

**MEDIATION BILL 2016**

**SECOND READING**

**PARLIAMENT, 9 JANUARY 2017**

**SENIOR MINISTER OF STATE FOR LAW MS INDRANEE RAJAH SC**

Madam Speaker,

1. I beg to move, ‘That the Bill be now read a second time’.

**I. Making Singapore an International Commercial Mediation Centre**

2. Singapore is today a leading centre in the world for cross-border dispute resolution, alongside London, Paris, Geneva and Hong Kong. While our legal sector is relatively small, over the last 10 years, we were able to go beyond our shores, ride the wave of rising inter- and intra-Asia trade and investment and establish for ourselves a global brand name as a trusted location for high-quality cross-border dispute resolution. We are trusted, not only because of our legal expertise, but also because people know we are, and will remain, neutral, and our legal regime is stable. In the next decade, when trust commands an even higher premium, Singapore is well poised to achieve even more.

3. We are tabling two Bills today – the Mediation Bill and the Civil Law (Amendment) Bill – as part of a number of moves we will make in 2017 to grow dispute resolution work in Singapore to the next level.

4. Strengthening our position as an international dispute resolution centre will benefit Singaporeans and Singapore. First, it helps create growth and jobs for Singapore law firms and lawyers, amidst a more challenging

economic environment. Second, exposure to more, and more wide-ranging, legal work helps broaden and deepen the legal expertise available for domestic cases. Third, our position as a legal service hub will bolster Singapore's overall attractiveness as a business hub and create value for other parts of the economy.

5. I will speak on the Mediation Bill here and will talk about the Civil Law (Amendment) Bill later.
6. In Singapore, we provide a full suite of dispute resolution services so that businesses can pick and choose the services that best meet their particular needs. Mediation is one such service, complementing court litigation and arbitration. It provides a more cost effective, flexible and faster means of settling disputes. Mediation is also well-suited to our Asian context, where harmony and amicable resolution are valued highly in the dispute resolution process. It is particularly attractive for parties who desire to preserve long-term relationships and continue to do business.
7. In 2013, the Chief Justice and the Ministry of Law set up an International Commercial Mediation Working Group to look into developing the international commercial mediation space in Singapore. Arising from the Working Group's recommendations, in 2014, the Ministry set up the Singapore International Mediation Centre (SIMC) and Singapore International Mediation Institute (SIMI).
8. I am happy to report that both institutions have done well in just two short years.

- a. The SIMC has, as of end 2016, successfully attracted case filings from parties from more than 20 different jurisdictions and a wide range of industries and sectors. The sums in dispute ranged from S\$0.5 million to more than S\$600 million. Part of SIMC's success lies in its strong focus on meeting the needs of business. For example, SIMC has worked across institutional boundaries, to partner the Singapore International Arbitration Centre (SIAC) to develop SIAC-SIMC arb-med-arb, an innovative protocol that offers business the option of both arbitration and mediation.
  - b. As a professional standards body for mediation, SIMI has successfully implemented and maintains a 4-tiered credentialing scheme for 116 (and growing) local and international mediators, and a 3-tiered partner scheme for 2 (soon to be 7) organisations offering mediation services and/or training. SIMI works closely with more than 20 domestic and international organisations to promote mediation and set high competency standards in mediation practice.
9. Besides building strong institutions, Singapore needs a legislative framework for mediation if we desire to be an international centre for commercial mediation. This Mediation Bill provides such a framework. Its provisions will strengthen the enforceability of a mediated settlement agreement. They will also provide much-valued certainty for cross-border mediation users, in areas where the common law position is unclear or differs from jurisdiction to jurisdiction.
10. This Bill will implement the last of the recommendations made by the International Commercial Mediation Working Group. Its provisions

incorporate inputs from public consultation and extensive stakeholder engagement with lawyers, mediation and alternative dispute resolution practitioners and service providers, academics and mediation professional bodies. The stakeholders we consulted are very much looking forward to this new legislation. It will help draw even more international commercial mediation work to Singapore and further strengthen Singapore's position as an international dispute resolution hub.

## **II. Bill's features**

### **(i) Scope of the Bill**

11. The Bill will apply to mediations which are conducted:

(a) wholly or partly in Singapore;<sup>1</sup> or

(b) internationally, where the agreement to mediate provides that Singapore law or the Bill, if passed, should apply.<sup>2</sup>

12. The Minister is also able, on consultation with the Chief Justice, to extend any provision of the Bill to any mediation conducted by or under the direction of a court.<sup>3</sup>

13. To prevent inconsistencies with existing mediation legislation and frameworks, for instance, community mediations governed by the Community Mediation Centres Act, mediation processes conducted

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<sup>1</sup> Clause 6(1)(a)

<sup>2</sup> Clause 6(1)(b)

<sup>3</sup> Clause 6(2)(b), (3)

under, or provided by or under any written law, will be excluded.<sup>4</sup> In the same way, the Minister may, where appropriate, also exclude specified mediation proceedings.<sup>5</sup>

14. The key features of the Bill are to:

- (a) strengthen the enforceability of settlement agreements resulting from mediation;
- (b) clarify confidentiality and admissibility rules;
- (c) provide for stay of court proceedings; and
- (d) make clear that the restrictions under the Legal Profession Act do not apply under certain circumstances.

15. I will now take the House through these four key aspects.

**(ii) Enforceability provisions**

16. The first key aspect of the Bill relates to strengthening the enforceability of mediated settlement agreements.

17. The lack of enforceability of a mediated settlement agreement is an oft-cited concern of mediation. To illustrate – having gone through significant time and effort in a mediation, parties may finally reach a settlement agreement. However, if one party later reneges on his obligations, the

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<sup>4</sup> Clause 6(2)(a)

<sup>5</sup> Clause 6(4)

innocent party needs to commence court proceedings to prove a contract exists, and terms have been breached. This lack of enforceability is seen as an inhibiting factor in attracting commercial parties to mediate a dispute, since finality and certainty of dispute resolution outcomes is key.

18. The Bill provides an *additional*, expedited way for parties to ensure the settlement agreement is enforceable.<sup>6</sup> It does not alter or restrict the court's existing powers to record a settlement agreement as a consent order, in cases where the dispute is already before the court.
19. The additional expedited method provided by the Bill is as follows.
  - (a) Once parties reach settlement, subject to the Bill's requirements, parties may further agree to apply to court to have the settlement agreement recorded as a court order.
  - (b) To use this procedure, all parties to the agreement must agree to the application being made. The settlement agreement must be in writing, and the mediation administered by a designated mediation service provider, or conducted by a certified mediator.<sup>7</sup> Such safeguards aim to ensure that the quality of the mediated settlement agreement is appropriate for being recorded and enforced as a court order.
  - (c) The court may refuse to record the settlement agreement as a court order under certain circumstances.<sup>8</sup> For example, if this is contrary to public policy, if the subject matter of the agreement is not

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<sup>6</sup> Clause 12

<sup>7</sup> Clause 12(3)

<sup>8</sup> Clause 12(4)

capable of settlement, if any term is not capable of enforcement as an order of court, and so on.

20. Parties who are not able to use this procedure, for example, because other parties refuse to consent to the application, will still be able to commence court proceedings to enforce the settlement agreement as a contract.

21. Consequential and related amendments are made to the Supreme Court of Judicature Act and Family Justice Act, to make clear that the court has jurisdiction to record such mediated settlement agreements as court orders.

**(iii) Restrictions on disclosure and admissibility**

22. The second set of key provisions relate to confidentiality and admissibility of mediation communications. The Bill makes clear that except under narrow circumstances set out under the Bill, communications made in a mediation cannot be disclosed to third parties to the mediation, and cannot be admitted in court or arbitral proceedings as evidence.<sup>9</sup> These positions seek to reflect current practices, and expectations of mediation users.

23. Confidentiality and privilege are considered key cornerstones of the mediation process. Today however, such rules are based on a mixture of common law privileges, contractual protections, and equitable remedies for breach of confidence. In practice, parties may not be clear on how such protections apply to their individual circumstances.

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<sup>9</sup> Clauses 9, 10 and 11

24. Under the Bill, a protected mediation communication includes anything said or done, documents prepared, or information provided in the course or for the purpose of the mediation. This also includes the agreement to mediate, and the settlement agreement, if any.<sup>10</sup>

25. Mediation communications are protected in two broad ways under the Bill:

(a) First, a mediation communication cannot be disclosed to any third party to the mediation,<sup>11</sup> unless this falls under one of the listed exceptions, for instance, party consent, or for the purpose of requesting legal advice, and so on.<sup>12</sup> Short of these exceptions, any further disclosure will require the leave of court, or an arbitral tribunal (if the request for disclosure is being made in the context of arbitral proceedings).<sup>13</sup> The usual civil remedies for a breach of confidentiality will be available if unauthorised disclosure is made or threatened.

(b) Second, a mediation communication is not to be admitted into evidence in any court, arbitral, or disciplinary proceedings, except with the leave of a court or arbitral tribunal.<sup>14</sup>

**(iv) Stay of court proceedings**

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<sup>10</sup> Clause 2, definition of “mediation communication”

<sup>11</sup> Clause 9(1)

<sup>12</sup> Clause 9(2)(a), (e)

<sup>13</sup> Clause 11

<sup>14</sup> Clause 10

26. The third key aspect of the Bill is a provision to stay court proceedings. The Bill will provide parties to a mediation agreement with a specific statutory basis to apply to court to stay any on-going court proceedings in relation to the same dispute.<sup>15</sup> The court may subject the stay order to any terms and conditions as it thinks fit, and make further orders to preserve the rights of parties.<sup>16</sup>

27. The provision will provide parties to a mediation with assurance that their legal position in any court proceeding can be preserved pending the outcome of mediation.

**(v) Legal Profession Act provisions**

28. The fourth key aspect of the Bill is amendments to the Legal Profession Act,<sup>17</sup> which make it clear that the restrictions on the practice of Singapore law will not apply to the mediation context where the mediation is conducted by (1) a certified mediator; or (2) administered by a designated mediation service provider.<sup>18</sup> These are similar to existing provisions for arbitration.

29. Such provisions will support international commercial mediation in Singapore by providing flexibility for parties intending to mediate to choose their own mediators and counsel, and encourage foreign mediators and counsel to use Singapore as venue for mediation.

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<sup>15</sup> Clause 8

<sup>16</sup> Clause 8(3)

<sup>17</sup> Section 35 of the Legal Profession Act

<sup>18</sup> Clause 17

### **III. Conclusion**

30. The present reforms are part of our overall effort to ensure Singapore's dispute resolution framework continues to be progressive and user focused.
31. The introduction of the Bill is timely. With a strong base of legal talent, high-quality dispute resolution service providers, and standard-setting professional bodies, the Bill will serve to create a more conducive environment in Singapore for international commercial mediation, and reinforce Singapore's position as a premier venue for the conduct of international commercial mediation.
32. Madam Speaker, I beg to move.