PJSC's Opening Speech

INAUGURAL MEETING OF THE INTERNATIONAL JUDICIAL RESOLUTION NETWORK

"Strategies in Judicial Dispute Resolution: The Singapore Experience"

18 MAY 2022

Distinguished guests

Fellow colleagues

Ladies and gentlemen

A. Introduction

1 Greetings. I am delighted to be here with you at the inaugural International Judicial Dispute Resolution Network meeting.

2 The International Judicial Dispute Resolution Network (or "JDRN"), was established to allow a network of judiciaries to collaborate, exchange experiences, and advance the adoption of the judicial dispute resolution (or "JDR") process.

3 Every jurisdiction's journey in the JDR process is unique, and in a meeting like this, we benefit from learning about the best practices of every jurisdiction's experience.

4 On my part, I am happy to contribute by sharing the Singapore judiciary's experience with the JDR process in the management of our cases.

5 Before doing so, allow me to first provide a brief overview of the court system in Singapore.

6 The Supreme Court, which consists of the Court of Appeal and the High Court, sits at the apex of the Singapore judicial system.

7 The vast majority of cases in Singapore originate from and are dealt with in the State Courts – which comprise the civil, criminal and community courts, as well as a number of various tribunals.

8 We also have the Family Justice Courts which hear all family-related cases such as divorce and probate.

9 In my speech, I will focus on the case management measures and the use of Alternative Dispute Resolution (or "ADR") in the State Courts as part of our JDR journey. I will then briefly touch on the measures implemented in the other Singapore courts as well.

B. Case management and the use of ADR in the State Courts

10 Over the years, the State Courts have developed a number of case management strategies, including the use of Court ADR tools to manage cases more effectively. I shall touch on three of these strategies. They are:

(a) First, the proactive, pre-trial management of cases;

(b) Second, the use of pre-action protocols; and

(c) Third, the use of mediation in court.

(a) Pro-active, pre-trial management of cases

11 The first strategy – the pro-active, pre-trial management of cases, is most consciously applied to personal injury claims filed in the State Courts, under the "Court Dispute Resolution" (or CDR) process, as it is referred to in Singapore.

12 In such cases, the judge's clear mandate is to manage the dispute – as much as possible – towards an early, cost-effective and amicable resolution.

13 Through our pro-active, case management efforts, more than 80% of cases are settled through the CDR process. This helps to save parties' time and costs and avoid the uncertainty of trial. In that sense, the judges overseeing the CDR process are gatekeepers to the trial courts, helping to contain conflict, and control litigation costs.

14 Cases which are dealt with under the CDR process are fixed for what is known as a "Case Conference", after the Defendant files a notice of intention to contest the claim. Ever since the COVID-19 pandemic, these Case Conferences have been conducted asynchronously, by email, such that physical hearings are mostly dispensed with.

15 One of the judge's most important tasks during the Case Conference is to conduct an Early Neutral Evaluation (or "ENE"), to assess liability and quantum of damages. During the ENE process, the judge, after considering each party's account of events, supporting evidence and legal authorities, will give the parties an evaluation of the likely apportionment of liability between the parties, should the matter proceed to trial. This gives the parties an early, objective and realistic

assessment of the likely outcome at trial. We have found ENEs to be very effective, in assisting parties in their settlement negotiations.

16 The judge may also refer the matter to mediation if that would assist parties to resolve the matter. Timelines are also set by the Judge for parties to negotiate. Where parties' positions are close but no resolution has been reached, the court may schedule a Case Conference to understand the reasons preventing a settlement, and suggest solutions to break the impasse.

17 This is the extent to which our judges are involved, in the pro-active, pre-trial management of cases.

(b) Pre-action protocols

18 The second strategy I wish to share is the use of pre-action protocols, for specific cases heard in the State Courts.

19 Pre-action protocols refer to the series of steps parties *are required to* take, including the exchange of documents and negotiation, before a case can be commenced in court.

20 These pre-action protocols are used for specific cases, such as motor accident cases, personal injury cases and medical negligence cases.

21 Pre-action protocols are used in such cases because we have observed that the amount of resources parties spend litigating these cases *in court* are often significantly disproportionate to the value of their dispute.

22 The pre-action protocols are thus designed to help parties save time and costs, by incentivizing them to – and improving their chances

of – reaching an amicable settlement, through informed negotiations, thereby obviating the continuance of court proceedings, which are often to the financial and emotional detriment of both parties.

(c) Mediation in court

23 I now move on to our third strategy – the use of mediation in court.

24 As you would be familiar, a mediator plays a very different role from that of a judge, as traditionally understood. In our courts, mediators are assigned at an early stage to assist parties to understand each other's concerns, and the implications of going for a trial, in the event no settlement can be reached. If a trial cannot be avoided even after mediation, the matter will be fixed before a different judge for trial.

25 Our mediations are conducted by both experienced trial judges trained in mediation, as well as volunteer mediators. Most of our volunteer mediators are lawyers who have been accredited and have extensive experience in mediation. By tapping on this pool of volunteer mediators, we are able to meet the increasing demand for mediation services, as part of the JDR process.

26 To further promote the use of mediation and ADR generally, the State Courts had introduced the notion of, I quote, a "presumption of ADR" for all civil cases, as early as 2012. Under our Practice Directions, parties are required to consider, at the earliest possible stage, appropriate ADR processes to resolve their dispute. The court will also refer suitable cases for ADR as a matter of course.

C. Case management and ADR measures in the Supreme Court and the Family Justice Court

27 Having shared the JDR strategies the State Courts employ, let me briefly touch on the case management and ADR measures which are implemented in the Supreme Court, and the Family Justice Court.

28 In the High Court, active and robust case management through pre-trial conferences (or "**PTCs**"), were introduced in 1992. During PTCs, cases are closely monitored, and the court ensures timelines are strictly complied with, and where necessary, by issuing peremptory orders.

29 The High Court also encourages and refers appropriate cases for mediation to the Singapore Mediation Centre. When parties opt for mediation, the Court supports this election by giving directions to facilitate mediation, by setting the time frames for mediation to be initiated and completed, and scheduling court timelines to allow for the mediation to take place.

30 It is now stipulated in the Practice Directions of the Supreme Court of Singapore that it is the professional duty of advocates and solicitors to advise their clients about the different ways disputes may be resolved using ADR, as well as to advise their clients on potential adverse costs orders for unreasonable refusal to engage in ADR.[1]

31 This ethos is now enshrined as well in Order 5 of our new Rules of Court (which came into effect in April this year). Order 5 states that a party has a *duty* to consider amicable resolution of the dispute before the commencement of proceedings and during the course of the

[1] Para 35B(2), SupCourt PD 2013; Para 53(2), SupCourt PD 2021.

proceedings.[2] A party is to also make an offer of amicable resolution *before* commencing the proceedings unless he has reasonable grounds not to do so.[3] Order 5 also gives the court the power to order parties to attempt ADR.[4]

32 Mediation is also a central feature in the Family Justice Courts. It is mandatory for divorcing couples with children under the age of 21,to first attend mediation. Judges are also empowered to order parties to attend mediation and counselling in other cases.

D. Conclusion

33 I hope that through my short presentation today, you have an overview of the Singapore experience in implementing the JDR process. The JDR process has been key in our ability to manage and dispose cases in a timely and effective manner.

34 The JDR process has allowed the majority of our cases to be resolved without the need for a trial. It also ensures that even for cases that cannot be resolved at the pre-trial stage, we are able to fix trial dates within a reasonable time.

35 Notwithstanding the successes which the JDR process has allowed us to reap, my colleagues and I in Singapore sincerely believe that there are still many areas for improvement.

36 In that regard, there is certainly much we can, and want to, learn, from the collective wisdom and experience of the founding members of the JDRN.

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[2] Order 5, Rule 1(1) of ROC 2021.
[3] Order 5, Rule 1(2) of ROC 2021.
[4] Order 5, Rule 3(1) of ROC 2021.

37 We look forward to the various discussions which will follow.

38 Thank you very much.