BOOK REVIEW

MEDIATION IN SINGAPORE: A PRACTICAL GUIDE
Danny McFadden & George Lim gen eds

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1 The second edition of Mediation in Singapore: A Practical Guide is a timely expansion of the first volume. It adds new insights to existing works and brings new areas of research to light. General editors Danny McFadden and George Lim, who are themselves chapter authors and heavyweights in the field, join with numerous established scholars and practitioners for this second edition. Their goal is to deepen the reader's institutional knowledge of this rapidly expanding industry. The four entirely new essays seek to provide a guide for overcoming challenges that might face mediation’s future development. It achieves this goal with urgency and demonstrates why Singapore is becoming “rightly regarded by many in Asia and beyond as one of the outstanding alternative dispute resolution (ADR) centres in the world”.

2 The 19 chapters that comprise the volume can be divided into five sections. The first provides the context for the rise of mediation in Singapore. The second addresses matters of individual training, psychology and culture. The third covers the organisations that have grown out of this movement and seek to institutionalise the strides the industry has made. The fourth discusses the implications of institutionalising mediation within the legal field, specifically related to civil, family, community and criminal disputes. Finally, the fifth section looks ahead to how the mediation field can grow to overcome some of the practical challenges it faces.

3 These sections are imposed mostly for the sake of the review, not because the subject matters are clearly distinct. However, dividing the works in such a manner provides a useful framework to digest the content. In fact, many chapters address similar issues from different vantage points.

* Sweet & Maxwell, 2nd Ed, 2014.
I will focus on the concept of arb-med-arb, the role of culture in Singapore's mediation development and the new chapters of this volume.

4 In numerical order, ch 2 introduces the concept of arb-med-arb, which continues to reappear throughout the volume as a method of tying arbitration with the more flexible mediation format. Often, potential users of mediation ask: is mediation really enforceable? Whether parties choose med-arb, med-arb2 or arb-med, this technique can provide a backstop of binding arbitration and overcoming that fear. As the practical enforceability of mediation becomes more widely understood, this method will likely become less prevalent because mediation will no longer need to be buttressed by arbitration to satisfy enforceability fears. However, for the moment, particularly in cross-border disputes, it provides a useful tool for easing those familiar with the arbitration process into the mediation field.

5 Chapter 7 takes into account the role of the individual and culture in the mediation process. Culture plays a significant role in any dispute. Singapore, in part, stakes its claim to dominance in the Asian mediation arena on the fact that its citizens grow up learning to maneuver a country built on such diversity. It is part of what makes Singapore unique. The chapter sets up an east-west cultural dichotomy to address not just the regional, but the global cultural divides as well. When setting up this framework, the author emphasizes there is no “universal” Asian culture; rather, there are trends and unifying characteristics that, when juxtaposed with the western cultural mindset, make this distinction very useful. This perspective provides the critical link and case for why Singapore should be the hub for dispute resolution in Asia. Its institutions and people are practiced in this form of translation.

6 Jumping ahead briefly, as author Doracas Quek Anderson states in ch 12, the diversity of Singapore is one of its biggest strengths while also one of its largest challenges. The people of Singapore come from a wide variety of cultures, languages and nationalities. In response, the mediation industry developed numerous channels for handling disputes in different contexts. Now, one of the challenges facing the industry is making sure high standards can be ensured in the various sectors.

7 These next final chapters provide the bulk of the new material for this volume. In many respects, they are the necessary extension of not only the mediation field, but also the changes that are taking place in the legal field.

8 The organisation charged with standardising this rapidly growing field is the Singapore International Mediation Institute (“SIMI”), founded in 2014. It “aims to provide users of mediation confidence in the mediators provided by the mediation services providers in Singapore through a

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6 See Mediation in Singapore: A Practical Guide (Danny McFadden & George Lim gen eds) (Sweet & Maxwell, 2nd Ed, 2014) chs 8 and 11.
robust system of credentialing scheme”. It continues to fulfil this purpose. It sets standards both for mediators and mediation organisations, and provides a clear path for entry as well as renewal requirements. A major advantage of the credentialing scheme is that it does not stifle individual and institutional creativity, which are so essential for mediation to succeed. This new chapter (ch 11) lays out a straightforward path to joining SIMI’s credentialing scheme and ultimately furthering the goal of this guide: the institutionalisation of mediation in Singapore. Though it may seem like early days for such a body to exist, it was necessary to institute such an organisation as soon as possible because of the diversity of Singapore and the mediation field itself.

9 Chapter 17 seems to try to dissuade some of the perceived reservations lawyers have towards advocating for mediation. When introducing newcomers to the field of mediation, educators spend energy explaining the mediator’s and the parties’ role, while the lawyer is relegated to the background. However, in order for mediation to succeed, attorney participation is key. The chapter provides a “checklist”, a step-by-step guide to try and ease suspicions that the lawyer’s role is insignificant. According to McFadden, the lawyer should play the role of a “skilled advisor”. A lawyer introduces the idea of mediation at the right time, helps select a mediator and keeps the mediation process on track. In effect, this chapter is a call for lawyers to step up and act as mediation advocates. The author’s argument is timely as this is a major challenge that mediation must face.

10 The following chapter makes the case for increased use of online dispute resolution (“ODR”). Theoretically, moving anything online makes sense with the ease of modern technology. However, before reading this chapter, I was sceptical. Conflict is interpersonal; it is about facing the other person against whom you feel anger or mistrust or fear. In many respects, the entire point of mediation is getting two (or more) people in a room together. The very notion of ODR seems to strip this fundamental aspect of the process away. However, this is what makes Graham Ross’s contribution necessary. The potential use for online legal services and artificial intelligence are conversations the legal profession must have to stave off decline in the not-too-distant future. Specifically, ODR speeds up the mediation process by streamlining the prep work, increasing efficiency and lowering the bar for public access to dispute resolution. Though I think ODR has some ways to go before the majority of practitioners are convinced, this chapter is an important initial step in the conversation.

11 Finally, written by Alastair Henderson and Anita Phillips, two well-known names in the field of international arbitration, the brief final chapter follows on the heels of the 2014 Commercial Mediator’s Handbook.7 As Singapore seeks to establish itself as a mediation haven, a significant number of the cases will ideally be in international

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commercial space. Therefore, this chapter opens the door for business leaders to view mediation as an accessible tool to be used during many stages of conflict, not just on the cusp of litigation. It delves into particular industries such as manufacturing, mining and construction. Though brief, it shows that mediation tools are now available to anyone in the international commercial space interested in trying something new.

12 Though this short review only addresses a few areas, for anyone interested in mediation, this tome will certainly provide a useful guide. There are three major takeaways from this work. First, mediation is not only when the parties are in the room, but also the preparation and context within which discussions take place. Second, Singapore now has an established range of institutions prepared to handle nearly any kind of dispute suitable for mediation. And, third, now that the institutional foundations have been laid, they must be advocated for and used. If there is one shortcoming of this volume, it is that it covers so much, potentially making it difficult for a newcomer to discern where to start. That is why standardising the field is so important at this stage. True to its goal, any reader will come away with an appreciation of the institutional breadth of this burgeoning industry. Still in its early years, it is an exciting time for mediation in Singapore.