

INTRODUCTION TO SINGAPORE AND ITS LEGAL FRAMEWORK

(1) Overview of Singapore's legal system

(a) What is Singapore's legal system based on? For example, is it based on the civil or common law system, or a hybrid of the two?

1. Singapore's legal system is based on the common law system. The litigation process is therefore largely adversarial, as opposed to being inquisitorial, which is a common feature in the civil law system.

(b) How are the courts structured? Are there specialist courts like family courts or constitutional courts? To what extent is the JDR process implemented?

2. The Singapore Judiciary is made of the Supreme Court, the State Courts and the Family Justice Court:

- (a) The **Supreme Court** consists of the Court of Appeal and the High Court. The High Court consists of the General Division, the Appellate Division and the Singapore International Criminal Court.

- (i) The **Court of Appeal** is the apex court in Singapore. It hears all criminal appeals against decisions made by the General Division in the exercise of its original criminal jurisdiction. It also hears prescribed categories of civil appeals, such as appeals arising from a case relating to constitutional or administrative law, appeals arising from a case relating to the law of arbitration and appeals arising from a case relating to insolvency.

- (ii) The **Appellate Division of the High Court** hears civil appeals that are otherwise not allocated to the Court of Appeal. It does not have any criminal jurisdiction and does not hear criminal appeals.

- (iii) The **General Division of the High Court** hears both civil cases where the value of the claim exceeds \$250,000, and criminal cases where the offence is punishable with death or an imprisonment term exceeding 10 years. Matters which are heard in the General Division include admiralty matters, insolvency and bankruptcy matters, appeals from tribunals and criminal and civil appeals from the State Courts.

- (iv) The **Singapore International Commercial Court ("SICC")** hears international commercial disputes such as claims that are international and commercial in nature and cases related to international commercial arbitrations. The disputes have to satisfy certain conditions before they can be heard by the Singapore International Commercial Court.

- (b) The **State Courts** consist of several courts and tribunals. They include the District Court, the Magistrate's Court, the Coroner's Court, the Small Claims Tribunal, the

Community Disputes Resolution Tribunal, the Employment Claims Tribunal and the Protection from Harassment Court.

- (i) The **District Court** hears both criminal and civil cases. It hears criminal cases where the maximum imprisonment term does not exceed 10 years, or which are punishable with a fine only. It hears civil claims of more than \$60,000 and up to \$250,000 (or up to \$500,000 for claims for road traffic accidents or personal injuries from industrial accidents).
 - (ii) The **Magistrate's Court** hears both criminal and civil cases. It hears criminal cases where the maximum imprisonment term does not exceed 5 years, or which are punishable with a fine only. It hears civil claims not exceeding \$60,000 in value.
 - (iii) The **Coroner's Court** conducts inquiries into sudden or unnatural deaths or where the cause of death is unknown.
 - (iv) The **Small Claims Tribunal** hears claims not exceeding \$20,000 in value (or \$30,000 if both parties consent in writing) for certain disputes. They include disputes arising from a contract for the sale of goods or provision of services, disputes arising from a tort in respect of damage caused to property and disputes arising out of residential leases not exceeding 2 years.
 - (v) The **Community Disputes Resolution Tribunal** hears claims not exceeding \$20,000 in value arising out of disputes between neighbours involving unreasonable interferences with the enjoyment or use of places of residence.
 - (vi) The **Employment Claims Tribunal** hears claims not exceeding \$20,000 in value arising out of disputes between employers and employees involving salary or wrongful dismissal.
 - (vii) The **Protection from Harassment Court** hears cases specified in the Protection from Harassment Act, such as seeking protection orders against behaviour causing harassment, alarm or distress or against unlawful stalking.
- (c) The **Family Justice Courts ("FJC")** consist of the Family Court, the Youth Court and the Family Division of the High Court.
- (i) The **Family Court** hears all family-related cases, including divorce, probate and administration, maintenance, protection against family violence, deputyship, adoption, protection for vulnerable adults, guardianship and international child abduction.

- (ii) The **Youth Court** hears cases under the Children and Young Persons Act, including cases relating to family guidance, care and protection and youth arrest (namely criminal cases involving youth offenders).
 - (iii) The **Family Division of the High Court** hears family proceedings involving assets of more than \$5 million, probate matters where the value of the deceased's estate is more than \$5 million, appeals against decision of the Family Court or Youth Court and cases involving important questions of law or test cases.
- 3. The JDR process is implemented at all levels in all courts. All cases are actively managed from the start. Parties are strongly encouraged to attempt the various suite of dispute resolution modalities before proceeding to trial.
- 4. In the State Courts for example, the Court Dispute Resolution Cluster ("**CDRC**") actively manages all personal injury cases (arising out of workplace accidents, motor accidents and others), property damage cases arising out of motor accidents, professional negligence cases and cases arising out of other negligent torts. CDRC judges manage cases robustly, and employ a variety of strategies to achieve early, consensual outcomes between parties. The case management toolbox includes early neutral evaluation, judicial mediation, conciliation and a judge-directed negotiation process, undergirded by rigorous case management through which firm and realistic timelines are set by the judge to ensure that each case is managed in an efficient and timely manner, while allowing parties sufficient time for negotiations.
- 5. In addition, CDRC judges conduct judicial mediation and neutral evaluation for all types of civil claims, relational disputes and Magistrate's Complaints. These include contractual disputes, trust and related claims involving family members, harassment claims, neighbour disputes and other relational and community disputes.
- 6. More than 85% of all cases managed by CDRC judges are amicably resolved without trial.
- 7. Other clusters in the State Courts also actively engage in JDR. The Community Courts and Tribunal Cluster (which consists of the Employment Claims Tribunal, the Small Claims Tribunals, the Community Disputes Resolution Tribunal and the Protection from Harassment Court) ("**CCTC**") also conducts mediation. The judges in the Office of the Registrar (who manage civil matters) also engage in early neutral evaluation during the assessment of damages.
- 8. JDR is practiced in the Family Justice Courts and in the General Division of the High Court as well. In the General Division of the High Court every case is actively managed through pre-trial conferences. During these pre-trial conferences, directions and timelines are given for the expeditious resolution of the case. Where parties agree to submit the matter to mediation or neutral evaluation, the matter would usually be referred to the Singapore Mediation Centre. Mediation or neutral evaluation is not conducted "in-house", unlike in the State Courts.

9. In the FJC, the court may refer parties for mediation provided by the Family Dispute Resolution (“FDR”) Division. Parties may also request for mediation at any time. Mediation sessions are conducted by specially appointed judges, staff family mediators or volunteer legal professionals.
10. Since most of the JDR work in Singapore is done in the State Courts (save for the JDR work done in the FJC, which is a specialist court), the discussion of JDR in the rest of this note will focus on the JDR work done by the State Courts.

(2) Objectives of the JDR process

(a) What was the impetus for the introduction of the JDR process and the use of the dispute resolution modalities?

11. JDR in Singapore started due to necessity. There was a pressing need to clear the backlog of cases which had clogged up the Singapore court system by the late 1980s. At that time, courts took a largely hands off approach in managing cases on the basis that the litigation process was an adversarial process that should be driven by parties and the court’s role was limited to simply adjudicating the matter. However, it became clear that this was not a tenable position to take. It was important for courts to take a proactive role in managing cases to ensure they moved expeditiously and as far as possible could be resolved without a full trial. In tandem with other measures to clear the backlog such as pre-trial conferences and the introduction of the night courts, judicial mediation was introduced as one of the case management measures to facilitate the early resolution of cases without the need for a trial.
12. Thus, in 1994, judicial mediation was initiated as a pilot project in the then-Subordinate Courts (now referred to as the State Courts). This allowed for mediations in civil cases to be conducted by judges as part of the pre-trial management process. The project was a success, and in 1995, the Court Mediation Centre (subsequently renamed the Primary Dispute Resolution Centre) was established to formally institute the JDR process for civil cases.
13. Over the years, after the backlog of cases was cleared, the range of JDR tools was expanded from only providing judicial mediation, into a full repertoire, which included early neutral evaluation, conciliation and facilitated negotiations. All these JDR modalities were then integrated into the judicial process. This development allowed the curation of the appropriate solution for each case, relying on the most suitable JDR mode.
14. Since then, the State Courts has institutionalised the JDR process as a case management strategy to facilitate the resolution of civil, community and relational disputes without the need for a trial. All these JDR modalities are utilised during the JDR process, undergirded by the robust management of the case.

15. To underscore the importance of the JDR process in the administration of justice, the State Courts Centre for Dispute Resolution was established in 2015 as a separate Justice Division, to focus on the management of cases to achieve early resolution of disputes, using the whole suite of JDR modalities. The State Courts Centre for Dispute Resolution has since been re-named to the State Courts' Court Disputes Resolution Cluster.

(b) What are the objectives and key outcomes of the JDR process?

16. The objective of the JDR process is to amicably resolve court cases and disputes as early as possible within the judicial process, without the need for trial, through pro-active judge-led management of cases. Resolving cases amicably at an early stage leads to the following positive effects:

- (a) Parties can save time and costs which would otherwise be spent to litigate the matter
- (b) Valuable court time and trial resources are saved
- (c) Parties avoid the uncertainty over the outcome of the trial
- (d) Parties have autonomy and control over the outcome, instead of having a decision imposed on them by an adversarial trial process
- (e) An amicable resolution of the case can preserve the relationship between the parties

(3) Legal framework for the JDR process

(a) What is the source of the court's authority to implement the JDR process, including the use of dispute resolution modalities (eg, legislation, rules of court, practice directions, convention, inherent jurisdiction of the court, case law etc)?

17. The court's authority for JDR is derived from Order 5 of the Rules of Court 2021 (which comes into operation on 1 April 2022) ("ROC 2021"). Order 5 of ROC 2021 is as follows:

ORDER 5

AMICABLE RESOLUTION OF CASES

Duty to consider amicable resolution of disputes (O. 5, r. 1)

1.—(1) A party to any proceedings has the duty to consider amicable resolution of the party's dispute before the commencement and during the course of any action or appeal.

(2) A party is to make an offer of amicable resolution before commencing the action unless the party has reasonable grounds not to do so.

(3) An offer of amicable resolution in this Order means making an offer to settle the action or appeal or making an offer to resolve the dispute other than by litigation, whether in whole or in part.

(4) A party to any proceedings must not reject an offer of amicable resolution unless the party has reasonable grounds to do so.

Terms of amicable resolution (O. 5, r. 2)

2.—(1) An offer of amicable resolution and any rejection must be in writing.

(2) An offer of amicable resolution must be open for acceptance within a reasonable period of time and in any case, for at least 14 days, unless the parties otherwise agree.

(3) The terms of an offer that has been made and not accepted must not be relied upon or made known to the Court until after the Court has determined the merits of the action or appeal and is dealing with the issue of costs.

(4) Any offer of amicable resolution which does not state an expiry date expires once the Court has determined the merits of the action or appeal to which it relates unless the offeror has stated otherwise.

Powers of Court (O. 5, r. 3)

3.—(1) The Court may order the parties to attempt to resolve the dispute by amicable resolution.

(2) In deciding whether to exercise its power under paragraph (1), the Court must have regard to the Ideals and all other relevant circumstances, including whether any of the parties have refused to attempt to resolve the dispute by amicable resolution.

(3) Without affecting the Court's power under paragraph (1), if a party informs the Court that the party does not wish to attempt to resolve the dispute by amicable resolution, the Court may order the party to submit a sealed document setting out the party's reasons for such refusal.

(4) The sealed document will only be opened by the Court after the determination of the merits of the action or appeal and its contents may be referred to on any issue of costs.

(5) The Court may suggest solutions for the amicable resolution of the dispute to the parties at any time as the Court thinks fit.

18. ROC 2021 applies to the Supreme Court (except for the SICC) and the State Courts. The Family Justice Rules (“FJC Rules”) apply to the FJC. The FJC Rules provide that the FJC when dealing with any matter shall adopt a judge-led approach. Amongst other things,

the FJC has the power to direct the parties to the proceedings to attend mediation or counselling.

19. In addition, the Practice Directions from the Supreme Court and State Courts coming into operation on 1 April 2022 (“**Supreme Court PD 2021**” and “**State Courts PD 2021**” respectively) provides for JDR. In particular, as the State Courts implements JDR for a large volume of cases, the State Courts PD 2021 provides for detailed provisions for the management of certain cases, as follows:
 - (a) PD 38 provides an overview of the judicial dispute resolution case management process (“**JDR CM process**”) and the use of court alternative dispute resolution modalities (“**Court ADR**”) for civil cases. Court ADR modalities include mediation, conciliation and neutral evaluation.
 - (b) PD 39 set out the JDR CM process for all personal injury claims and non-injury motor accident claims. Neutral evaluation is actively practiced for these cases, though other Court ADR modalities are also practised.
 - (c) PD 40 sets out the JDR CM process for medical negligence cases.
 - (d) PD 41 sets out the JDR CM process for all other negligence claims (excluding medical negligence, personal injury and non-injury motor accident claims).
20. Before ROC 2021, the court’s authority for JDR was set out in the earlier versions of the Rules of Court and the State Courts’ Practice Directions (“**Earlier ROC**” and “**Earlier State Courts PD**” respectively). Although their wording may be different from ROC 2021 or the new Practice Directions, the effect of the provisions is not very different. For example, under the Earlier ROC, the court’s power to conduct the JDR process is derived from Order 34A Rule 2 of the Earlier ROC. Pursuant to Rule 2(1), the court may, at any time before the trial of any action, direct parties to attend a pre-trial conference (“**PTC**”). Rule 2(2) then provides broad powers to the court in conducting the PTC, such that “the court may consider any matter including the possibility of settlement of all or any of the issues in the action or proceedings and require the parties to furnish the court with any such information as it thinks fit, and may also give all such directions as appear to be necessary or desirable for securing the just, expeditious and economical disposal of the action or proceedings”. Rule 2(3) allows the court to enter judgment or dismiss the action, if the parties fail to comply with any of the court’s directions given at the PTC. If, at the PTC, the parties are agreeable to settle the action, rule 2(6) allows the court to make the necessary judgment or orders to effect the settlement.
21. Under the Earlier State Courts PD, paragraphs 35 to 42 provide procedural guidance as to how, at the PTC, the judge-led JDR is conducted for all the various types of civil cases filed in the State Courts. Paragraph 35(2) allows for mediation, conciliation and neutral evaluation to be undertaken as mechanisms of the CDR process, and the procedure for these mechanisms are set out in paragraphs 41, 41A and 42 respectively. Paragraph 35(9) specifically provides for a presumption of JDR for all civil cases, such that the

appropriate JDR processes will be applied as a “first stop” for resolving the dispute, at the earliest possible stage.

- (b) **Are there specific legislation, regulations or other guidelines to enable or allow the judge presiding over the JDR process to carry out judicial mediation, early neutral evaluation or employ other related JDR modalities (which traditionally are not regarded as part of the role of the judge)?**

22. There are provisions which specifically provide for judicial immunity where the judge is presiding over the JDR process. For judges in the State Courts, this immunity is provided through Section 68(4) of the State Courts Act 1970, which states that no judge “shall be liable to be sued for an act done by him for the purposes of any mediation or other alternative dispute resolution process conducted by him,” provided that the act was done in good faith and did not involve any fraud or wilful misconduct. A similar provision exists in the Family Justice Act 2014, which applies to judges and mediators in the FJC.

(4) **Details of the JDR process**

(a) **Description of the JDR process**

- (i) What are the characteristics of the JDR process? Which dispute resolution modalities (eg, early neutral evaluation, judicial mediation) are practised?

23. In the State Courts, the JDR process undertaken by CDRC consists broadly of:

- (a) Case management work comprising of pre-trial management of all personal injury claims, property damage claims, professional negligence claims and other negligence claims (collectively, “**Negligence Claims**”). The process is referred to as the JDR CM process (see above at [19(a)]). The process is mandatory for Negligence Claims.
- (b) Judicial mediation, conciliation and neutral evaluation for cases that are referred to the CDRC. The process is referred to as Court ADR (see above at [19(a)]). These referrals can come from the parties, or from courts in other clusters within the State Courts. The nature of the claims referred to can include civil claims, relational disputes and Magistrate’s Complaints. The process is voluntary.

24. In respect of Negligence Claims, the JDR CM process is convened early on during which the court robustly manages the case up until trial. During the JDR CM process, the court would give timelines for the filing of pleadings, provision of discovery and the filing of witness statements. The court would often also provide early neutral evaluation (“**ENE**”). During ENE, the judge would review the parties’ pleadings, documentary evidence and other objective evidence, video recordings and photographs and provide a reasoned, non-binding, neutral evaluation of the merits of the case. If for any reason the court considers that ENE may not be suitable, the court may suggest that parties try to resolve the matter through other Court ADR modalities such as mediation or conciliation.

25. In judicial mediation, the judges adopt a problem-solving approach as mediators in facilitating a consensual outcome that meets the needs of parties, while maintaining control and direction over the mediation process. While there are established modalities of mediation, for example facilitative and evaluative, which are recognised as distinct styles of mediation, the approach adopted by the judge mediators at the State Courts is a balanced one. This approach entails a holistic assessment of where the parties' interests lie and how to assist them in bridging their differences, as well as coming together to explore and evaluate the alternatives, while engaging parties in reality testing and helping them to put forth a proposal that is mutually acceptable.
 26. In conciliation, parties seek guidance from the conciliator and taps on his experience and knowledge to suggest an optimal settlement for the parties. The conciliator actively suggests possible solutions and advises parties on how to resolve the dispute. Conciliation is generally more suitable for parties who would like more guidance and direction from the conciliator in the negotiation and settlement process.
 27. Neutral evaluation is a process whereby the parties mutually and voluntarily seek the assistance of an evaluator to evaluate their case on the merits and render a reasoned opinion that represents the evaluator's best estimate of the possible outcome of the case should the matter proceed to trial. The purpose of the evaluation is to provide the parties with a neutral, objective and realistic assessment of their respective legal positions in light of the available evidence and the applicable laws. This in turn would facilitate the parties in either reaching a final settlement that they can each accept as being right and fair (thereby avoiding going for trial), or in furthering their settlement negotiations. The ENE process described above at [24] is similar to neutral evaluation except that ENE takes place at a very early stage of the proceedings, before witness statements are filed.
 28. Oftentimes, the court may shift roles between a conciliator and mediator where necessary and if it would assist parties in coming to a resolution.
- (ii) How is the JDR process carried out? Is the JDR process conducted online? Are technological tools used to facilitate the JDR process?
29. In respect of the JDR CM process conducted for Negligence Claims, this is largely conducted asynchronously, by email. Parties are expected to write in to court with the directions they seek, and the court will respond with the necessary directions. ENE is also conducted in this way.
 30. Judicial mediation, conciliation and neutral evaluation can be conducted in person or virtually.
- (iii) Do judges conduct early neutral evaluation and judicial mediation or are these outsourced to third parties?

31. The judges in the CDRC in the State Courts conduct ENE and judicial mediation. In addition, the CDRC also taps into a pool of Court Volunteer Mediators to conduct mediations for certain type of cases. Court Volunteer Mediators are experienced mediators who have been appointed by the State Courts to complement the judges in managing civil and relational disputes.

(b) Eligibility criteria for the JDR process

(i) Is the JDR process mandatory or optional? Is it mandatory for certain types of disputes only?

32. In respect of certain categories of Negligence Claims (namely, personal injury claims and property damage claims arising out of motor accidents), the JDR CM process is mandatory. The JDR CM process also encompasses ENE.

33. As for judicial mediation, conciliation and neutral evaluation, these are optional, but it would be rare for parties to not have at least attempted some kind of ADR process before the matter proceeds to trial. It is not uncommon for parties to have attempted ADR before proceedings were commenced as well.

(ii) When would the court recommend JDR process to parties?

34. Where parties have not attempted any ADR (whether before proceedings are commenced or after), the court would recommend JDR. Where the costs of litigating the matter is likely to be disproportionate to the claims, the court would also recommend JDR.

(c) Training of judges conducting the JDR process

35. The judges conducting the JDR process have usually been judges for several years. They would therefore have significant judicial experience. They would normally also have experience in ADR, whether as judges or practitioners. As part of the induction process for new judges, they would have to attend training on ADR.

(d) Statistics on the JDR process

(i) Statistics and other empirical and qualitative data on the effectiveness of the JDR process, eg, percentage of cases disposed of through the JDR process, number of hearing days saved, etc

36. The settlement rate for the cases heard / managed by the CDRC in the State Courts has generally exceeded 80% over the last 6 years.

Year	No of cases concluded	Settled	Not settled	Settlement Rate
2016	5,790	5,099	691	88%
2017	5,248	4,665	583	89%

2018	5,949	5,282	667	89%
2019	6,629	5,707	921	86%
2020	6,795	5,610	1,185	83%
2021	5,352	4,276	1,076	80%

37. From June 2019, the CDRC in the State Courts has been tracking the success of judicial mediations based on (a) the value of the claim mediated, as well as (b) the number of trial days saved. For the period between 4 June 2019 and 31 December 2021, as a result of successful judicial mediations, a total of 1510 trial days were saved for cases where their claims were cumulatively valued at \$64,100,095.03. The breakdown of figures by month is as follows.

Month	No of cases mediated successfully	Total value of claim/counterclaim successfully mediated	No of trial days saved
Jun 19	15	\$2,458,131.75	45
Jul 19	32	\$2,817,919.68	86
Aug 19	24	\$2,987,319.28	67
Sep 19	39	\$5,642,768.67	90
Oct 19	32	\$3,082,367.70	88.5
Nov 19	20	\$1,237,153.32	51
Dec 19	4	\$568,997.91	11
Jan 20	26	\$2,165,320.96	61
Feb 20	26	\$2,653,852.16	71
Mar 20	15	\$1,730,805.02	33
Apr 20	1	\$70,134.05	2
May 20	1	\$149,260.90	2
Jun 20	15	\$1,764,300.94	46
Jul 20	27	\$2,237,103.34	61
Aug 20	20	\$1,772,385.46	50
Sep 20	31	\$3,784,103.28	91.5
Oct 20	22	\$1,922,104.95	56
Nov 20	15	\$2,456,694.77	42.5
Dec 20	20	\$2,498,563.57	53
Jan 21	18	\$2,402,105.31	43.5
Feb 21	19	\$1,648,682.59	47.5
Mar 21	22	\$2,930,065.25	58
Apr 21	19	\$3,512,237.76	48
May 21	15	\$2,056,275.82	70
Jun 21	9	\$548,663.90	21
Jul 21	9	\$998,485.90	28
Aug 21	13	\$958,530.38	24
Sep 21	20	\$3,181,432.10	49
Oct 21	19	\$1,682,798.33	47.5
Nov 21	17	\$1,324,300.85	43
Dec 21	8	\$857,229.13	23

Total	573	\$64,100,095.03	1510
--------------	------------	------------------------	-------------