC Series platform is just an example of how technology can facilitate work. I am sure that this will kickstart a data collection process that will, when it's completed, have an impact on the future of dispute resolution in the world.
5. Singapore is proud to play a role in this.
6. I would very much like to acknowledge the efforts of the organisers, including the International Mediation Institute, the Singapore Mediation Centre, the State Courts, and all the partners who have played a part in this successful event.

Rise in Disputes

7. There is no shortage of disputes in the world today. In a 2014 survey of 150 senior attorneys and executives from 18 industries, half the respondents expected the number of international disputes to rise over the next two years¹. Another survey saw 32 per cent of corporate counsel and compliance officers from US and European companies with annual revenues of \$250 million or more report an increase in legal disputes².
8. And this is not just limited to large, high-value commercial disputes. As the world's urban population grows, the potential for conflict arising out of social and economic interaction will inevitably grow as well. Employment issues, marriage and family issues – all of these are susceptible to disputes.
9. Disputes all have unique circumstances and considerations but most of the time, the parties want the same thing, which is to end the dispute quickly and cost-efficiently and to be able to move on.
10. A dispute can impose great strains on productivity, resources and well-being. It can bring a company down or tear apart a family. Take arbitration cases handled by the International Centre for Settlement of Investment Disputes (ICSID) at one end of the spectrum, for example. These are typically large, complex, cross-border cases. The Global Arbitration Review found that the average time taken for such cases is more than three years. The longest of these took more than 10 years³!
11. And these are the cases handled efficiently, to the best of the abilities of a top institution. So you can imagine if the dispute, whether it be the case itself or the procedure of hearings, were handled poorly.
12. Hence, the advantages of being able to resolve a dispute quickly and effectively go without saying.

Dispute Resolution – A Singaporean Approach

13. I thought it might be helpful, since you are here, to share a Singaporean approach.
14. There are some fundamentals which we believe in here in Singapore, when it comes to dispute resolution.
15. First, we firmly believe that we need a system, a legal framework, that is trusted by parties to a dispute.
 - (a) Trust, in the sense that the system will run the due process – that it's not corrupt, that it's efficient, and that it respects the rule of law. These values and principles are non-negotiable and we are serious about upholding them.

(b) Trust also comes from neutrality. You can be from Singapore, or Asia, or anywhere across the world, but in Singapore, you will play by the same set rules, which are fixed and transparent for everyone.

(c) Related to this is also our inheritance of the best practices of common law and, from time to time, we also do look at civil law practices. Given the inevitable evolution of jurisprudence and our own national approach towards creating an environment friendly to businesses, Singapore and Singapore law has adapted itself to the context of Asia and developing economies.

16. The second thing is that a good framework or system also needs good execution or implementation.

17. Our judiciary plays a critical, pivotal role in that.

(a) Our judges are known for efficiency and competence, and their international outlook – a characteristic which is hardcoded into our DNA.

(b) Our judiciary also understands the value of alternative dispute resolution. They adopt an approach of maximum support and minimal intervention in international arbitration proceedings.

18. We also have high quality lawyers and mediators with the capability to resolve international disputes.

(a) We have both international law firms with a presence in Singapore, as well as Singapore law firms with regional and international expertise and networks. As such, there is sufficient expertise to advise on deals and disputes of all kinds, or to serve as litigators or arbitrators.

(b) Likewise, we have high-quality mediators.

(i) We have, of course, the credentialing body – the Singapore International Mediation Institute, or SIMI – that is linked with the International Mediation Institute. This serves to provide a level of assurance to clients that we are in line with the best practices and high standards.

(ii) In addition, our mediation centres provide access to a panel of experienced, respected international mediators from a wide range of disciplines and backgrounds.

(iii) We also appreciate that international commercial mediation, like all other forms of international commercial dispute resolution, requires deep technical knowledge. The Singapore International Mediation Centre, or SIMC, offers a panel of technical experts comprising independent consultants and key personnel of well-established companies.

19. Third, we take what we would call a holistic approach to dispute resolution. There are many different parts that contribute to the client's experience over the course of the dispute resolution process, and that facilitates the effectiveness of that process.

20. Let me provide an example, not in the commercial context but still relevant. A few years back, we thought that something needed to be done to more comprehensively address family disputes in Singapore. I co-chaired the Family Law Committee with V K Rajah, Justice of Appeal as he then was, to consider how we could change the paradigm of family dispute resolution. We found that we had to look beyond the courts, the lawyers and the law. We needed to look at the entire background and context against which these disputes were arising, the touch points for assistance, and non-legal issues such as counselling and also mediation.

21. So we developed channels across multiple touch points so that families could seek help in the most direct, natural way possible, without necessarily having to come to the courts. We developed specialist agencies to provide expert advice and help and this year, we also announced a new specialist Law School focusing on family and criminal lawyers which will, we hope, produce specialist lawyers with multidisciplinary skills in this area.

22. This is an example of dispute resolution in a non-commercial area. But it reflects our approach in general. We've also realised, for example, that a conducive environment for resolution of commercial disputes outside the courts was necessary. Hence, we developed Maxwell Chambers, the world's first integrated dispute resolution complex.

Complete Suite of Dispute Resolution Services

23. Here in Singapore, we also have a complete suite of dispute resolution services. Building on the basic, common factors which I've outlined, we also think it's important to address the unique circumstances behind the individual disputes, and to provide solutions that respond to these unique circumstances.

24. So we really have adopted what I call a tripartite approach, which is international litigation, international arbitration and international mediation. Of course, all of this is available at the domestic level as well.

(a) The Singapore International Commercial Court, or SICC, which we set up last year, offers another form of dispute resolution – that's international commercial litigation – should the client decide that these are the features appropriate to their dispute. Apart from the international profile and expertise of its bench, and the option to be represented by foreign counsel in relevant circumstances, there is also flexibility in evidential rules and discovery, and foreign law can also be more efficiently determined through submissions.

(b) We will continue to improve on Singapore arbitration, which remains a leading choice for cross-border commercial dispute resolution. Singapore remains amongst the top five most preferred seats of arbitration across the world. The Singapore International Arbitration Centre, or SIAC, has done well in recent years, with various innovative rules and procedures, and a truly international profile, with more than 80 per cent of cases filed in 2015 being international in nature. Apart from the SIAC, we are also proud to house other top international arbitral institutions in Singapore.

25. Let me now say a little more on mediation.

26. Mediation, of course, goes beyond strict legal rights and obligations. It's nuanced, and has to take into account cultural norms, attitudes and emotions.

27. We are committed to mediation as an alternative means of dispute resolution. We see it as complementary to court litigation and arbitration.
- (a) Our courts espouse this process as a means to achieving lower-cost, non-adversarial settlement of disputes.
 - (b) Our first Community Mediation Centre, or CMC, was set up in 1998 and it has grown from strength to strength, having mediated more than 7,500 cases.
28. For a country like Singapore which has, and seeks to foster social harmony amongst, a multi-racial population, mediation as a method of dispute resolution is particularly valuable.
- (a) There are sufficient stories of our mediators having to use different languages to handle a single mediation.
 - (b) And this is not just about translation, but cultural code-switching – being able to stand in another person’s shoes to consider an outcome that is positive for all parties involved – a factor essential to the mediation process.
 - (c) You might also say that we have built up some expertise in this because of the limited space that we have in Singapore. Neighbours don’t have the ready option of moving, and they do have to deal with each other in the most effective way possible.
29. Let me just tell you a little story about community mediation. Those of us who are Members of Parliament have to deal with this all the time, and one of our community mediators came to me with this story.
30. There were these two neighbours. I’m not sure if you’re familiar with this but for the Chinese, there is what they call the *bagua* that’s meant to be for protection. One neighbour decided to put it on his front door for protection. His opposite neighbour took great offence, because he was wondering why this neighbour needed to be protected from him. Obviously, relations went downhill from there.
31. And so, the community mediator had to step into the picture and try to resolve this. Obviously on the one hand, you have somebody who wanted protection from his viewpoint, and the other who really didn’t want to feel that he was the evil person that needed being protected against.
32. Eventually, the mediator persuaded the first person to put the *bagua* indoors instead, so he still had the protection but the neighbour opposite didn’t get to see it. Hence, you had a happily mediated outcome with both sides having a win-win.
33. That’s an illustration of some of the cultural differences that we have to deal with, and you need to understand the cultural background of where one of the parties is coming from, in order to effect this kind of mediated settlement.
34. In the commercial space, mediation has I think in the past been regarded a little like the Cinderella of ADR. But I’m glad to see that this thinking is now rapidly becoming outmoded. High value, complex, disputes can be resolved by mediation as well.
35. We have an example of a case where a family was tussling over assets in the millions of dollars, spreading over multiple jurisdictions. Thanks to the efforts of the mediator, the family realised that going to court would have destroyed their ties, and that these ties were more important than whether the monies should be distributed in accordance with the will, or some other method. Hence, an equitable distribution was agreed upon.
36. So it is natural that apart from Singapore, various courts around the world – the US and Australia, as well as the UK, being the more prominent ones – are encouraging mediation as well.
37. Arbitration institutions are similarly introducing mediation into their rules, whether as necessary or optional steps to take before or during the arbitration process⁴.
38. The SIAC and SIMC work together on a joint service known as the Arb-Med-Arb Protocol, which allows a mediated settlement agreement to be formalised as a consent arbitral award, thereby gaining the bite and reach of enforceability allowable under the New York Convention.
39. Our Government welcomes top international mediators. Non-resident mediators who are certified by an approved scheme, or are conducting a mediation administered by a designated mediation service provider, are eligible for a tax exemption on income for services rendered in Singapore.
40. So there you are – you may wish to specify Singapore as a venue for your mediation, or if you are a lawyer or mediator, advise your client to do so!
41. But the best thing really in favour of mediation is the cost factor. At a time when legal fees are facing downward pressures, there is a strong incentive to consider more cost-efficient options. The Singapore Mediation Centre managed to settle 75 per cent of its mediations, of which more than 90 per cent were concluded within a single working day. More than 80 per cent of parties surveyed by SMC reported cost and time savings.
42. Apart from typically shorter duration and lower costs, mediation has the added advantage of preserving the relationship between disputants.
43. One of our mediators recently shared an example where joint venture partners decided to mediate, rather than litigate, over differing interpretations of a clause in their agreement. They found that the clause did not accurately represent either of their intentions, and therefore came to a compromise. This preserved the joint venture.
44. In the next one year, we will give mediation a bigger push in Singapore.
45. First, through the legislative framework. Yesterday, we opened for public consultation a proposed Mediation Bill. This builds on recommendations made by an International Commercial Mediation Working Group. It will strengthen the mediation framework in Singapore and provide certainty for mediation users where the legal position is unclear, or varies between jurisdictions.
- (a) The Bill contains a provision that addresses a key concern with mediation today, which is enforceability of outcomes. Parties, by agreement,

can apply to have a mediated settlement agreement recorded as a court order, subject to certain conditions.

(b) It sets out a general duty of confidentiality in mediation and clarifies when disclosure may take place, or mediation communications admitted into court.

(c) It also provides an explicit statutory basis for parties to apply to court for a stay of proceedings, pending the outcome of a mediation.

(d) It also mirrors our approach in arbitration, by clarifying that participation by foreign mediators and foreign-qualified counsel in mediation will not amount to unauthorised practice of Singapore law.

(e) We welcome feedback on the Bill.

46. Next, training and research. Yesterday, the Chief Justice announced the launch of the Singapore International Dispute Resolution Academy, otherwise known as SIDRA.

(a) This is the first regional institution dedicated to thought leadership, and training and educational excellence in negotiation and dispute resolution.

(b) SIDRA was set up to complement Singapore's suite of dispute resolution service providers.

(c) It will build on Singapore's track record in dispute resolution training, and draw on our dispute resolution institutions to offer training and educational opportunities for the region.

(d) By collaborating with both local partners and renowned overseas institutions in training, education and research, SIDRA aims to offer an international platform by exchanging and developing ideas on theory, practice and policy, and will bring a strong Asian voice into global conversations on negotiation and dispute resolution.

47. With a strong base of legal talent, high-quality dispute resolution service providers, accreditation and standards-setting through SIMI, and now a training and research institution, Singapore will continue to see how we can develop offerings that provide the best solutions for parties facing disputes.

Conclusion

48. In a world where disputes and conflicts abound, there is a great need for peacemakers – and in our context, this would be the professionals in the dispute resolution industry.

49. I therefore laud this conference, which has been a valuable platform – not only for the exchange of ideas and insights, sharing of data and trends, and thought leadership – but also, ultimately, for making the world a better place.

50. Thank you very much.

¹ Hogan Lovells, "Global Currents: Trends in Complex Cross-Border Disputes" (2014)

² AlixPartners, "Litigation and Corporate Compliance Survey" (2015)

³ Global Arbitration Review, Vol. 4 Issue 5, "ICSID arbitration: how long does it take?" (2009)

⁴ Including: AAA-ICDR, LCIA, HKIAC.

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