

## EXECUTIVE SUMMARY

## RECOMMENDATIONS OF THE WORKING GROUP TO DEVELOP SINGAPORE INTO A CENTRE FOR INTERNATIONAL COMMERCIAL MEDIATION

## A. Background

1. In April 2013, The Honourable The Chief Justice Sundaresh Menon and the Ministry of Law appointed Edwin Glasgow CBE QC and George Lim SC, to co-chair a Working Group (“the WG”) comprising international and local experts (See **Appendix I** for composition of WG and its Terms of Reference) to propose plans to develop the international commercial mediation space in Singapore.
2. The growth of trade and investment within Asia in recent years has significantly enhanced the need for dispute resolution services, especially for cross-border commercial disputes. Singapore enjoys a trust premium, and is uniquely well placed, as a neutral venue with sound legal infrastructure, to provide the broad range of litigation, arbitration and mediation services increasingly required within the region. In addition, Singapore’s connectivity and geographical location are added conveniences.
3. In Singapore, litigation and arbitration services are well established. The Singapore Courts are internationally respected. Singapore is now widely recognised as the leading arbitration hub in Asia<sup>1</sup> and a base for international law firms as well as corporate counsel of MNCs within Southeast Asia and South Asia. The value-add of the legal services sector has grown by about 25 percent from \$1.5 billion in 2008 to an estimated \$1.9 billion in 2012.
4. In order for Singapore to become a focal point of dispute resolution in Asia, it is crucial for Singapore to build a credible offering of the entire suite of dispute resolution services. Developing international commercial mediation services and capabilities will ensure that commercial users of Singapore’s dispute resolution services can choose from the full spectrum of processes ranging from facilitative mediation to binding arbitration.
5. The WG believes that Singapore should take advantage of the current window of opportunity created by burgeoning trade and investment into Asia with the attendant need for trusted and efficient dispute resolution solutions, to build Singapore’s capabilities as a centre of excellence for international commercial mediation.

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<sup>1</sup> According to the White and Case 2010 International Arbitration Survey, Singapore is the third most preferred seat of arbitration in the world, behind London and Geneva, and on par with Tokyo and Paris. The Singapore International Arbitration Centre has also become the 4<sup>th</sup> most preferred arbitration institution behind the International Chamber of Commerce, the London Court of International Arbitration and American Arbitration Association/International Centre for Dispute Resolution.

6. In preparing its Report and in making its Recommendations, the WG has worked closely, and benefited from discussions with, both the Singapore Mediation Centre (SMC) and the Singapore International Arbitration Centre (SIAC).

## **B. Recommendations**

7. The WG has made 6 key recommendations:

- a) Quality Standards. Establish a professional body to set standards and provide accreditation for mediators;
- b) International Mediation Services. Establish an international mediation service provider which will work closely with the SIAC and will offer as part of its service offerings, a quality panel of international mediators and experts, as well as user-centric innovative products and services;
- c) Legislative framework. Enact a Mediation Act;
- d) Exemptions and Incentives. Extend existing tax exemptions and incentives applicable for arbitration, to mediation;
- e) Judicial Support. Enhance rules and Court processes to encourage greater use of mediation; and
- f) Marketing and Promotion. Reach out to target markets and key industries to focus promotion efforts on the use of mediation services.

### **Recommendation 1: Establish a professional body**

8. To ensure professionalism and to raise standards in mediation, the WG recommends the setting up of a new independent non-profit entity called the Singapore International Mediation Institute (SIMI). It is proposed that SIMI could be formed as a collaboration involving the International Mediation Institute<sup>2</sup> (IMI) and the National University of Singapore (NUS).

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<sup>2</sup> The IMI was established as a charitable foundation in The Hague in 2007. IMI develops global professional standards for experienced mediators, advocates and others involved in collaborative dispute resolution processes. IMI also convenes mediation stakeholders to address the needs of users and promote understanding of mediation. As a professional mediation body, IMI does not offer or provide billable services. The Chair of IMI's Board is always a representative of the user community, and users make up half of IMI's Board appointments. IMI's current Chair is Deborah Masucci, Head of the Employment Dispute Resolution Program at American International Group, Inc. Other corporations such as Hess Services UK Ltd., General Electric, Nestle, Northrop Grumman and Shell International are also represented. The Board also comprises individuals from various bodies such as American Arbitration Association/International Centre for Dispute Resolution, International Chamber of Commerce, JAMS, SMC, SIAC, Bahrain Chamber for Dispute Resolution and Netherlands Mediation Institute. IMI's Advisory Council, comprising prominent mediation thought leaders in the world, provides guidance as needed. The Chair of the Advisory Council is Lord Woolf. The operations are run by an Executive Director and Operations Manager. IMI has also appointed an Independent Standards Commission of 70 mediation thought leaders in 27 countries. For more information on IMI, please refer to the IMI portal at [www.IMImediation.org](http://www.IMImediation.org)

9. The role of SIMI will be to act as the professional body for mediation in Singapore. SIMI would certify the competency of mediators, apply and enforce world-class standards of professional ethics, require continuing professional development for SIMI accredited mediators, deliver impartial information about mediation and make tools available to assist parties to make basic decisions about mediation. To maintain its impartiality, neutrality and independence, SIMI would not provide mediation services and would not be associated with any mediation service provider.

**Recommendation 2: Establish an international mediation service provider**

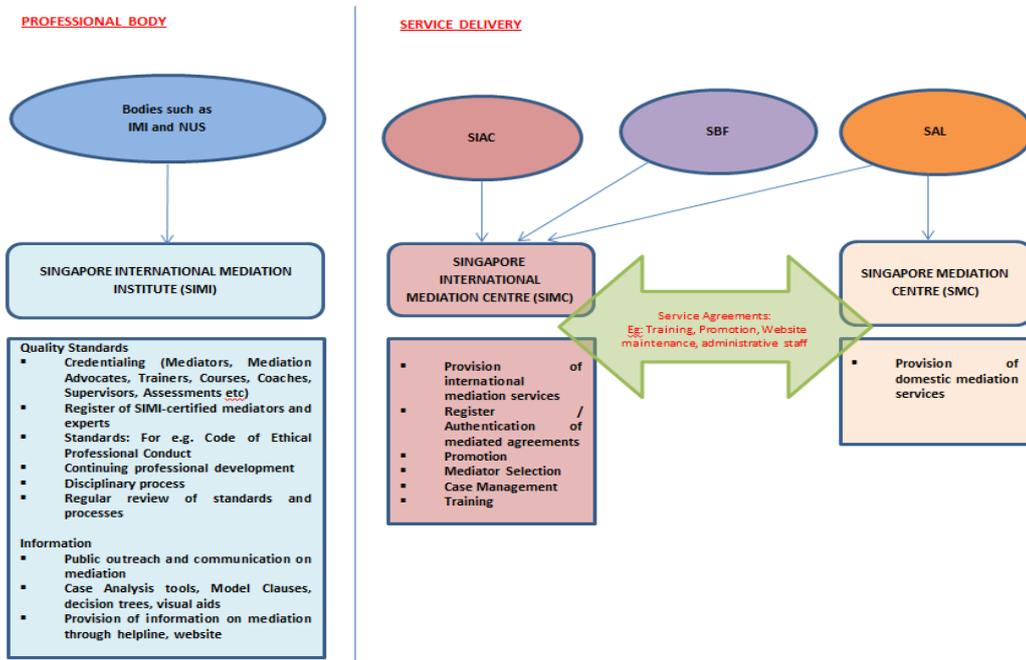
10. To spearhead the provision of best-of-class international commercial mediation services, the WG recommends the setting up of a new entity called the Singapore International Mediation Centre (SIMC) with subscribers such as the Singapore Academy of Law (SAL), Singapore Business Federation (SBF) and SIAC.
  11. To ensure a world class service, the WG recommends that SIMC should have an International Board, a panel of high quality international mediators whose competency is certified by SIMI and a panel of technical experts/specialists.
  12. The WG recommends that SIMC should provide differentiated mediation products and services which could include the following:
    - a) **Case management service and flexible mediation venue.** SIMC could offer case management and administration services. It could also provide a convening service, to help bring parties to mediation and to assist them to understand the process. SIMC should provide mediation services at client convenience, including mediation at a venue of the parties' choice, where appropriate;
    - b) **Deal making service.** A mediator would interface at the deal making stage of negotiations to support the parties when any major deal is contemplated, to avoid potential issues which may lead to disputes and help parties to negotiate a more sustainable deal;
    - c) **Post-merger facilitation.** Similar to deal making, a mediator would be engaged to maximise cooperation and mutual benefit from mergers, for conflict prevention and avoidance purposes;
    - d) **Dispute process design service.** SIMC could assist users to develop appropriate processes to manage disputes effectively, including Dispute
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Boards to monitor projects, encourage dispute avoidance and assist in dispute resolution;

- e) **Online dispute resolution service.** SIMC could develop a service framework for leveraging technology to resolve disputes more efficiently;
- f) **E-dossier.** SIMC could compile an unpublished e-dossier of profiles, or “e-CVs” of experienced mediators, containing standardised pre-determined information about the mediator, including a feedback digest. This allows parties to have an objective and credible list of mediators to aid their selection process; and
- g) **Designating Authority.** SIMC could upon parties’ request, act as a designating authority to select the most appropriate mediators where the parties are unable to agree on a selection or require special assistance.

13. While SIMC will drive the development of international commercial mediation, the SMC will continue to retain its current focus on domestic and/court-annexed mediation. To ensure collaborative synergies are maintained between both entities, the WG recommends that formal and mutually-supportive Service Agreements be entered into between the two institutions.

14. The recommended structure is set out in the diagram below:



### **Recommendation 3: Enact a Mediation Act**

15. The WG recommends that a Mediation Act should be introduced to help strengthen the framework for mediation in Singapore and provide certainty for users where the position in law is unclear. The Mediation Act should have regard to the following:

- a) **Scope of Application.** The Mediation Act should apply to mediations partly or wholly conducted in Singapore, unless otherwise agreed by parties;
- b) **Stay of Proceedings.** Provision should be made for stay of proceedings pending a mediation outcome (mirroring the provision for stay of proceedings for arbitration cases), to ensure that parties' legal positions are preserved and to remove disincentives from mediation;
- c) **Enforcement.** Mediated settlement agreements are typically enforced as contractual obligations where there was a breach of the mediated settlement. To strengthen the enforceability of mediated settlements, provision could also be made to allow mediated settlements conducted in Singapore to be enforced as an Order of Court. To give effect to this idea, a mechanism for enforcement would need to be worked out. For instance, a system for registration of mediation agreements with the SIMC might need to be introduced, such that only registered mediation agreements could be enforced in this manner;
- d) **Confidentiality & Privilege/Admissibility.** Provision should be made to clarify the position on confidentiality and privilege in the context of mediation and the circumstances under which communications made in the course of a mediation session are protected. It is recommended that statutory provisions could be introduced to ensure the preservation of confidentiality between parties, between parties and third parties, and between parties and the Courts; and
- e) **Transitional provisions.** If the recommendation to establish SIMC as a separate entity is implemented, certain transitional provisions would need to be made for mediation clauses in international commercial contracts referencing SMC to be deemed as references to SIMC.

16. Existing Legal Profession Act (Chapter 161) exceptions applicable to arbitration should be extended to mediation. The Legal Profession Act (section 35) currently makes clear that participation in arbitration proceedings involving Singapore law (eg. as an arbitrator) does not amount to unauthorized practice of Singapore law. Separately, Rule 14 of the Legal Profession (International Services) Rules 2008 allows Foreign Law Practices to practise Singapore law

(eg. craft in arbitration clauses with Singapore as seat of the arbitration) in the limited context of international commercial arbitration through Singapore-qualified lawyers working in such entities. It is proposed that to the extent practicable, similar exceptions should extend to the mediation context, and SIMI certified mediators should enjoy the same legislative protections as arbitrators

#### **Recommendation 4: Extend existing tax exemptions and incentives to mediation**

17. The WG proposes that existing tax incentives currently applicable to arbitration, for instance, the Withholding Tax Exemption for Non-resident Arbitrators and the International Arbitration Tax Incentive, could, where appropriate, be extended to the conduct of mediations in Singapore.

#### **Recommendation 5: Enhance rules and Court processes**

18. The WG recommends that support for mediation could also be enhanced by rules ensuring that parties adequately consider it as part of the dispute resolution process. For instance, Order 59, Rule 5 of the Rules of Court which provides that the Court could take into account parties' action in relation to Alternative Dispute Resolution (ADR) when deciding on costs, could be more rigorously enforced in relation to mediation.
19. A Practice Direction could be introduced to provide that parties should together with their counsel, be required to attend a session at the Summons for Directions stage where the presiding Assistant Registrar could explore with the parties their ADR options in the context of discussing the cost implications of proceeding to trial. This would assist the parties in making an informed decision about how best to manage their dispute and costs.

#### **Recommendation 6: Reach out to target markets and key industries**

20. The WG recommends that promotional efforts for mediation should target emergent regional markets such as Brunei, Cambodia, Laos, the Pacific Islands, Philippines, Myanmar, Sri Lanka and Vietnam, and international markets such as China, India, Indonesia, Japan, South Korea and the Middle East.
21. In terms of industry segments, the WG recommends that mediation could be useful in key industries such as construction, manufacturing, shipping, aerospace, IT, Intellectual Property, financial services and extractive energy (oil & gas, mining).

## **C. Conclusion**

22. The WG believes that the recommendations made in this Report would help to augment Singapore's position as a leading dispute resolution venue. If accepted by the Singapore Government, the WG suggests that the recommendations be implemented as soon as practicable.

## Appendix I

In April 2013, The Honourable The Chief Justice Sundaresh Menon and the Ministry of Law convened a Working Group under the co-Chairmanship of Edwin Glasgow CBE QC and George Lim SC, to advise in accordance with the following Terms of Reference:

*To assess and make recommendations on how to develop Singapore into a centre for international commercial mediation, having regard to the current development of mediation in Singapore, and to Singapore's position as a prominent international business centre.*

*In particular, to study and make recommendations in relation to (but not limited to) the following key areas, which have a long-term impact on the commercial mediation sector:*

- a) Matters pertaining to mediation service providers, in particular the conceptualisation of an organisation that would spearhead the promotion of Singapore as an international mediation hub;*
- b) Examining the need and extent to which the practice of mediation should be professionalised in Singapore, through standards and a system of accreditation;*
- c) Assessing the need to develop a legislative framework to support international commercial mediation;*
- d) Identifying infrastructure needed to develop Singapore into a global and regional centre for commercial mediation; and*
- e) Proposing other measures or initiatives to support mediation activity in Singapore.*

In addition to the Co-Chairs, the WG comprised the following members:

- a) Professor Nadja Alexander, Mediator and Director of the International Institute of Conflict Resolution, Hong Kong Shue Yan University; Senior ADR Consultant, World Bank Group;
- b) Professor Lawrence Boo, Head, The Arbitration Chambers, Singapore;
- c) Ms Josephine Hadikusumo, Regional Legal Counsel, Texas Instruments Singapore; Practising mediator, Singapore Mediation Centre;
- d) Mr Michael Leathes, Former in-house counsel with international corporations; Director of the International Mediation Institute, The Hague;
- e) Associate Professor Joel Lee, Vice-Dean, National University of Singapore Law Faculty; mediator and Training Director of Singapore Mediation Centre;
- f) Mr Lok Vi Ming SC, President, The Law Society of Singapore; Partner, Rodyk & Davidson LLP; Mediator, Singapore Mediation Centre; and
- g) Ms Valerie Thean, Deputy Secretary, Ministry of Law.