

QUESTIONNAIRE

1. The Actual Administration and Use of ADR

***(1) Provide the definition and kinds of ADR.**

ADR stands for Alternative Dispute Resolution. ADR is a means by which the parties to a dispute can resolve it without having to go to court.

There are generally 2 types of ADR. The 1st type of ADR is arbitration and the 2nd type is mediation.

Arbitration. At the end of an arbitration proceeding, the arbitrator gives an arbitration award. This award can be enforced in the local court as if it is a judgment obtained in the court. This award can also be enforced in a foreign court if the foreign country allows it. Most of the countries who have signed the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958, have ratified their own laws to allow a foreign arbitration award to be registered and enforced in their countries.

Mediation. The objective of mediation is to encourage the parties to a dispute to reach a settlement. At the end of a mediation proceeding, the parties would sign a settlement agreement. If a party breaches a term of the agreement, the other party can commence action against it for breach of contract.

A major arbitration centre in Singapore is the Singapore International Arbitration Centre ("SIAC"). A major mediation centre in Singapore is the Singapore Mediation Centre ("SMC").

SIAC is a non-profit organisation incorporated as a public company limited by guarantee in March 1990. It commenced operations on 1 July 1991.

SMC is a company limited by the guarantee of the Singapore Academy of Law ("SAL"). The SAL is a body created by statute. Its members are from the judiciary, the legal service, as well as lawyers. SMC enjoys the support of the Singapore judiciary.

(2) Provide the number of arbitration and mediation cases accepted and disposed of, with a breakdown as to type, if possible.

As at 22 January 2002, SIAC has handled 589 cases. The caseload figures for SIAC are as follows:

Category of Arbitration cases	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	Total
Shipping Marine	2	3	10	15	27	28	20	27	21	23	19	195
%	100	25	50	44	53	55	34	30	24	28	19	33
Construction Engineering	0	7	2	7	5	7	6	19	24	31	27	135
%	0	58	10	21	10	14	10	21	27	37	27	23

Trade/ Commercial	0	1	3	7	9	14	21	32	40	19	30	176
%	0	8	15	21	18	27	36	36	45	23	30	30
Corporate Insurance	0	1	2	2	3	1	8	10	3	3	1	34
%	0	8	10	6	6	2	14	11	3	4	1	6
Others	0	0	3	3	7	1	3	1	1	7	23	49
%	0	0	15	9	14	2	5	1	1	8	23	8
Domestic	0	5	5	12	14	26	15	22	22	28	44	193
%	0	42	25	35	27	51	26	25	25	34	44	33
International	2	7	15	22	37	25	43	67	67	55	56	396
%	100	58	75	65	73	49	74	75	75	66	56	67
Total No. of cases	2	12	20	34	51	51	58	89	89	83	100	589

Source : SIAC

As at 31 January 2002, about 800 matters were mediated at SMC. About a third of the cases are construction and renovation cases. Most of the cases involved claims of more than S\$250,000.00. The caseload figures for SMC are as follows :

Year in which dispute was registered	1997	1998	1999	2000	2001	2002 (to Feb)	Total
Total number of disputes that were referred for mediation	139	196	169	220	160	22	906
Total number of disputes that were mediated	110	170	159	198	147	12	796
Total number of disputes that were settled after mediation	87	122	124	152	116	8	609
Average settlement rate	79.09%	71.76%	77.99%	76.77%	78.91%	66.67%	76.51 %

Source : SMC

As at June 2002, a total of 844 matters have been mediated at SMC.

(3) Generally what is the frequency of hearing of other procedure and how long is the elapsed time for an arbitration award or a mediation? Are the answers different for different types of cases?

Court proceedings in Singapore are swift and an action can be resolved within 1 year if the matter is not too complex and if there are no appeals.

For Arbitration, its duration depends on the complexity of the matter and may be shorter or longer than Court proceedings.

For Mediation, it takes about one week or two, to set a matter for mediation after the case is referred to the SMC. About 75% of the cases at the SMC mediated result in a settlement agreement. Of these cases that settle, the mediation session generally lasts one day.

(4) How many persons, in each field, are listed as candidates or applicants? (Aside from lawyers, what are the qualifications and occupations of such persons?)

SIAC has about 66 international arbitrators and about 92 local arbitrators from the construction, banking and insurance, shipping and international trade industry.

SMC has about 111 mediators. About 50% of them come from a legal background. The other 50% comprise professionals from diverse backgrounds. These are engineers, quantity surveyors, communications experts, doctors, accountants and others on our panel of mediators.

(5) What requisites are necessary to be listed as a candidate? (For example, are certain specified qualifications, career records and specializations necessary?) Who decides this?

SIAC decides its own panel of arbitrators. In SIAC, the Chairman of SIAC makes all appointments required by the SIAC Rules of Arbitration. The appointed Arbitrators must have integrity and competence and are likely to command respect in the particular industry.

There is a limit on the number of mediators accredited to SMC's panel of mediators. This is to ensure that the accredited mediators of SMC will actually get a chance to mediate, as there is a limited pool of cases. Generally, SMC will first determine whether it needs to increase the number of persons on its panel. SMC will also determine the type of mediators that it requires. For instance, if SMC requires more mediators from the construction industry, it will approach the professional and trade institutions in the construction industry to request that they nominate persons who are well respected within the industry and who have the right temperament to be mediators. Thereafter, these nominees will be required to undergo mediation skills training at SMC, at the end of which they will be evaluated by SMC. Only those persons who have the right temperament and skills will be accredited to SMC's panel of mediators.

(6) Have policies been devised to improve the quality of arbitrators and mediators?

The performance of mediators is monitored through the administration of survey forms after every mediation. In addition, roundtable discussions are organised for mediators to discuss and learn from each other's experiences.

(7) How is the compensation for arbitrators and mediators determined? Also, what are the actual amounts?

The mediators are generally compensated based on a percentage of the mediation fee collected by SMC. The fee schedule is as follows:

Quantum of Claim	Mediation Fee
Up to S\$250,000/-	S\$900 per party per day or part thereof
Above S\$250,000/- up to S\$1,000,000/-	S\$1800 per party per day or part thereof
Above S\$1,000,000/- up to S\$5,000,000/-	S\$3400 per party per day or part thereof
Above S\$5,000,000/-	S\$2400 per party per day or part thereof plus 0.05% of the quantum above \$5,000,000

Source: SMC

***(8) When you have a procedure that transfers from the arbitration to the mediation, or from the mediation to the arbitration, do the members of panel change?**

There is no fixed procedure for such transfers. However, the members of the panel often change if there is a transfer. This is because mediation often involves the disclosure of without prejudice communication or information. In an arbitration, without prejudice communication or information is not usually available to the arbitrator.

2. Relationship with the Court System

- (1) When a case is instituted, does the court refer the matter to arbitration or mediation? If so, is it referred to a private sector organisation or to an organ of the court? (Here and below, if there is a relevant law of regulation, please provide the text)**

For disputes before the High Court, pre-trial conferences (PTC) are conducted to encourage parties to settle their disputes without having to resort to the judicial process. Where private negotiation is not possible, they will then be encouraged to attempt settlement through SMC. SMC is housed in the same building as the High Court. As stated in the answer to question 1(1), the SMC is a company limited by the guarantee of the SAL, and is not part of the Judiciary.

For disputes before the Subordinate Courts, PTCs are also conducted where parties are encouraged to attempt settlement. This is conducted by the judicial officers themselves, unlike the SMC.

In family and matrimonial disputes, where both parties consent, judicial officers from the Family Court (a component court of the Subordinate Courts) are the ones who assist parties reach an amiable settlement.

The Subordinate Courts also conduct settlement conferences co-conducted by a Singapore Subordinate Courts Judge and a Judge from a foreign jurisdiction such as the USA, Australia or Europe. The settlement judges, who have a wealth of experience in mediating disputes, sit as Judge Mediators. This settlement conference is named Court Dispute Resolution International (CDRI) and is suited for complex civil matters with substantial claims.

The CDRI is, however, confined to considering issues of fact. Should issues of law arise during the co-mediated sessions, the Singapore Judge Mediator will decide on that. In addition, the CDRI will be conducted using the Early Neutral Evaluation Approach in which the Settlement Judge evaluates and comments on the merits of each party's case. This assists the parties to decide quite early if they wish to reach a settlement privately, or persist in using the courts.

Like other mediation sessions, this is voluntary (as solicitors representing the parties apply for it through the Primary Dispute Resolution Centre at the Subordinate Courts) and non-binding in nature.

The mediation conducted by judicial officers, such at the Subordinate Courts and the CDRI, this service comes free. For the CDRI, however, should the matter be subsequently referred to the Small Claims Tribunal, the SMC or the SIAC, or where an independent expert is appointed, additional costs may be incurred.

- (2) In a case where the matter is referred to private sector organization, how is the liability for the costs of the arbitration or mediation allocated?**

For mediation, the parties normally split the costs.

For arbitration, the arbitrator would decide who should pay the costs. Normally, the losing party is required to pay costs to the winning party.

The mediation fees charged by the SMC can be found in the answer to 1(7) above.

The arbitration fees for International Arbitrations charged by SIAC are as follows:

The administrative fees of SIAC for administering arbitral proceedings are based upon the quantum of each claim or counterclaim as disclosed when the claim or counterclaim is filed or an estimate thereof. (Note: Amounts in S\$ or its equivalent)

Amount of Claim/Counterclaim	New SIAC Management Fees
Up to \$250 000	\$2,750 (Minimum)
\$250,000 – \$1,000,000	\$2,750 + 0.30% of excess over \$250,000
\$1,000,000 – \$5,000,000	\$5,000 + 0.15% of excess over \$1,000,000
\$5,000,000 – \$10,000,000	\$11,000 + 0.06% of excess over \$5,000,000
\$10,000,000 – \$50,000,000	\$14,000 + 0.03% of excess over \$10,000,000
Maximum	\$25,000

The above fees do not include arbitrator's fees which can be negotiated. The fees range from about \$250 to S\$500/- an hour.

- (3) **Is there court supervision? Also, is there some sort of cooperation between the arbitration or mediation organisation and the court? How does the court participate? (For example, does it cooperate in the examination of evidence, in the provision of information or the like?)**

There is no formal supervision, just strong encouragement by the court to parties to reach a settlement. For example, a trial judge may, after reviewing the merits of the case, indicate informally that it is in the best interests of the parties that they reach a settlement. The courts identify cases that are suited for mediation and send out notices to alert disputing parties that ADR should be considered. The mediation proceedings at the Singapore Courts and the SMC are not on file and are conducted on a "without prejudice" basis.

- (4) **In the event that mediation ends in failure, how is the matter disposed of? For example, how is the issue of extinctive prescription (similar to the statute of limitations) handled?**

If mediation fails, the parties proceed to trial. However, all matters discussed at mediation cannot be used as evidence at trial because such discussions were conducted on a without prejudice basis.

- (5) **How is the enforceability of the arbitration award or the mediation agreement ensured? Does the court participate in that process?**

Parties may bring the defaulting party to court to enforce the arbitration award or the mediated settlement agreement.

A Singapore arbitral award is easily enforceable internationally across over 120 nations, including the UK and the US. Singapore has acceded to the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958.

SIAC will also assist parties in arranging the registration of awards for enforcement in countries which acceded to the same UN Convention.

3. Particular Issues

- (1) **Have special rules been established for cases related to intellectual property rights? For example, is it possible to arbitrate with respect to the validity of a patent?**

Although there is no prohibition on arbitration, an arbitration award on the validity of a patent will not be recognised by the Patent Office. Hence, the validity is usually decided by the Court.

- (2) **Are there disputes when arbitration is rejected?**

Yes. Arbitration occurs only by consent. If there is no arbitration clause in the relevant agreement between parties or if a party does not consent to arbitration, the SIAC Chairman will not appoint an arbitrator. Where there is an arbitration clause in a contract, and a party refuses to adhere to it when a dispute arises, the other party may apply to court for a stay in proceedings pending arbitration.

- (3) **Is there a specialised arbitration or mediation system (or rules) for computer software and the like?**

Yes, Information Technology disputes could be resolved by referring them to the Singapore IT Dispute Resolution Advisory Committee (SITDRAC). The Committee is part of the SMC and comprises representatives from the following major IT and ADR bodies:

- Singapore IT Federation (SITF) (formed by merger of the Singapore Federation of Computer Industries and Microcomputer Trade Association of Singapore)
- Singapore Computer Society (SCS)
- IT Management Association (ITMA)
- Infocomm Development Authority of Singapore (IDA) (formed by merger of the National Computer Board and Telecommunication Authority of Singapore)
- SMC
- SIAC

These mediators are specially trained to handle IT cases.

- (5) **What measures are in place for the protection of secrets? (For example, are there methods of controlling records, limiting the scope of disclosure to agents, and so on?)**

It is usual for parties to sign confidentiality agreements when they attend mediation sessions. This covers the documents tendered and what transpired between the parties and mediators. Moreover, proceedings are conducted on a “no prejudice” basis to either party and cannot be admitted to court as evidence.

It is also implied that the mediators will not divulge the details of the proceedings.

(6) Have some measures been conceived to promote prompt settlements?

Before judicial reforms were introduced by the present Chief Justice, disputes often took years before the litigants had their day in court. In essence, the pace of litigation really depended on the Plaintiffs.

In contrast, the judiciary now takes active steps to monitor the progress of litigation through pre-trial conferences. Lawyers are advised to encourage their clients to resort to ADR.

(7) How is ADR publicised? How can potential users learn about your ADR organization's system?

While there appears to be no formal publicity for ADR, there are the occasional news reports in the press and publicity material available from the SMC and SIAC. Information is also available from their web sites: www.mediation.com.sg and www.siac.org.sg

Quite often, potential users learn about ADR through the recommendation of their lawyers. In turn, lawyers learn about ADR from seminars, while newly qualified ones would have some exposure to its mechanics either at the University or during their Practical Law Course. As disputes are now heard by the courts within about a year, lawyers are aware of the high stakes involved and advise their clients of the benefits of giving ADR a try. In turn, potential users may be encouraged by the success rate of SMC which stands at about 75%.

***(8) What kind of dispute is suitable for the online ADR? How about the actual use?**

It is generally perceived that disputes in the information technology industry would be suitable for online ADR, eg domain name disputes. One reason is distance between the parties. The parties are likely to be from different parts of the world. Another reason is comfort. Since the parties are from the IT industry, they are IT savvy and thus are more likely to use online ADR.

On 31 July 2002 "DisputeManager.com" was launched. "DisputeManager.com" is an internet portal that offers e-Settlement, Mediation, Neutral Evaluation and the Singapore Domain Name Dispute Resolution Service. It is developed by SMC with the support of the Ministry of Law and the Singapore Academy of Law.

"DisputeManager.com" is not strictly for settling disputes within only the IT industry. As its inception is new, its actual use has yet to be determined. However, with improved IT infrastructure and education, it can be expected that the DisputeManager.com would be a success.

4. Please attach any court precedents related to the above topics.

Since ADR proceedings are not court proceedings, there are no court precedents. However, the parties may sometimes refer certain matters to the court, eg an appeal against an arbitration award, in which case the Judgment or Order is sometimes reported.

(end)