

THE LAW SOCIETY OF SINGAPORE

GUIDANCE NOTE 7.1.2

ADVISORY ON DISPUTE RESOLUTION OPTIONS FOR POTENTIAL LITIGANTS

1. This Guidance Note is issued to assist law practices and legal practitioners in advising clients on the types of dispute resolution options available for civil matters apart from litigation in Court.
2. Members are reminded that, under rule 17(2)(e)(ii) of the Legal Profession (Professional Conduct) Rules 2015 (S 706/2015) ('PCR 2015'), a legal practitioner must, in an appropriate case, together with his or her client evaluate the use of alternative dispute resolution ('ADR') processes.
3. Every legal practitioner, while observing the obligation in rule 17(2)(e)(ii) of the PCR 2015, is strongly encouraged to furnish and explain the "Standard Advisory for All Potential Litigants" ('the Advisory') at **Annex A** of this Guidance Note to clients.
4. Unless already obliged by contract to engage in ADR processes, legal practitioners are strongly encouraged to mention the following points:
 - (a) The types of dispute resolution options apart from litigation in Court:
 - (i) mediation;
 - (ii) arbitration;
 - (iii) neutral evaluation or determination; and
 - (iv) small claims tribunal (for certain cases¹);
 - (b) An explanation on the eligibility criteria, process and consequence of each of the four dispute resolution options;
 - (c) An evaluation on the benefits and disadvantages of each of the four dispute resolution options; and
 - (d) A recommendation on which dispute resolution option is the most suitable (if any).
5. Legal practitioners may, in an appropriate case, modify the Advisory to suit the specific circumstances of their client's matter.
6. For the avoidance of doubt, it is not intended that departure from the recommendations at paragraphs 3 and 4 of this Guidance Note would result in disciplinary consequences for legal practitioners. The Guidance Note is to assist practitioners in the discharge of any existing obligation to assist their clients in evaluating the appropriateness of ADR.

Date: 22 December 2021

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

¹ Information on the specific type of disputes falling under the jurisdiction of the small claims tribunal may be found at <https://www.statecourts.gov.sg/cws/SmallClaims/Pages/Before%20filing%20a%20claim.aspx>.

ANNEX-A

STANDARD ADVISORY FOR ALL POTENTIAL LITIGANTS

1. You have been given this Information Sheet because you are currently thinking of commencing or defending litigation in the Singapore Courts.
2. As your lawyer will have explained to you in greater detail, instead of resolving your dispute through litigation in court, you can choose to have your case resolved by other means, for example: the Small Claims Tribunal (for certain cases), mediation, arbitration or neutral evaluation or determination. Mediation, arbitration and neutral evaluation or determination are forms of ADR (Alternative Dispute Resolution).
3. These alternatives are generally private and may be cheaper and faster depending on the specific considerations of your case, and **you are advised to consider them carefully *before* committing significant time and financial resources in litigating your case in court.**
4. A short explanation of these alternatives follows. **You should discuss these alternatives with your lawyer in detail, so that you understand their pros and cons.**

(A) **MEDIATION:**

Getting assistance from a *neutral third party* who will discuss the case with you and/or with the opposing party and help settle your dispute, out of court.

- Mediation is a **consensual, flexible, informal process** in which a trained neutral person (called a mediator) helps the parties find a mutually agreeable, practical solution to resolve their dispute i.e. an out-of-court settlement. Unlike a judge in court, the mediator does not decide the dispute and does not assign fault or blame.
- Mediation has been proven to be a **quick and highly effective** method of resolving disputes of all kinds, whether big or small, across different countries and cultures. It is **much cheaper** than litigation in court.
- **To attempt mediation, you and the opposing party must agree to do so.** Your opposing party will have received this Information Sheet also, and will therefore know that mediation is a good option for him / her to consider.
- You and your opposing party can go for mediation **at any time**, whether before or after a case is filed in court. It is usually **better to attempt mediation early** e.g. *before* a case is filed in court so that you can save the most amount of money if the dispute is resolved through a settlement.
- **Everything that occurs in mediation is confidential and ‘without prejudice’.** Therefore, you do not have to worry about what is said during the mediation process, if it proves to be unsuccessful in resolving your dispute, and you have to carry on in court, or arbitration. **Nothing arising in mediation can be used against you or the opposing party.**
- **The product of a successful mediation is a settlement agreement which can be enforced as if it were a judgment of a Singapore court, by taking certain steps, or**

under the United Nations Convention on International Settlement Agreements Resulting from Mediation (also known as “the Singapore Convention on Mediation”), if the settlement agreement fulfils the requirements under the Convention.

- **Your lawyer can attend the mediation with you**, to help you in the process.
- The Law Society of Singapore runs a low-cost, effective Mediation Scheme, that you are encouraged to consider using. **You can obtain more information on the Law Society of Singapore Mediation Scheme by scanning this QR Code.**



(B) ARBITRATION:

Appointing a *neutral third party* (who is not a judge) to decide your dispute with the other party, on a confidential basis, out of court.

- Arbitration is a **consensual, flexible, informal process** in which a trained neutral person (called an arbitrator) decides the dispute for the parties, instead of a judge in court.
- Arbitration has been proven to be a **confidential and highly-effective** method of resolving disputes of all kinds, whether big or small, worldwide. The arbitration process is flexible and is set by the arbitrator and the parties, based on the needs of the particular case. If the process is designed correctly by the arbitrator and the parties (through discussions and consent) it can be **much faster and cheaper** than litigation in court.
- **To go for arbitration, you and the opposing party must agree to do so.** Your opposing party will have received this Information Sheet also, and will therefore know that arbitration is a good option for him / her to consider.
- **Everything that occurs in arbitration is confidential. It is also final and binding on the parties. Usually, there is no right of appeal.** Unlike cases in court, there are **no strict rules of evidence. Rules of civil procedure also do not apply.** This makes the process **more flexible and less complicated** than going to court.
- **The product of an arbitration is an award, which can be enforced as if it were a judgment of a court, in Singapore and abroad, by taking certain steps.**
- **Singapore arbitration awards can be enforced in over 160 countries world-wide because of an international treaty i.e. the New York Convention 1958.** Awards are much more readily enforced world-wide, in contrast to judgments of a Singapore court.
- **Your lawyer can attend and argue at the arbitration**, just as he would, in court. **If you win, you are likely to get a higher proportion of your lawyer’s fees back from the opposing side, as compared with going to court.**
- The Law Society of Singapore runs a low-cost, effective Arbitration Scheme, that you are encouraged to consider using. **You can obtain more information**



on the Law Society of Singapore Arbitration Scheme by scanning this QR Code.

(C) **NEUTRAL EVALUATION OR DETERMINATION:**

Appointing a *neutral third party* (who is not a judge) to *evaluate* or *determine* your dispute with the other party, on a confidential basis, out of court.

- Neutral Evaluation and Determination are **confidential, quick and temporary summary processes** in which a trained neutral person (called a Neutral) provides an evaluation or determination of the dispute pending a final decision by a court or arbitral tribunal. It is **suitable for all types of civil disputes**.
- This is **generally speedier and less costly than litigation and arbitration** and they allow parties to have a **temporary resolution** to their dispute before the dispute is ultimately determined by a competent court or tribunal.
- **The Neutral is a lawyer**. The Neutral will make an evaluation (“**Evaluation**”) or a determination (“**Determination**”) based on the documents submitted or after a truncated hearing (if the parties request for it). **You can select your Neutral** by agreement of parties from the Law Society’s Panel of experienced lawyers practising in various areas of law.
- Every single stage is **limited by time to ensure quick resolution**.
- An **Evaluation is advisory only**. It is the opinion of the Neutral and is not binding on the parties, except for the Neutral’s decision on the costs of the neutral evaluation which is binding on the parties. A **Determination is binding until the dispute is finally determined by a competent court or tribunal**.
- The Evaluation or Determination will be given **in writing**. The Neutral will provide **reasons for the opinion or decision**.
- The Law Society of Singapore runs a neutral evaluation and determination scheme that you are encouraged to consider using. **You can obtain more information on the Law Society of Singapore Neutral Evaluation and Determination Scheme by scanning this QR Code.**



(D) **SMALL CLAIMS TRIBUNAL:**

A simple adjudication process where lay persons present their own cases (involving a certain type of dispute, and where the claim is S\$20,000 or less, or up to \$30,000 if both parties agree.)

- If the **claim in your case is for \$20,000 or less, and of a certain type**, you have the option of having your claim heard and decided in the Small Claims Tribunal (SCT) by commencing a claim there (if you are the claimant) or by asking the person suing you to agree to have his / her claim heard there (if you are the respondent). **Both parties can also mutually agree to raise the claim limit to S\$30,000.**

- SCT claims must be filed **within 2 years** of the event giving rise to the claim.
- SCT claims and defences are **presented by the parties themselves**. Lawyers do not appear for the parties. This makes the SCT process **much cheaper** than bringing or defending a case in court. **The SCT claim can also be filed, defended, negotiated and mediated online.**
- SCT cases are heard before, and decided by, a Tribunal Magistrate. Unlike cases in the civil courts, the SCT is not bound by **strict rules of evidence**. **The Tribunal Magistrate adopts a judge-led approach in directing the proceedings and in determining the substantive merits of the case.** This makes the process **easier to handle for a lay person, himself**. It also results in the whole process often being **faster and less complicated** than going to court.
- **The types of cases** that can be heard before the SCT include the following :
 - A contract for the sale of goods. This includes claims arising from a contract in which goods are sold and bought in exchange for money. Examples: Suing a supplier for an unfair practice in relation to a consumer transaction or suing a supplier for non-conformity of goods.
 - A contract for the provision of services. This includes claims arising from written or oral agreements for the provision of services involving skill and/or labour in exchange for money. Examples: Suing a renovation company for failing to provide the contracted renovation service or suing a provider of spa treatments for failure to carry out the treatments.
 - A tort for damage caused to property This includes claims for losses or expenses incurred by owners of property as a result of careless, reckless or improper acts by others. This does not include claims for damage to property caused by an accident arising from or in connection with the use of a motor vehicle.
 - A hire purchase agreement which relates to an unfair practice as defined under section 4 and the Second Schedule of the Consumer Protection (Fair Trading) Act.
 - Refund of motor vehicle deposits under the Consumer Fair Trading (Motor Vehicle Dealer Deposits) Regulations 2009.
 - A contract relating to a lease of residential premises not exceeding 2 years. This excludes: leases of industrial or commercial premises and licenses of any premises for any period of time.
- The order of the Tribunal Magistrate in an SCT hearing is an order of the State Courts of Singapore, and can be enforced in the same manner as an order or judgment of the District Court.
- **You can obtain more information on the SCT from the State Courts website by scanning this QR Code.**



WHICH OPTION IS BEST FOR ME?

You should consider all of these factors and discuss them with your lawyer.

- How big is the claim?
- How much will it cost me to bring (or defend) the claim, all the way?
- How much will I get back (from what I have spent) if I win?
- How much will I need to pay (to the opposing party and to my own lawyer) should I lose?
- Would it be good to keep this dispute confidential?
- Do I need the right to enforce the outcome in a different country?

I confirm that I have read this Information Sheet and understand its contents.

(Signature)

Name :

Date :