

Mediation Bill

Bill No. /2016.

Read the first time on 2016.

MEDIATION ACT 2016

(No. of 2016)

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A BILL

i n t i t u l e d

An Act to promote, encourage and facilitate the resolution of disputes by mediation and for purposes connected therewith, and to make related amendments to certain other Acts.

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

Short title and commencement

1. This Act is the Mediation Act 2016 and comes into operation on a date that the Minister appoints by notification in the *Gazette*.

General interpretation

- 5 2.—(1) In this Act, unless the context otherwise requires —
- “approved certification scheme” means an accreditation or certification process designated as an approved certification scheme under section 7;
- 10 “certified mediator” means a mediator who is certified under an approved certification scheme;
- “data message” means information generated, sent, received or stored by electronic, magnetic, optical or similar means, including, but not limited to, electronic data interchange (EDI), electronic mail, telegram, telex or telecopy;
- 15 “designated mediation service provider” means a mediation service provider designated under section 7;
- “electronic communication” means any communication that is made by means of data messages;
- 20 “mediated settlement agreement”, in relation to a mediation, means an agreement by some or all of the parties to the mediation settling the whole or part of the dispute to which the mediation relates;
- “mediation agreement” means an agreement referred to in section 4;
- 25 “mediation communication” means —
- (a) anything said or done;
 - (b) any document prepared; or
 - (c) any information provided,
- 30 for the purposes of or in the course of mediation, and includes a mediation agreement or mediated settlement agreement;

“mediation institution” means a body or an organisation that operates a certification scheme for mediators;

5 “mediation service provider” means a body or an organisation that provides services for the conduct of mediation and has in place procedures or rules to govern the conduct of mediation;

“mediator” means an individual who is appointed to be a mediator for a mediation mentioned in section 6(1);

10 “party to a mediation” includes any party to the dispute that is referred for mediation, but does not include any mediator conducting the mediation;

“third party”, in relation to a mediation, means a person who is neither —

(a) a party to the mediation; nor

(b) a mediator for the mediation.

15 (2) Where more than one mediator is appointed for a mediation, a reference to a mediator under this Act is a reference to all the mediators for the mediation.

Meaning of mediation

20 **3.—**(1) In this Act, “mediation” means a process comprising one or more sessions in which one or more mediators assist the parties to the dispute to do all or any of the following with a view to facilitating the resolution of the whole or part of the dispute:

(a) identify the issues in dispute;

(b) explore and generate options;

25 (c) communicate with one another;

(d) voluntarily reach an agreement.

(2) For the purposes of subsection (1), a session is a meeting between the mediator, or one or more mediators (where more than one mediator is appointed for a mediation), and one or more of the parties to the dispute, and includes any activity undertaken —

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(a) to arrange or prepare for such a meeting, whether or not the meeting takes place; and

(b) to follow up on any matter or issue raised in such a meeting.

5 (3) For the purposes of subsection (2), a meeting includes a meeting conducted by electronic communication, video conferencing or other electronic means.

Meaning of mediation agreement

10 **4.**—(1) In this Act, “mediation agreement” means an agreement by 2 or more persons to refer a dispute which has arisen, or which may arise, between them to mediation.

(2) A mediation agreement may be in the form of a clause in a contract or in the form of a separate agreement.

(3) A mediation agreement must be in writing.

15 (4) A mediation agreement is in writing if its content is recorded in any form, whether or not the agreement to mediate has been concluded orally, by conduct or by other means.

20 (5) The requirement that a mediation agreement must be in writing is satisfied by an electronic communication if the information contained in that communication is accessible so as to be useable for subsequent reference.

(6) Where a clause in a contract refers to any document containing a mediation clause, that clause in the contract constitutes a mediation agreement in writing if the reference is such as to make the mediation clause part of the contract.

25 (7) Where a clause in a bill of lading refers to a charterparty or other document containing a mediation clause, that clause in the bill of lading constitutes a mediation agreement in writing if the reference is such as to make the mediation clause part of the bill of lading.

Act binds Government

30 **5.** This Act binds the Government.

Application of this Act

6.—(1) Subject to subsection (2) and the rules made under that subsection, this Act applies to, or in relation to —

- 5 (a) any mediation conducted under a mediation agreement where —
- (i) the mediation is wholly or partly conducted in Singapore; or
- (ii) the agreement provides that this Act or the law of Singapore is to apply to the mediation;
- 10 (b) any mediation conducted by a State Court where —
- (i) the parties requested, or are referred by a State Court, for mediation conducted by a State Court; or
- (ii) the parties are required by any written law to participate in mediation conducted by a State Court;
- 15 (c) any mediation conducted by or pursuant to a direction by a Family Justice Court; and
- (d) any mediation conducted by or pursuant to a direction by the High Court or the Court of Appeal.
- (2) The Minister may make rules to provide for —
- 20 (a) the exclusion from all or any of the provisions of this Act; or
- (b) the application of all or any of the provisions of this Act, with such modifications as the Minister considers appropriate, to or in relation to,
- 25 any mediation scheme, process or framework, whether provided by or under any written law or otherwise.
- (3) This Act does not apply to, or in relation to, any mediation which commences before the date of commencement of this Act, unless all the parties to the mediation agree otherwise.
- 30 (4) For the purposes of subsection (3), a mediation to resolve the whole or part of a dispute that has arisen, unless otherwise agreed

by all the parties, commences on the day on which all the parties agree to refer the whole or part of that dispute to mediation.

Designation of mediation service provider and approved certification scheme

5 **7.**—(1) The Minister may, subject to such terms and conditions as the Minister thinks fit to impose —

 (a) designate any mediation service provider to be a designated mediation service provider for the purposes of this Act; and

10 (b) designate any accreditation or certification process administered by a mediation institution to be an approved certification scheme for the purposes of this Act.

(2) Notice of every designation must be published in the *Gazette*.

Stay of court proceedings

15 **8.**—(1) Where any party to a mediation agreement institutes any court proceedings against any other party to that agreement in respect of any matter which is the subject of that agreement, any party to that agreement may apply to that court to stay the proceedings so far as they relate to that matter.

20 (2) The court hearing the application may make an order, upon such terms or conditions as the court thinks fit, staying the proceedings so far as the proceedings relate to the matter.

(3) The court may, in making an order under subsection (2), make such interim or supplementary orders as it thinks fit for the purpose of preserving the rights of the parties.

25 (4) For the purposes of this section, a reference to a party includes a reference to any person claiming through or under such party.

Confidentiality

30 **9.**—(1) Subject to subsections (2) and (3), a person must not disclose a mediation communication to a third party to the mediation.

(2) A person may disclose a mediation communication to a third party to a mediation if —

(a) the disclosure is made with the consent of —

(i) all the parties to the mediation; and

5 (ii) in the case where the mediation communication is made by a person other than a party to the mediation, the person who made the mediation communication;

10 (b) the content of the mediation communication is information that has already been made available to the public at the time of its disclosure, other than information that is only in the public domain due to an unlawful disclosure;

(c) there are reasonable grounds to believe that the disclosure is necessary to prevent or minimise —

(i) the danger of injury to any person; or

15 (ii) the abuse, neglect, abandonment or exploitation of any child or young person (within the meaning of the Children and Young Persons Act (Cap. 38));

20 (d) the disclosure is made for research, evaluation or educational purposes without revealing, or being likely to reveal, whether directly or indirectly, the identity of any person to whom the mediation communication relates;

(e) the disclosure is made for the purpose of seeking legal advice;

25 (f) the person disclosing is an arbitrator acting as a mediator under section 63(1) of the Arbitration Act (Cap. 10) or an arbitrator or umpire acting as a conciliator under section 17(1) of the International Arbitration Act (Cap. 143A) and the disclosure is made in accordance with section 63(2) or (3) of the Arbitration Act or section 17(2) or (3) of the International Arbitration Act (as the case may be);

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(g) the disclosure is required by any court or under any written law, or requested by a public authority in the exercise of its power of investigation under any written law; or

5 (h) the mediation communication was made in furtherance of any illegal purpose.

(3) Despite subsection (2), a person may disclose a mediation communication with leave of the court or an arbitral tribunal under section 11 —

10 (a) for the purpose of enforcing or disputing a mediated settlement agreement;

(b) for the purpose of establishing or disputing an allegation or a complaint of professional misconduct against a mediator or any other person who participated in the mediation in a professional capacity;

15 (c) for the purpose of discovery or other similar procedures in any judicial proceedings or arbitral proceedings (as the case may be), which have been instituted, where the parties to these proceedings are required to disclose documents in their possession, custody or power; or

20 (d) for any other purpose that the court or arbitral tribunal, as the case may be, considers justifiable in the circumstances of the case.

(4) In this section, “disclosure”, in relation to information, includes permitting access to the information.

25 **Admissibility of mediation communication in evidence**

10. A mediation communication is not to be admitted in evidence in any judicial, arbitral or disciplinary proceedings except with the leave of the court or an arbitral tribunal under section 11.

30 **Leave of court or arbitral tribunal for disclosure or admission in evidence**

11.—(1) A court or an arbitral tribunal may, on application by any person, grant leave for a mediation communication to be disclosed under section 9(3) or admitted in evidence under section 10.

(2) For the purposes of subsection (1), the court or arbitral tribunal, as the case may be, must take into account all the following matters in deciding whether to grant leave:

- 5 (a) whether the mediation communication may be or has been disclosed under section 9(2);
- (b) whether it is in the public interest or the interests of the administration of justice for the mediation communication to be disclosed or admitted in evidence;
- 10 (c) any other circumstances or matters that the court or arbitral tribunal, as the case may be, considers relevant.

(3) Where the mediation communication is sought to be disclosed or admitted in evidence in proceedings —

- (a) before a court, the application must be made to the court before which the proceedings are heard;
- 15 (b) before an arbitral tribunal, the application must be made to the arbitral tribunal before which the proceedings are heard; and
- (c) in any other case, the application must be made to the High Court.

20 **Recording of mediated settlement agreement as order of court**

12.—(1) Where a mediated settlement agreement has been reached at a mediation in relation to a dispute for which no proceedings have been commenced in a court, any party to the agreement may[, with the consent of all the other parties to that agreement,] apply to a
25 court to record the agreement as an order of court.

- (2) The application must be made within —
 - (a) 4 weeks after the mediated settlement agreement has been reached; or
 - (b) such longer period as the court may allow.
- 30 (3) Subject to subsection (4), a court may record a mediated settlement agreement as an order of court if —

- (a) the mediation is administered by a designated mediation service provider or conducted by a certified mediator;
 - (b) the agreement is reduced to writing and signed by or on behalf of all of the parties to the mediated settlement agreement; and
 - (c) the agreement contains such information as may be prescribed.
- (4) The court may refuse to record a mediated settlement agreement as an order of court if —
- (a) it is brought to the attention of the court that the agreement is void or voidable on grounds of incapacity, fraud, misrepresentation, duress, coercion, mistake or other invalidating cause;
 - (b) the subject matter of the agreement is not capable of settlement;
 - (c) any of the terms of the agreement is not capable of enforcement as an order of court; or
 - (d) the making of the order would be contrary to public policy.
- (5) For the purposes of this section —
- (a) a reference to a mediated settlement agreement is a reference to a mediated settlement agreement that is entered into on or after the date of commencement of this section;
 - (b) where the subject matter of the dispute to which a mediated settlement agreement relates falls under the jurisdiction of a State Court, a Family Justice Court or the High Court, a reference to a court is a reference to a State Court, a Family Justice Court or the High Court, respectively; and
 - (c) the requirement in subsection (3)(b) that a mediated settlement agreement must be reduced to writing is satisfied by an electronic communication if the information contained in that communication is accessible so as to be useable for subsequent reference.

Rules of Court

5 **13.** The Rules Committee constituted under section 80 of the Supreme Court of Judicature Act (Cap. 322) may make Rules of Court regulating the practice and procedure of the Court of Appeal, the High Court and the State Courts in respect of any matter under this Act.

Family Justice Rules

10 **14.** The Family Justice Rules Committee constituted under section 46 of the Family Justice Act 2014 (Act 27 of 2014) may make Family Justice Rules —

 (a) prescribing the classes of mediated settlement agreements that may be recorded as orders of court under section 12; and

15 (b) regulating the practice and procedure of the Family Justice Courts in respect of any matter under this Act.

Rules

20 **15.—**(1) The Minister may make such rules as may be necessary or expedient for carrying out the purposes and provisions of this Act and for prescribing anything that may be required or authorised to be prescribed by this Act.

 (2) The powers conferred by this section do not extend to any matter for which Rules of Court or Family Justice Rules mentioned in section 13 or 14 (as the case may be) may be made.

Related amendments to Legal Profession Act

25 **16.** The Legal Profession Act (Cap. 161, 2009 Ed.) is amended by inserting, immediately after section 35A, the following section:

“Sections 32 and 33 not to extend to mediation

35B.—(1) Sections 32 and 33 do not extend to —

30 (a) any certified mediator conducting any mediation to which, or in relation to which, the Mediation Act 2016 applies;

- (b) any mediator conducting any mediation to which, or in relation to which, the Mediation Act 2016 applies and which is administered by a designated mediation service provider;
- 5 (c) any foreign lawyer representing any party in any mediation that —
- (i) is conducted by a certified mediator or administered by a designated mediation service provider; and
- 10 (ii) relates to a dispute involving a cross-border agreement where Singapore is the venue for the mediation; or
- (d) any foreign lawyer registered under section 36P and representing any party in any mediation that relates to a dispute in respect of which an action has commenced in the Singapore International Commercial Court.
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(2) In this section —

20 “certified mediator”, “designated mediation service provider”, “mediation” and “mediator” have the same meanings as in the Mediation Act 2016;

“cross-border agreement” means an agreement in respect of which any one or more of the following circumstances exist:

- 25 (a) at least one party to the agreement is incorporated, resident or has its place of business outside Singapore;
- (b) the subject matter of the agreement —
- (i) is most closely connected to a place located outside Singapore; or
- 30 (ii) has no physical connection to Singapore;
- (c) the obligations under the agreement are to be performed entirely outside Singapore.”.

Related amendment to Supreme Court of Judicature Act

17. Section 17 of the Supreme Court of Judicature Act (Cap. 322, 2007 Ed.) is amended —

(a) by deleting the word “and” at the end of paragraph (e);

5 (b) by deleting the full-stop at the end of paragraph (f) and substituting the word “; and”, and by inserting immediately thereafter the following paragraph:

10 “(g) jurisdiction under the Mediation Act 2016 to record a mediated settlement agreement reached at a mediation, in relation to a dispute for which no proceedings have been commenced in a court, as a consent order.”; and

15 (c) by renumbering the section as subsection (1) of that section and by inserting immediately thereafter the following subsection:

“(2) In this section, “mediated settlement agreement” and “mediation” have the same meanings as in the Mediation Act 2016.”.

EXPLANATORY STATEMENT

This Bill seeks to enact a new Mediation Act to promote, encourage and facilitate the resolution of disputes by mediation and for purposes connected therewith. The Bill also seeks to make related amendments to the Legal Profession Act (Cap. 161) and the Supreme Court of Judicature Act (Cap. 322).

[The rest of the Explanatory Statement will be inserted when the Bill is finalised.]

EXPENDITURE OF PUBLIC MONEY

This Bill will not involve the Government in any extra financial expenditure.

Note: [wc/Mediation Bill \(v16.20\) clean](#)