Resolving disputes via court proceedings and mediation during the COVID-19 pandemic in Singapore

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The economic impact of the COVID-19 pandemic on businesses and commercial parties can be keenly felt across the world. Unfulfilled contractual obligations, supply-chain and logistics challenges, cash-flow pressure points, employment issues, to name a few—it is clear that COVID-19 has and will continue to bring about many sources of conflict and dispute.

To this end, dispute resolution mechanisms can and must still function to assist in the management of disputes and administering of justice in these unprecedented times. Given the elevated social distancing measures in Singapore, most notably the suspension of non-essential business activities unable to operate via telecommuting from 7 April 2020 to 4 May 2020 (both dates inclusive) ("Circuit Breaker Period"), court and arbitral hearings, as well as mediation sessions have been gradually advancing to the digital realm.

In this short article, we highlight two key dispute resolution processes that affected parties may turn to in the relatively new landscape of online dispute resolution.

Court proceedings

Actions can still be commenced and pursued in the courts. Parties may continue to file documents electronically using the online case management system (eLitigation system).

In Singapore, temporary measures introduced in the COVID-19 (Temporary Measures) Act 2020 ("Temporary Measures Act") now allow court proceedings to be conducted using remote communication technology (e.g. teleconference, video conference, and email) such that physical attendance in the courtroom can be minimised or dispensed with.

To ensure the continuity of the courts’ functions, the State Courts Centre for Dispute Resolution ("SCCDR") has introduced a pilot asynchronous Court Dispute Resolution hearings by email ("aCDR") since 16 March 2020 for all hearings at the SCCDR, excluding mediation sessions for civil cases and Magistrate’s Complaints. With effect from 1 April 2020 until further notice, selected hearings in the State Courts and Supreme Court, such as case management conferences and pre-trial hearings, will also be conducted via video conferencing or telephone conferencing where appropriate. The Courts have since also published relevant guides on the use of teleconferencing (using the application Zoom) for court hearings on their respective websites.

Ongoing civil matters scheduled for hearing in the State Courts of Singapore and the Supreme Court during the Circuit Breaker Period will be adjourned to a later date, unless the matter is assessed to be essential and urgent. Even then, unless directed otherwise by the courts, these matters will still be conducted by electronic means of communication where possible.

This gradual shift to embracing new remote communication technology in the court setting is certainly welcome, as it can potentially speed up court processes (e.g. reduction in waiting times, and cost and time of travel) and promote public access to justice even in times of uncertainty.

Mediation

Mediation, the process whereby a neutral third party (mediator) facilitates negotiation of parties by reaching a mutually acceptable and amicable settlement to their dispute, can still be conducted during the Circuit Breaker Period.
Online court-based mediation is not entirely new in Singapore. For instance, the e-Mediation function had been introduced through the Community Justice and Tribunals System to allow disputing parties to mediate in the presence of a court mediator online since 5 Feb 2018.

We believe that the practice of virtual private mediation will quickly come into its own as mediation bodies and private professional mediators swiftly equip themselves with the infrastructure and skill set to adapt to the current COVID-19 climate. In fact, the Singapore Mediation Centre and Singapore International Mediation Centre already offer online portals for the registration of new cases and tracking of existing appointments. Private professional mediators and mediation companies also remain available remotely to address any mediation-related concerns.

Mediation can be a useful tool for conflict resolution, as the confidential and non-adversarial process helps preserve commercial relationships that may otherwise break down if alternative litigation or arbitration routes were taken. In spite of these trying times, undergoing mediation can potentially enable businesses and individuals to mitigate their losses and strengthen long-standing relationships.

Previous concerns about the enforceability of mediated settlement agreements are slowly being put to rest, as mediated settlement agreements can now be immediately converted into an enforceable consent court order. With the Singapore Convention on Mediation due to come into force later this year, commercial parties in a cross-border dispute will soon be able to seek enforcement overseas by applying directly to the courts of countries that have signed and ratified the treaty.

Concluding remarks

While there are admittedly numerous technical concerns to having asynchronous or virtual hearings/mediation sessions, they are arguably not insurmountable and will smoothen out over time as Singapore gradually emerges from the nascent stage of online dispute resolution. Given the expected increase in disputes and the uncertainty of the current climate, online dispute resolution should be embraced and adapted to as the new norm.

That being said, commercial parties or individuals who are facing existing or potential disputes should consider the forum most appropriate to resolve specific disputes in the most timely and cost-effective manner, paying heed to any dispute resolution clause in the applicable contract (if any).

Please feel free to reach out to us if you would like to discuss how we can assist you or your business in exploring dispute resolution options.
