

CHAPTER 3 MEDIATION

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SECTION 1 INTRODUCTION

3.1.1 The mediation movement in Singapore was actively revived in the 1990s. Currently, mediation is not only used for private disputes but forms an integral part of the Singapore legal system. It is widely used as a mechanism of dispute resolution in courts, government departments, businesses and other specific industries. This paper will describe the mediation movement in Singapore. After providing the reader with a brief introduction to the concept of mediation and its benefits, the history of mediation in Singapore will be traced. Thereafter, this paper will focus on the two principal forms of mediation in Singapore: private mediation as practised by the Singapore Mediation Centre (SMC) and court-based mediation found in the Subordinate Courts. The paper will also deal with some legal issues related to mediation. In conclusion, the paper will discuss the future of the mediation movement.

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SECTION 2 DEFINITION AND BENEFITS OF MEDIATION

3.2.1 In order to grasp the impact of the mediation movement in Singapore, it is necessary to understand the key concept and benefits of mediation. Mediation is best described as a voluntary and confidential process in which the parties seek to find a practical solution to their dispute. The parties are guided in their decision-making process by a neutral third party, the mediator, who assists the parties in finding a solution to which both assent and which has regard to the different concerns of those involved.

3.2.2 Mediation can be used for many purposes, including settlement of disputes, management of conflicts, negotiation of contracts, policy-making and conflict prevention. Depending on the parties and the matter to be decided, the mediator can adopt different mediation techniques. They range from an active involvement in the

substantive outcome of the dispute using evaluative or directive approaches to a more facilitative model where the focus of the mediation process is to assist parties achieve a settlement by managing the process of negotiations between them.

3.2.3 This definition reveals some of the benefits of mediation as compared to adjudicatory dispute resolution mechanisms such as litigation and arbitration. Firstly, as settlement agreements are reached voluntarily, unlike arbitration or litigation, parties do not run the risk of having a judge or an arbitrator deciding against them and losing their case. Secondly, as an informal and flexible process, mediation saves time and costs, being much faster than adjudicatory processes. Unlike adversarial proceedings, it can lead to an improvement of party relations by overcoming or reducing communication problems. Mediation is also highly beneficial for businesses as the mediation process is confidential and as such is more likely to preserve the commercial goodwill of the parties and avoid long-term damage that often results from proceedings in court. Mediation is a process for parties who value their privacy. The SMC, its mediators and the parties are prohibited by contract from disclosing any information relating to the mediation. Finally, as settlements are voluntarily entered into, there are very few cases of parties reneging on the terms of the settlement. In any case, settlement agreements are binding by virtue of the law of contract.

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SECTION 3 MEDIATION IN SINGAPORE

3.3.1 Mediation is not a new concept to Singapore. Many Asian cultures practised mediation in one form or another in their communities, often by using respected elders as mediators. However, urbanisation and industrialisation and a focus on legal rights has led to an emphasis on litigation and dwindling of mediation and other informal dispute resolution mechanisms. Mediation and other alternative dispute resolution practices were re-introduced into Singapore in the 1990s as the 1970s Western mediation movement spilled over to Singapore. It is these practices that determine Singapore's mediation culture today.

3.3.2 The mediation movement in Singapore is largely institutionalised. There are two main categories of mediation practice in Singapore; court-based mediation and private mediation. Court-based mediation is mediation that takes place in the courts after parties have commenced litigation proceedings. This type of mediation is mainly carried out by the Subordinate Courts and is coordinated by the e@dr centre, also known as the Primary Dispute Resolution Centre (PDRC). Private mediation in Singapore is spearheaded and mainly carried out by the Singapore Mediation Centre (SMC), a non-profit organisation under the Singapore Academy of Law. A third prong of mediation practice, which will not be included in this paper, takes place in government agencies and industry-based bodies such as the Community Mediation Centres, Tribunal for the Maintenance of Parents and the Consumers' Association of Singapore.

3.3.3 The resurrection of mediation in Singapore depended to a large extent on the support of Singapore's judiciary, in particular, the Honourable Chief Justice Yong

Pung How. The judiciary initiated Pre-Trial Conferences (PTCs) for civil cases in the Supreme and Subordinate Courts as early as January 1992. These PTCs, led by a registrar, served to evaluate the case for an optimal and efficient handling and encouraged the parties to settle their dispute via negotiation on a 'without prejudice' basis. The use of PTCs was formalised in 1996 in the High Court through O34A of the Rules of Court of Singapore. This order empowers the court to order the parties to attend confidential PTCs or to make other orders or directions as it regards appropriate for the just, expeditious and economical disposal of the dispute at any time after the beginning of proceedings.

3.3.4 The judiciary led the way in institutionalising ADR through the introduction of mediation in the courts in 1994 with the launch of Court Dispute Resolution (CDR). The main objective was to reintroduce into Singapore culture a process to which it was not a stranger and to preserve family and societal harmony and cohesion. Other reasons included increasing productivity by reducing the costs of conflict and making more efficient use of public resources for conflict resolution. Today CDR has become firmly entrenched in the Subordinate Courts. Moreover, the efforts of the judiciary have ingrained in Singapore's legal community a culture to strive for early dispute resolution.

3.3.5 The Singapore government has also adopted an active role in promoting mediation in Singapore and in encouraging parties to try mediation before resorting to litigation. In May 1996 a cross-profession Committee in ADR was formed to study how mediation could further be promoted in Singapore and to implement mediation beyond the courts. The Committee made two main recommendations, dividing the private mediation movement into commercial and community mediation. First, the committee recommended the creation of a commercial mediation centre under the Singapore Academy of Law. This centre, the SMC, was launched on 16 August 1997. Second, it recommended the establishment of a network of easily accessible Community Mediation Centres to foster social cohesion. In order to achieve this, community leaders and volunteers were to be trained to be mediators. This was to teach communities how to resolve their own disputes. This recommendation was implemented by the Ministry of Law. A Resource Panel on ADR was formed to oversee the development of a national ADR infrastructure. The Community Mediation Centres Act (Cap 49A) came into force in January 1998 and, shortly after, Singapore's first Community Mediation Centre was officially opened in November 1998. The Ministry of Law supervises the CMCs and remains an active promoter of mediation and ADR. Other initiatives to promote mediation as the primary tool of dispute resolution include the recommendation by the Attorney General's Chambers that all government departments should use mediation as their first option for dispute resolution and to include a mediation clause for referrals of disputes to SMC in government contracts.

3.3.6 The next part will examine the two main institutions for mediation in Singapore. It will start with the Singapore Mediation Centre as the main institution for private and commercial mediation in Singapore. Thereafter it will deal with court-based mediation in the Subordinate Courts.

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SECTION 4 SINGAPORE MEDIATION CENTRE

History

3.4.1 The SMC was incorporated on 8 August 1997, and officially launched by the Honourable Chief Justice Yong Pung How on 16 August 1997. The SMC is a non-profit organisation guaranteed by the Singapore Academy of Law. It is linked institutionally with many professional and trade associations and receives the support of the judiciary and the Singapore Academy of Law. The SMC has successfully spearheaded the mediation movement in Singapore and is dedicated to the promotion of amicable and efficient settlement of disputes. It aims to create an environment in which people can work together to find enduring solutions to conflicts and tensions created by human interactions. It contributes to the building of a harmonious society, and a thriving business community, by broadening awareness of, and providing access to, constructive means of dispute resolution and conflict management.

Cases for Mediation

3.4.2 As at 1 August 2004, more than 1000 disputes were referred to SMC. About 75% - 80% of the cases that are mediated at SMC are successfully settled. Of those successfully resolved, more than 90% were settled within one working day and of the disputants who participated in the mediations and provided feedback, 83% reported cost savings, 87% reported time savings and 94% would recommend the process to other persons in the same situation. Very often, parties save substantial legal, court and hearing fees when agreements are reached by mediation.

3.4.3 Almost all types of civil cases are mediated at SMC. SMC has handled cases where the disputed amount is in excess of S\$90 million. To-date, the total quantum of disputes handled at SMC is in excess of S\$1.19 billion. About 40% of SMC cases are referred by the courts.

Mediators

3.4.4 SMC maintains its own panel of trained and experienced Principal Mediators comprised of distinguished members of different professions and fields. They include Members of Parliament, former High Court Judges, Senior Counsel, architects, doctors, engineers, IT specialists, project managers, psychologists and university professors. All SMC Principal Mediators have undergone formal mediation training and a strict evaluation before being appointed to the panel. There is also an International panel consisting of internationally renowned neutrals. If disputes require technical expert knowledge, the SMC usually appoints two mediators to the case to co-mediate the dispute. One of these mediators will be a professional of the industry concerned who is familiar with the subject matter of the dispute. The other mediator is generally a lawyer who will be familiar with the legal issues.

3.4.5 The SMC will also try to match the language abilities of the mediators to the disputants to facilitate the free flow of conversation between the parties and to

avoid the mediation of cases through translators who may hinder the building of rapport between mediator(s) and parties. So far, besides English, cases have been successfully mediated in Mandarin and other Chinese dialects as well as Tamil and Malay.

3.4.6 There is no national system or law to regulate the accreditation, the quality or standards of mediators nor is there a law regulating the practice of mediation as such in Singapore. Therefore, the SMC has developed its own system of mediator training and accreditation. The number of Principal Mediators accredited by SMC is limited by the demand for mediation services in order to ensure that all mediators on the Panel of Principal Mediators (currently numbering 108) get a chance to mediate and maintain their skills.

3.4.7 The majority of Principal Mediators are nominated by their peers in their professional or trade organisations. These nominees attend a mediation workshop at the SMC and are assessed at the end of the workshop. Those assessed to be suitable for mediation and who possess the right temperament are accredited and appointed to the Panel. The SMC's accreditation is limited to a period of one year and is subject to renewal. Re-accreditation will be granted if the mediator engages in at least eight hours of annual continuing education in mediation and is available to conduct at least five mediations per year if requested to do so.

3.4.8 Mediations under the SMC's auspices are governed by the provisions in the SMC Mediation Procedure. Clause 4 of this Procedure states that a mediator has to subscribe to the SMC's Code of Conduct. These provisions are binding upon all mediators appointed by the SMC to mediate. They direct and guide the mediator through the mediation process with regard to issues such as confidentiality, neutrality and impartiality.

Mediation Processes at SMC

3.4.9 The mediation process at the SMC may be initiated in two ways; either the case may be referred to SMC by the courts or one or more of the parties may contact SMC directly with a request for mediation. If only one party makes a request, the SMC will contact all the other parties and seek to convince them to attempt mediation. After SMC has assessed the suitability of the case for mediation and if all parties agree to mediate, SMC may brief the parties on what mediation at the SMC entails. This is to ensure that the parties make an informed decision and are committed towards finding a suitable solution to their dispute via mediation. The first step for mediation at the SMC is the signing of the SMC's Agreement to Mediate. By this Agreement, the parties are bound by the terms of SMC's Mediation Procedure which requires them to give effect to the terms of any settlement reached. Then, SMC will designate a date and time for the mediation process (usually one week after initiation, or, on an urgent basis, within 24 hours). Mediation sessions are held at SMC premises to ensure neutrality. Also, SMC will appoint suitable mediators from its Panel of Principal Mediators. A party may reject the proposed mediator if it has valid reasons, such as conflict of interests. Meanwhile, the parties exchange concise summaries of their positions in the case and, if necessary, of important documents referred to in the summary.

3.4.10 On the day of the mediation, the mediator will lead and guide the parties through a problem-solving process. The lawyers of the parties play an important role in assisting the mediator and advising the parties during the settlement process. If the matter is settled, the parties will reduce in writing the terms of their settlement with the assistance of their lawyers and this settlement agreement will be signed by or on behalf of the parties.

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SECTION 5 COURT-BASED MEDIATION IN THE SUBORDINATE COURTS

History

3.5.1 Court Dispute Resolution (CDR) at the Primary Dispute Resolution Centre was introduced in a pilot project on 7 June 1994. The Court Mediation Centre was established in 1995. It was renamed the Primary Dispute Resolution Centre in May 1998 as CDR expanded to include processes other than mediation such as early neutral evaluation and binding and non-binding evaluation and special forms of mediation like CDR-International, Co-Mediation with Experts, Mini-Trial and Mediation-Arbitration. Furthermore, the multi-door courthouse was established within the Primary Dispute Resolution Centre in 1999. Its purpose is to assist and direct disputants in finding the appropriate dispute resolution mechanism within or outside the court system. Also, it seeks to increase public awareness of dispute resolution processes.

3.5.2 Court-connected mediation refers to mediation which is held in court or conducted by a judicial officer or court official once legal proceedings have commenced. Apart from mediation under CDR, mediation may be employed within Pre-Trial Conferences. However, the majority of all court-based mediation is handled under CDR. The vast majority of cases in the Subordinate Courts undergo CDR.

Cases for Mediation

3.5.3 CDR has had an enormous impact on the Singapore judicial system. Since 1994 to 2004, 48,300 matters have undergone CDR. Of these, 94.6% were successfully settled. Surveys conducted by the Subordinate Courts in 1997 revealed significant cost and time savings for both the judiciary and for 96% of the disputing parties.

3.5.4 Generally, almost all cases at the Subordinate Courts undergo mediation. Initially, mediation was only applicable to civil cases. Today, however, a wide range of cases is mediated including assessment of damages, disputes over costs of civil proceedings, maintenance applications, applications by spouses for personal protection orders, complaints to magistrates of offences involving neighbourhood and relational disputes and small claims.

3.5.5 In 1997 the civil jurisdiction of the Subordinate Courts was increased from S\$100,000 to S\$250,000. As the financial stakes in cases with claims between S\$100,000 and S\$250,000 are much higher than those in the other civil cases in the Subordinate Courts, particular effort was made to promote mediation in these cases. Special PTCs were implemented to bring the attention of the parties to all dispute resolution programmes available.

Mediators

3.5.6 Adapting Western Style mediation to the Asian/Singaporean culture, the Singapore Court Mediation Model was introduced by the Honourable Chief Justice Yong Pung How in 1997. In Asian culture high regard is placed on persons in positions of authority. As such, mediations at CDR are conducted by Judges. It is believed that the Settlement Judge will enjoy greater confidence and respect from parties and be able to guide the mediation more effectively. In the Singapore Court Mediation Model, the Settlement Judge adopts a pro-active stance. He guides the parties and intervenes in the process by suggesting and actively engaging in the finding of possible solutions to the dispute.

3.5.7 Settlement Judges are guided by the Model Standards of Practice for Court Mediators of the Subordinate Courts. Further, clause 4 of the Model Standards provides that mediators have to comply with the Code of Ethics for Court Mediators of the Subordinate Courts of Singapore. This Code of Ethics deals with areas concerning impartiality, neutrality, confidentiality, informed consent, conflict of interests, promptness, training and qualification. The Code of Ethics enables practitioners to develop a sense of their professional responsibilities, and also informs and assists users and members of the public to have realistic expectations of the service.

Mediation Processes at PDRC

3.5.8 CDR Settlement Conferences are by far the most significant and widespread mode of PDRC's settlement activities. CDR sessions can be held at almost any juncture during the process leading to trial. By the use of CDR sessions, the PDRC handles the entire gamut of civil tort and contract cases filed in the Subordinate Courts. These include medical negligence and intellectual property cases. The PDRC practises differential case management for the different types of cases. CDR sessions are presided by experienced District Judges who assume the role of settlement judges. In appropriate cases, the Settlement Judge may conduct the CDR session with another person (either a foreign judge or an expert). CDR sessions are conducted in court as an integral component of the civil justice case process.

3.5.9 CDR is a highly evaluative or 'rights-based' form of mediation. This judge-driven CDR differs considerably in nature from many of the facilitative ADR processes. Evaluative mediation seeks to maintain an objective perspective, where the merits of the case are candidly and openly discussed. The mediator assists parties by previewing the probable outcomes of the case should it proceed to trial. Evaluative mediation operates with the applicable principles of law as its focal point,

and parties have a full appreciation of the time, costs and other implications of a litigated outcome.

Other Court-Based Mediations: Family Court, Small Claims Tribunal and Magistrates' Complaints

3.5.10 Other courts within the Subordinate Courts in Singapore have also developed a mediation culture. This section will deal briefly with the mediation programmes within the Family Court, the Small Claims Tribunal and Magistrates' Complaints.

3.5.11 Established within the system of the Subordinate Courts in 1995, mediation in the Family Courts was intended to be a process by which most family related disputes could be resolved. The Court provides in-house mediation and counselling services free of charge. This practice was legally entrenched in August 1996 with the passing of the Women's Charter (Amendment) Act where Section 50(1) provides for the court to refer the parties with their consent to mediation. The mediations are conducted by District Judges, the Deputy Registrar at the Family Court, court interpreters or volunteer mediators from the Court Support Group (which includes people with a legal, social work, psychology or family therapy background). The mediations take place on a 'without prejudice' basis and no matters disclosed during the sessions are admissible in court. Paragraph 47 of the Subordinate Courts Practice Directions provides that lawyers and parties are to be prepared to discuss their cases during the mediation and have all necessary documents ready. A similar provision exists for Muslim parties or parties married under Muslim Law who seek mediation or counselling for their family dispute.

3.5.12 The Small Claims Tribunal was established in 1985 with the passing of the Small Claims Tribunals Act. It handles disputes relating to contracts for the sale of goods or services or damage caused to property by torts not exceeding S\$10,000 in value. Damages stemming from the use of motor vehicles are excluded from the provision. Upon request the Tribunal also deals with disputes not exceeding S\$20,000 if the parties submit a written request. Proceedings before the tribunal are conducted in a private setting and in an informal manner with several attempts to settle the dispute amicably before a referee hears the evidence and submissions of the parties and decides the case based on its merits.

3.5.13 Under section 133 of the Criminal Procedure Code (Cap.68) a Magistrate can be informed of a criminal offence through a complaint. These complaints generally concern minor criminal offences and may be mediated by the magistrate himself or a court mediator. Further, subject to the consent of the parties, Magistrates' Complaints concerning interpersonal relationships may also be referred for mediation at the Community Mediation Centre. If no settlement is reached and the complainant wants to proceed to trial, a summons may be issued against the alleged offender.

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SECTION 6 LEGAL ISSUES IN MEDIATION

Status of Settlement Agreements Arising from Mediation

3.6.1 The legal status of settlement agreements will depend on the intention of the parties, the context of the mediation and the existence and nature of relevant statutory requirements. In most private mediations, parties would usually reduce the terms of the agreement in writing and sign on the document. It would be a legally binding agreement. As such, the enforceability of such settlement agreements is subject to normal contractual principles. Where there are pending court proceedings, the settlement agreement may provide for its terms to be recorded as a consent judgment or court order. It is also possible for parties to agree to have the terms of the settlement subsequently recorded as a consent arbitral award.

The Role of Confidentiality in Mediation

3.6.2 Mediation is often said to be a private and confidential process. There are 2 levels of confidentiality in mediation. The first is in relation to the process itself and the second is in relation to private meetings between the mediator and one of the parties during the process. The former is confidential in the sense that, apart from the mediator and the parties, no third party is to be privy to the proceedings. The latter refers to confidentiality in that no matter raised in private sessions should be disclosed to the other party by the mediator. As a matter of law, practice and policy, confidentiality in mediation is not a straightforward matter. In order to determine the scope of confidentiality, the law in relation to common law privileges, contractual principles, equitable doctrines and statutory regulations have to be examined. This paper will not be providing an exhaustive discussion of the legal principles save as to raise the issues therein.

3.6.3 Generally, at common law, statements made on a 'without prejudice' basis during negotiations towards settlement of a dispute are inadmissible in subsequent court proceedings relating to the same subject matter. As such, the 'without prejudice' privilege is usually applicable in most mediations. However, the privilege is not absolute and in certain cases, 'without prejudice' matters may be raised where justice requires or circumstances exist giving rise to the non-applicability or waiver of the privilege. At present, it would seem that the 'without prejudice' privilege only applies to the parties in mediation and not the mediator or the process. This poses a potential problem where there is a dispute between parties and mediator. In order to avoid these potential problems, most agreements to mediate contain a confidentiality clause which provides that the parties and the mediator are not to disclose to persons outside the mediation any information or document used in the mediation. These provisions have not yet been tested in the Singapore courts. Whilst such provisions afford a broader scope of confidentiality over the process and the parties, it is likely that some of the limitations on privileges under the law would also be imposed on such confidentiality clauses.

3.6.4 In equity, persons who receive information in circumstances of confidence cannot make unauthorised use of the information. A court may grant relief if there has been actual abuse or threatened abuse of confidential information. In [X Pte Ltd &](#)

[Anor v. CDE \[1992\] 2 SLR 996](#), the court cited with approval *Coco v. AN Clarke (Engineers) Ltd [1969] RPC 41* giving the elements of breach of confidential information as follows: (1) the information to be protected must have the necessary quality of confidence about it; (2) that information must have been imparted in circumstances importing an obligation of confidence; and (3) there must be an unauthorised use of the information to the detriment of the party who originally communicated it. Breach of confidentiality may apply in mediation where there has been disclosure of information which had been disclosed to mediators only for the purpose of the mediators performing their function as such. Mediators may be in breach of confidence where there has been unauthorised use of the information or disclosure to third parties without authorisation. In some situations confidential information disclosed in mediation may be commercially sensitive and mediators who use such information for their own benefit may be ordered to make restitution to the injured parties.

3.6.5 A number of statutory provisions exist to protect confidentiality of mediation through privilege and secrecy provisions. These provisions reinforce the common law position and in some cases extend the coverage. In Singapore, some examples of such protection would be sections 19 and 20 of the Community Mediation Centres Act (Cap 49A), sections 49(5) and 50(4) of the Women's Charter (Cap 353) and section 23 of the Evidence Act (Cap.97), which are potentially applicable to communications made during a mediation session.

Mediation Clauses

3.6.6 Mediation clauses have been incorporated in some contracts. Such clauses are drafted to trigger the mediation process in the event that there is a breach of the contract or to require the parties to resolve potential differences through mediation before resorting to litigation. A typical clause which is recommended by the SMC would be worded as such:

"All disputes, controversies or differences arising out of or in connection with this agreement shall first be submitted to the Singapore Mediation Centre for resolution by mediation in accordance with the Mediation Procedure for the time being in force. The parties agree to participate in the mediation in good faith and undertake to abide by the terms of any settlement reached".

The issue of the enforceability of mediation clauses has yet to be tested in the Singapore courts. L Boule and HH Teh in *Mediation : Principles Process Practice* (Singapore Edition) 2000 raise the following issues for consideration: (1) whether mediation clauses survive the termination of an agreement; (2) whether the mediation clause is sufficiently certain; (3) whether the mediation clause is complete; (4) whether the mediation clause is an attempt to oust the jurisdiction of the courts; and (5) whether there are other policy considerations affecting the enforceability of mediation clauses. A short discussion of these issues is found in the following paragraph.

3.6.7 It is a basic constitutional principle that the courts are accessible to all persons where a dispute is legally justiciable, and it is not possible to exclude the individual's right to pursue remedies through court. In relation to clauses specifying arbitration as the method of dispute resolution, the courts have required in the past

that they be in the *Scott v. Avery* (1856) 10 ER 1121 form in order to be enforceable. A *Scott v Avery* clause provides that the parties will first refer specified disputes to arbitration before instituting court proceedings. There is no reason why the underlying principle in *Scott v. Avery* should not equally apply in the context of an appropriately drafted mediation clause. It has also been submitted by the authors that there are several policy arguments which favour the enforceability of mediation clauses which do not undermine the principle against ousting the courts' jurisdiction : (1) where the clear intention of the parties is merely to postpone the commencement of litigation until another dispute resolution process has been attempted, the courts should give effect to that intention by upholding that contract; and (2) favourable attitudes towards ADR options also support the enforceability of such clauses. The changing nature of public policy is found in a series of measures taken by the government and the courts to promote the use of mediation as a means for resolving disputes. In Singapore, statements of legislative and judicial policy in favour of mediation show that mediation has come of age. Courts may therefore view the enforcement of mediation clauses favourably.

Drafting of Mediation Clauses

3.6.8 Whilst the law on the enforceability of mediation clauses is not settled, it is clear that mediation clauses are commonly used in practice. For example, in Singapore, the Attorney General's Chambers recommends that government contracts should carry a clause referring disputes to mediation, where appropriate. L Boule and HH Teh recommend that drafters of mediation clauses should be attentive to the following factors: (1) mediation clauses should be clear and certain; (2) they should be complete and comprehensive; (3) they should specify procedures to be followed by the parties in setting up and undertaking the mediation with some reference to the identity of the mediator and procedure to be followed or incorporated by reference to the mediation agreement or mediation rules of an agency providing mediation services; (4) they should uphold the non-ouster principle by stipulating that the parties should first submit their dispute to mediation before they institute court proceedings; and (5) the uncertainty of clauses requiring participation in good faith should be noted.

Remedies for Breach of Mediation Clauses

3.6.9 Where there is a breach of a mediation clause, parties are possibly entitled to the following 3 remedies: (1) stay of proceedings; (2) specific performance; and/or (3) damages. In respect of a stay of proceedings, the Singapore High Court has a statutory power to stay proceedings pending arbitration. There is no corresponding statutory power to stay proceedings pending mediation. However, the Singapore Court of Appeal in [Star Trans Far East Pte Ltd v. Norske-Tech Ltd & Ors \[1996\] 2 SLR 409](#) has affirmed that the Singapore courts retain a residual inherent jurisdiction to order a stay of court proceedings in favour of arbitration where such cases are not covered by statutory provisions. The grounds for invoking this jurisdiction are that the ongoing proceedings are frivolous, vexatious, oppressive or an abuse of the process of the court. In view of the foregoing, a similar inherent jurisdiction may exist to enable a defendant to apply to court to stay proceedings pending mediation where a plaintiff commences legal proceedings without first complying with an enforceable mediation clause. Specific performance is a remedy

for breach of contract in which the court orders a contracting party to carry out obligations under the contract. Such a remedy is equitable and ordered at the discretion of the court. Although the possibility of granting specific performance has not yet been considered by the courts in Singapore, it remains a possible remedy given the difficulties in awarding damages for breach of such clauses. However, several problems may arise, for example, it would be difficult for the court to supervise the performance thereof. As for damages as a possible remedy for breach of a mediation clause, a major difficulty would be to assess the quantum of damages suffered. Damages are designed to put plaintiffs in a position they would have been in if the defendants had carried out their contractual obligations. In mediation, it would not be possible to determine the terms or the outcome of the mediation had the mediation clause been complied with.

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SECTION 7 FUTURE DEVELOPMENTS AND CHALLENGES

3.7.1 The Mediation movement in Singapore has come a long way since the early 1990s. The government managed to revive mediation as an autonomous dispute resolution mechanism and, today, Singapore is one of the leading nations in the effective use of ADR in early stages of the judicial process with a high settlement rate. Also the private mediation movement has expanded largely since its inception in the mid nineties. The SMC remains at the forefront of the mediation movement in Singapore and Asia having been invited to train mediators in countries like the Philippines and as far as Malta and Austria. Technology has been successfully harnessed by the mediation movement with the introduction of various services for online dispute resolution.

3.7.2 However, much remains to be done. Mediation needs to be further promoted and ingrained within Singapore society to become the primary tool of dispute resolution. In order to tailor-fit mediation to Singapore and Asians in general, SMC is currently undertaking research in order to develop its own model of mediation that takes into account the cultural variations and differences that hamper an efficient application of Western-Style Models of Mediation.

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By: Loong Seng Oon
Executive Director
Singapore Mediation Centre

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