LITIGATION CONFERENCE 2024

DAY 2 KEYNOTE ADDRESS

Aspiration and Adaptation: Themes of our Modern Litigation Landscape

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The Honourable Justice Chua Lee Ming,
Distinguished guests,
Ladies and gentlemen,

1. Good morning. I thank the Law Society for the invitation to address you this morning. I trust you had a fruitful first day of the conference exploring the opportunities and risks of our technology-enabled future. As you would all be aware by now, this year marks the 10th anniversary of the Litigation Conference. Over the past decade, the conference has been a key platform for dispute resolution practitioners to keep up with trends, broaden our skill set, and build our network. On this milestone edition of the conference, I wish to take this opportunity to reflect on how the practice of litigation has evolved in recent years, and the shifts in mindset and approach that are needed for litigators to thrive in our civil justice system today.

2. Our civil justice system underwent a radical makeover in the form of the

Rules of Court 2021[1] and SICC Rules 2021[2], both of which came into force on 1 April 2022, just over two years ago. Both sets of rules were ambitious projects that set out to modernise the litigation process and cultivate new norms for the practice of litigation in Singapore. The Rules of Court 2021 was a product of the work of the Civil Justice Commission led by The Honourable Justice of the Court of Appeal Tay Yong Kwang. Having been a member of that Commission, which also included Justice Chua Lee Ming, I can attest to the words of the Honourable Chief Justice Sundaresh Menon when he remarked that the Rules of Court 2021 are "*a product of blue-sky thinking and reflect our earnest desire to modernise our civil justice system*" and that they "*transform the entire civil litigation process*".[3]

3. The Rules of Court 2021, which I shall refer to as the "2021 Rules", are guided by five Ideals: (a) fair access to justice; (b) expeditious proceedings; (c) cost-effective work that is proportionate to the nature and importance of the action as well as the complexity and value of the claim; (d) efficient use of court resources; and (e) fair and practical results suited to the needs of the parties.[4]

4. The SICC Rules 2021, which I shall refer to as the "SICC Rules", which apply to proceedings in the Singapore International Commercial Court ("**SICC**"), are likewise guided by General Principles, of which there are four, namely: (a) expeditious and efficient administration of justice according to law;

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[1] Rules of Court 2021 ("**ROC 2021**"), also referred to as the "2021 Rules" in this address.
[2] Singapore International Commercial Court Rules 2021 ("**SICC Rules**").
[3] The Honourable Chief Justice Sundaresh Menon, Foreword to *Singapore Rules of Court: A Practice Guide* (Chua Lee Ming and Paul Quan eds) (Academy Publishing, 2023) ("***Singapore Rules of Court: A Practice Guide***") at p vii.
[4] ROC 2021, O 3 r 1(2).

(b) procedural flexibility; (c) fair, impartial, and practical processes; and (d) procedures compatible with and responsive to the needs and realities of international commerce.[5]

5. Together, these Ideals and General Principles capture the aspirations of Singapore's modern civil justice system, while each suitably contextualised to our domestic and international practices respectively. They encapsulate the values that are important to our already well-functioning legal system. And they are worthy of being aspirations not only for the judiciary, but also for all litigation practitioners. It is essential therefore that, as the judges and practitioners that must live and breathe this civil justice system as part of our daily business, we must understand the thinking and philosophy behind the procedures that have been designed. We then need to adapt our conduct of litigation to the imperatives of this new system.

6. In this address, I will explore three themes in the procedural architecture that forms our modern litigation landscape. I will examine them first in the domestic context and then more briefly in the international context. These themes are:

a. First, a recognition that party autonomy must be bounded by strong judicial control of the litigation process.
b. Second, a conviction that justice requires not simply *just outcomes* but also *efficient processes* that are *proportionate* to the complexity and

[5] SICC Rules, O 1 r 3(1).

importance of the case.

c. Third, an emphasis on *appropriate* dispute resolution, such as mediation, which should not be seen as merely inferior *alternatives* to litigation.

I. Judicial Control of the Litigation Process

7. Let me begin with the first theme – judicial control of the litigation process. Judicial control over court proceedings is nothing new to practitioners today, but this was not always the case. We inherited from the British an adversarial system, which is underpinned by the concept of a dispute being decided by a passive, impartial, and non-interventionist court. The task of the presiding court was solely to adjudicate the issues presented to it by the parties whenever the case was ready for a hearing.[6] The pace and direction of litigation were matters that were entirely within the control of the parties. Today, we continue in this adversarial tradition, with all its merits for truth-finding through contestation. And we recognise that the historical basis of such a process was to give the parties the reins over how they wish to advocate for their clients.

8. A significant shift in this approach occurred in the 1990s when a wave of reforms was introduced by our courts to tackle a severe backlog of cases.[7] In the early 1990s, as Singapore continued to firmly establish itself as a regional

[6] Foo Chee Hock, Eunice Chua and Louis Ng, "Civil Case Management in Singapore: Of Models, Measures and Justice" (2014) ASEAN Law Journal 1 at 4–5.

[7] Eunice Chua and Lionel Leo, "Civil Procedure: Autochthony for Efficiency and Justice" in *Singapore Law: 50 Years in the Making* (Academy Publishing, 2015) (Goh Yihan & Paul Tan gen eds) ch 6 ("**Chua & Leo**") at paras 6.2 and 6.18–6.19.

commercial hub, there were more than 2,000 cases in the Supreme Court which had been set down for trial where the parties had to wait three years or longer for available trial dates.[8] That might sound astonishing to you but this was the reality that practitioners had to deal with at that time. More than 10,000 cases on the docket were inactive, and 44% of cases had a lifespan of between 5 to 10 years from commencement to disposal.[9] This unhealthy state of affairs was decisively turned around with a slew of reforms, of which the most effective was the implementation of active case management. The courts began using regular pre-trial conferences ("**PTCs**") to shepherd cases along toward a hearing.[10] They also introduced a regime of automatic discontinuance to remove dormant cases from the docket and ensure that parties move their cases with at least some semblance of urgency.[11] The progress of cases through the court system was rigorously monitored by tracking statistics such as clearance rates and waiting periods against stringent benchmarks[12] – a practice which continues till today.[13] Since that era, it has been recognised that parties' autonomy to conduct their cases as they think best, including the pace at which they think the case should proceed, must be balanced against the duty of the court to ensure that its machinery and resources are used fairly and optimally to serve the public interest in the administration of justice, which was seen as a fundamental obligation to our

[8] Lionel Leo, "Case Management: Drawing from the Singapore Experience" 2011 CJQ 143 ("**Leo**") at 145.
[9] Leo at 145.
[10] Leo at 151.
[11] Leo at 152–154.
[12] Leo at 155.
[13] *Singapore Courts Annual Report 2022* at pp 32–35, available at <https://www.judiciary.gov.sg/news-and-resources/publications/publication-details/singapore-courts-annual-report-2022> (accessed 25 March 2024).

society at large.

9. The 2021 Rules build on our previous reforms and take bold strides forward in the same direction. They significantly enhance the court's control over the litigation process in several ways. I will discuss three.

A. Case Conferences

10. First, the 2021 Rules introduced Case Conferences.[14] The Case Conference is to be "*the command centre which sets the timelines and the tone of the proceedings*".[15] The intention is twofold: first, to "*let the court take control right after an action is commenced instead of leaving the parties to determine the pace and intensity of the proceedings*"; and next, to grant the case conference registrars and trial judges "*maximum autonomy and flexibility in managing their cases*".[16]

11. How are Case Conferences different from the PTCs of old? One key difference lies in the enhanced case management toolkit provided by the 2021 Rules. For example, a list of issues must be drawn up by the parties at the court's direction, and this could be required from the very first Case Conference.[17] This is a "living list" that can be modified as the case progresses. This exercise forces

[14] ROC 2021, O 9 rr 1–2.
[15] *Singapore Rules of Court: A Practice Guide* at para 09.002.
[16] *Singapore Rules of Court: A Practice Guide* at para 09.005; see also Civil Justice Commission, *Civil Justice Commission Report* (29 December 2017) (Chair: Justice Tay Yong Kwang) ("**CJC Report**") at p 2, para 5.
[17] Supreme Court Practice Directions 2021 ("**SCPD 2021**"), para 56(5)–(6).

the parties to identify and refine the issues in the case from the earliest stages of the litigation.[18] This list can then be used as the common roadmap to determine interlocutory matters such as the scope of document production and the ambit of expert evidence required. The Single Application Pending Trial ("**SAPT**") is another powerful new tool that was introduced by the 2021 Rules. It requires counsel to focus, after document production is done, on what interlocutory relief is needed in preparation for trial, instead of waiting until the eve of the trial – an undesirable scenario which I am sure many of us have experienced. The SAPT also allows the court to forecast the interlocutory milestones that lie ahead before the trial.[19] Through its operation, the court is engaged in ordering the sequence of interlocutory matters sensibly, rather than leaving the parties to decide on the timing, sequence, and range of interlocutory applications.

12. Another key difference is the intention to involve Judges earlier during Case Conferences.[20] Under the old Rules,[21] it was not uncommon for the Judge to take stock of the case with the parties for the first time at the Judge-led PTC, which was held practically at the doorstep of the trial. From my experience as counsel and as a judge, by this very late stage, parties were often so entrenched in their positions, with the litigation having already consumed so much of their time and resources, and so geared up mentally for the trial, that they had neither the time

[18] Civil Justice Review Committee, *Report of the Civil Justice Review Committee* (26 October 2018) (Chair: Indranee Rajah SC) ("**CJRC Report**") at pp 20–21, paras 61–64.
[19] ROC 2021, O 9 r 9.
[20] CJRC Report, p 18 paras 56–58; SCPD 2021 at para 55(2).
[21] Rules of Court (2014 Rev Ed) ("**ROC 2014**"), referred to as the "2014 Rules" or "old Rules" in this address.

and inclination to even reconsider the approach to their cases, nor the will to genuinely explore alternative methods of resolution. Not only that, at that late stage, counsel are understandably less receptive to any comments from the Judge that there are gaps in their cases which might have to be plugged, or perhaps even, in some cases, necessary parties that have not been joined. Most counsel are wary of any possible vacation of trial dates caused by any amendments or joinder of new parties, which would mean adverse costs orders against their client. It is hoped that, with the involvement of the trial Judge at an earlier stage of the proceedings, the case can be more effectively managed from that earlier stage, when counsel is likely to be more prepared to change tack and reconsider their positions. This is ultimately for the benefit of their clients. This way, I believe more cases will be decided on their actual merits when they eventually get to trial, instead of on procedural mistakes or lapses by counsel.

B. Expert Evidence

13. A second way in which the 2021 Rules enhance the court's control is by subjecting the calling of expert evidence, and how it is to be done, to the court's approval. Parties no longer have complete autonomy to decide whether to call expert evidence; the court's permission is required, and the court will only grant approval where the expert evidence will contribute materially to the determination of any issue in the case, and that issue cannot be resolved by submission or

agreement.[22] Except in special cases, only a single expert can be called by a party on any one issue that requires expert evidence.[23] Further, the court is involved in settling the agreed facts and issues that will be presented to the experts and on which they will opine.[24] These changes are aimed at curtailing the potential wastage of time and costs from an indiscriminate (and sometimes, unthinking) use of expert evidence, while at the same time improving the quality and impartiality of expert evidence.[25] In short, the expert evidence should meet head-on and must actually assist the Judge in resolving the dispute between the parties.

C. Hearings and Trials

14. Third, the court has enhanced powers to control the conduct of the trial. There are express powers in the 2021 Rules that permit the court to directly question witnesses, including on issues outside the scope of pleadings, if necessary.[26] The court also has new powers to summon witnesses who have not been called by the parties, and also permit interested non-parties to give their views through submissions on specific issues that arise in the case.[27] Thus, Judges are equipped with the necessary powers to clarify points that are overlooked and ensure that parties get to the heart of the issues in an efficient

[22] ROC 2021, O 12 rr 2(1)–2(3).
[23] ROC 2021, O 12 rr 3(1)–3(2).
[24] ROC 2021, O 12 rr 4(1)–4(3).
[25] CJRC Report at pp 30–31, para 95; see also Justice Kannan Ramesh, "Expert Evidence: The Judiciary's Approach and Experience under the Rules of Court 2021", keynote address at the APIEx Symposium 2023 (21 November 2023) at paras 27–34, <https://www.judiciary.gov.sg/news-and-resources/news> (accessed 25 March 2024).
[26] ROC 2021, O 15 r 10(1).
[27] ROC 2021, O 9 r 22.

manner.

D. Flexibility

15. Although enhanced judicial control comes at the cost of party autonomy, the 2021 Rules balance this out with a high degree of flexibility to adapt or dispense with procedural rules so that justice can be done in every case. To allow this, a suite of flexible controls is housed in Order 3 rule 2 of the 2021 Rules. Order 3 rule 2(2) contains what has been called a "*gap-filling power*", which empowers the court to do whatever is right and necessary in a case where the rules do not specifically prescribe how to deal with a particular situation, so long as it is not prohibited by law and is consistent with the Ideals.[28] Further, the court has a discretion under Order 3 rule 2(1) to depart from the requirements of the 2021 Rules when it is in the interests of justice to do so. This may be done even where the requirements in the 2021 Rules are expressed in mandatory terms such as "must" or "shall". Finally, Order 3 rule 2(4) accords the court with flexible powers to determine the appropriate consequences for non-compliance with the 2021 Rules or the court's directions or other written law, including waiving the non-compliance altogether. While this degree of flexibility translates to some measure of uncertainty for parties and practitioners, the objective is that the court should not be hamstrung from doing justice when a strict application of the rules may lead to distorted results that compromise rather than advance the Ideals.

[28] *Singapore Rules of Court: A Practice Guide* at para 03.005.

16. What then does the greater judicial control under the 2021 Rules require from parties and lawyers? The aim is that the new procedures should nudge parties to carefully consider their case strategy and the key issues, as well as the supporting evidence they need, at an earlier stage in the proceedings. Subsequently, in progressing toward a hearing, counsel must cooperate with the court in keeping up with the directions. Counsel should also appreciate that the various case management tools and forms under the 2021 Rules were purposefully designed to aid the progress of the case; hence, they deserve thoughtful and considered, rather than perfunctory, responses. If counsel collaborate with the court in this manner, it is ultimately the litigants who will reap the benefits from these new case management processes.

II. Efficiency and Proportionality of Procedures

17. I move now to my second theme, which is the conviction that procedural justice requires efficient processes that are proportionate to the complexity and importance of the case. When one speaks of procedural justice, what often comes to mind is simply the fair conduct of a hearing before an impartial judge when the case eventually reaches trial or a hearing. Parties can then obtain just outcomes through the dispassionate application of the law to the facts of their case. But procedural justice is multi-faceted and must be ingrained into the litigation process from start to end.[29] It is not enough that the court process culminates in a fair

[29] See further on the importance of procedure and procedural design: The Honourable Chief Justice Sundaresh Menon, "Procedure, Practice and the Pursuit of Justice", keynote address at the Litigation Conference 2022 (5 May 2022) at paras 3–9, <https://www.judiciary.gov.sg/news-and-resources/news> (accessed 25 March 2024).

hearing. It must also deliver timely justice in a manner that is proportionate to the value of the claim and the means of the parties. If court processes are unnecessarily burdensome or complicated, or if court proceedings drain parties of their resources disproportionately, parties will often find that it is simply not worth their while to pursue justice. Moreover, in today's digital world, where transactions can be completed in a matter of seconds, it is hardly surprising that the demands and expectations of consumers of dispute resolution services have changed. Justice can no longer proceed at its own pace. Speed and efficiency are demanded.

18. While the court process cannot possibly promise justice at the click of a button, the 2021 Rules do speed up the litigation process in multiple ways. For instance, once litigation is commenced, the time within which an originating claim or originating application must be served in Singapore has been shaved down to three months.[30] If service is not effected expeditiously, and in any event by the second Case Conference, the court may dismiss the action.[31] That is just one example of a minor tweak that will have a significant effect on the pace of proceedings. But I wish to focus our attention on two more significant innovations in the 2021 Rules. These innovations aim to streamline the proceedings and eliminate some of the unfortunate excesses of litigation under the old Rules. They are: (a) the new approach towards disclosure of documents, now known as "document production" and what we all knew as "discovery" under the old Rules;

[30] ROC 2021, O 6 r 3(1)(*b*).
[31] ROC 2021, O 9 r 5; see also ROC 2021, O 6 r 3(4).

and (b) Affidavits of Evidence-in-Chief before document production.

A. Affidavits of Evidence-in-Chief ("AEICs") Before Document Production

19. I first deal with AEICs before document production. The 2021 Rules introduced a novel mechanism for possible re-ordering of the pre-trial processes. After pleadings are filed, parties *may* be ordered to file and exchange their AEICs before the production of documents.[32] This reflects a new principle under the 2021 Rules, which is that a claimant is to proceed on the strength of his own case, and not on the weakness of the defendant's case.[33]

20. The anticipated benefits of this change are threefold. First, parties are forced to apply their minds at an early stage to the core issues in their case and how they will go about proving their case. This ought to sharpen the lawyers' appraisal of the prospects of the claim or defence, and lead to more purposeful case management. Second, it minimises the risk of parties or witnesses tailoring their evidence in the AEICs to fit the documents obtained during the discovery process.[34] In this way, AEICs are more likely to be a more direct and authentic reflection of the facts that are within the witness' personal knowledge, as opposed to what opposing counsel and judges unfortunately grapple with far too often – a too lengthy AEIC, which is short on facts within the personal knowledge of the

[32] ROC 2021, O 9 r 8(1).
[33] *Singapore Rules of Court: A Practice Guide* at para 09.022.
[34] CJRC Report at p 21, para 67.

witness, but mostly a commentary on the documents produced by the opposing side, coupled with what is effectively submissions on the claimant's or defendant's case. Third, it is envisaged that the scope and scale of later document production will be greatly reduced after the witnesses have filed their AEICs. The process of filing the AEICs early will compel parties to make better forensic judgments about the admissible evidence available to support the claims. A review of the AEICs should also make clear what are the contentious areas where more documentary evidence may be needed. As a result, parties will more likely perform a more disciplined evaluation of the need for specific document production requests.[35] It will also be much easier for the court to determine the materiality of documents that are requested. All these factors will contribute to more focused pre-trial processes and a more expeditious trial.

21. This new approach of AEICs before document production will require parties to prepare their witness evidence and gather their admissible evidence before most, if not all, of the interlocutory processes come into play.[36] This is a paradigm shift for lawyers and parties. Understandably, this will almost certainly increase the costs of litigation at an earlier stage of the proceedings. However, this increased expense is expected to be more than recouped by greater savings in

[35] See *Armstrong Strategic Management and Marketing Pty Ltd v Expense Reduction Analysts Group Pty Ltd* [2012] NSWSC 393 at [66], remarking on a similar regime which was implemented in the New South Wales Supreme Court Practice Note No. SC Eq 11, "Disclosure in the Equity Division" (22 March 2012).

[36] Where the court makes an order under O 9 r 8(1), it will not exercise its powers to compel the production of requested documents until the order under r 8(1) has been complied with, except in a special case: see ROC 2021, O 11 r 3(3). Similarly, the court will not deal with the SAPT under O 9 r 9 until the parties have complied with an order made under O 9 r 8(1): see ROC 2021, O 9 r 9(1). See *Singapore Rules of Court: A Practice Guide* at para 09.022.

time and costs later down the line,[37] by the culling of untenable claims, the narrowing of the essential issues of fact that must be decided, the reduction in the scope of specific document production, and a shorter, less burdensome evidential hearing.

B. Production of Documents

22. A second profound innovation that will substantially change the way we practise is in the area of document production. As far as I can remember, our discovery regime under the old Rules had always been very costly and time-consuming. It required a *carte blanche* gathering in of every document that the parties had possession or custody of, or had power over, in connection with the issues in the claim or defence, without any judgment at all as to their probative value. The test was simply one of relevance. Often, whether out of prudence, or more often, for tactical reasons, parties would take an overly expansive view of what was relevant. With modern communications, and since the advent of electronic discovery in 2009,[38] the amount of data and electronic documentation given in discovery has exponentially increased. This technological advancement became a burden as it resulted in parties producing many gigabytes of data as part of general discovery, with the consequence that lawyers had to pore through endless pages of discovered documents to find what was truly material to the issues in dispute. The discovery process was liable to be abused to delay

[37] CJRC Report at p 23, para 70.
[38] Supreme Court Practice Direction No. 3 of 2009.

proceedings, or to harass or rack up costs for the opposing party. Harassment can be done by simply dumping on your opponent hundreds of thousands of pages of documents for him to review, all in the name of prudence and caution in complying with one's general discovery obligations. The legal costs involved in reviewing voluminous discovered documents may be entirely disproportionate to the importance and complexity of the dispute in the proceedings.

23. Under the new Order 11 of the 2021 Rules, general discovery now takes the form of "arbitration-style" document production where parties only disclose the documents that they intend to rely on in support of their case.[39] This is a sea change from having to trawl through your own client's documents to produce everything that might even be peripherally relevant. Correspondingly, it should also substantially reduce the time and costs expended in having to review documents produced by the other party. Document dumps by your opponents should be a thing of the past. To address the very real concern that this may allow opponents to hide documents that are adverse to their case, this "arbitration-style" disclosure has been supplemented by an obligation on parties to also produce all known adverse documents, which includes adverse documents that can be found through reasonable searches.[40]

24. Document disclosure has also been tightened by the introduction of a higher

[39] ROC 2021, O 11 r 2(1)(*a*).

[40] ROC 2021, O 11 r 2(1)(*b*); Civil Justice Commission and Civil Justice Review Committee, "Response to Feedback from Public Consultation on the Civil Justice Reforms: Recommendations of the Civil Justice Commission and the Civil Justice Review Committee" (11 June 2021) at paras 70, 73 and 75.

threshold for requests for specific document production.[41] The threshold has been raised to that of "materiality", which should be interpreted more stringently than "relevance" under the old Rules.[42] The burden is on the requesting party to show that the documents he is seeking will have a material bearing on the issues in the case. Specific disclosure requests for "train of inquiry" documents are not allowed, except in a special case.[43]

25. It is hoped that litigants and counsel will find that the new document disclosure regime frees them to focus on the real issues in their case and apply more careful thought to how to prove their own case. As for specific document production requests, counsel will need to exercise better forensic judgment as to the need for disclosure because such requests will have to be robustly justified under the new regime.

III. Appropriate Dispute Resolution

26. While every effort has been made to enhance the litigation experience, there remains a growing and well-founded appreciation that that the best outcome is sometimes not an adjudicated outcome achieved through litigation. This brings me to the third theme that I wish to address today. Alternative Dispute Resolution ("**ADR**") opens up the possibility of creative outcomes that transcend the binary results of litigation. It also has the potential to rescue the relationship between

[41] ROC 2021, O 11 r 3(1)(*b*).
[42] *Singapore Rules of Court: A Practice Guide* at para 11.012.
[43] ROC 2021, O 11 r 5(1).

warring parties by avoiding further entrenchment in a zero-sum fight.

A. The Gradual Rise of ADR

27. The use of ADR has increased tremendously in Singapore since its infancy in the 1990s. Court-based mediation commenced with the Court Dispute Resolution ("**CDR**") process introduced in the then-Subordinate Courts in January 1994.[44] Today, the CDR cluster at the State Courts continues to offer mediation, neutral evaluation and conciliation services to support a wide range of claims (such as motor accident claims, harassment claims and other selected civil claims).[45] Efforts to encourage parties to utilise ADR have been gradually making their way into the litigation process. In 2010, the State Courts introduced an ADR Form to promote the use of ADR by requiring parties to state the suitability of a case for ADR.[46] In 2012, the State Courts began triaging cases into a "Recommended ADR" track and a "General" track.[47] Subsequently, a simplified process for some claims in the Magistrate's Court was introduced in 2014, with a strong bent toward facilitating resolution without a trial.[48]

28. ADR was given a further boost when the Mediation Act 2017 was enacted to integrate mediation services with court services. Under the Act, mediation settlements by designated mediation service providers may be converted into a

[44] Chua & Leo at para 6.54.
[45] "State Courts' Court Dispute Resolution Cluster", <https://www.judiciary.gov.sg/alternatives-to-trial/state-courts-court-dispute-resolution> (accessed 25 March 2024).
[46] Subordinate Courts Practice Direction No. 2 of 2010; Chua & Leo at para 6.59.
[47] Chua & Leo at para 6.62.
[48] ROC 2014, O 108.

court order that is immediately enforceable.[49] This gives parties greater assurance that their mediated outcomes will be binding and enforceable. For cross-border disputes, a similar boost was achieved through the Singapore Convention on Mediation, which entered into force on 12 September 2020 and has been signed by 56 countries to-date.[50] The Convention is a multi-lateral treaty which allows parties to enforce a mediated settlement agreement across borders by applying to the courts of countries that have signed and ratified the treaty. Without this landmark treaty, such settlement agreements would only have the status of contracts and parties may have to re-litigate in a foreign jurisdiction to enforce the agreement. By offering a uniform framework for parties to easily enforce mediated settlements, the Convention is a significant step forward in the promotion of mediation as a means of resolving cross-border disputes.[51]

29. Increasingly, therefore, ADR is no longer viewed as a sidebar to litigation. Rather, the key is for parties to find a dispute resolution process that suits the nature of their dispute, the kind of relationship they enjoy, and their own values and priorities. Moreover, ADR can be suitable not merely for simple, small-value claims, but also for higher value, more complex, cross-border claims. This can be seen from the sizeable value of claims settled in the Singapore Mediation Centre ("**SMC**") and Singapore International Mediation Centre ("**SIMC**") in recent years.[52]

[49] Mediation Act 2017, s 12.

[50] See "Singapore Convention on Mediation", <https://www.singaporeconvention.org> (accessed 25 March 2024).

[51] Ministry of Law, "Singapore Convention on Mediation Enters into Force" (12 September 2020), <https://www.mlaw.gov.sg/news/press-releases/2020-09-12-singapore-convention-on-mediation-enters-into-force> (accessed 25 March 2024).

[52] The SMC has mediated more than 6,300 matters worth over $14 billion since 16 August 1997: see "About SMC", <https://mediation.com.sg/about-us/about-smc> (accessed 25 March 2024). In

It is quite clear that mediation has moved into the mainstream of our consciousness as litigators and is almost certainly one of the primary options to consider when parties have a dispute. Some might even say that it would be more accurate to describe mediation as a means of "appropriate dispute resolution", rather than the traditional nomenclature of "alternative dispute resolution".

B. Promotion of ADR under the 2021 Rules

30. The 2021 Rules augment our ongoing efforts at encouraging ADR in two main ways. First, they impose a mandatory obligation on parties to consider amicable resolution of the dispute *before* and *during* the course of any action or appeal.[53] While parties are familiar with the duty of counsel to consider the option of ADR in the course of the legal proceedings, what is more novel is that counsel now have to advise potential claimants on their duty to make an offer to resolve the dispute through amicable resolution even *before* the originating process is actually filed. Efforts, or lack of efforts, at amicable resolution may ultimately have an impact on costs orders made in the proceedings.[54] Second, the court is empowered to encourage and facilitate the settlement of disputes by parties through amicable resolution. This includes powers to suggest terms of settlement to the parties, which have been described as the "problem-solving" powers of the

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the SIMC, the total value of disputes filed between 2014-2022 was US$4.84 billion: see SICC and SIMC, "Singapore International Commercial Court Launches Mediation-Friendly Protocol with Singapore International Mediation Centre to Advance Singapore as Asian Hub for Dispute Resolution" (12 January 2023), <https://www.judiciary.gov.sg/news-and-resources/news> (accessed 25 March 2024).

[53] ROC 2021, O 5 r 1.

[54] ROC 2021, O 21 r 2(2)(*a*).

court, almost like what would happen in a conciliation.[55] Notably, the court may even issue directions to compel parties to attempt amicable resolution,[56] though this power is likely to be exercised only sparingly, in cases and circumstances where it would be appropriate to do so.

31. These enhancements in the 2021 Rules are laudable for various reasons. First, they give the court the flexibility to explore with counsel the possibility of ADR throughout the lifespan of the litigation, even up to an appeal. Often, it is after the commencement of legal proceedings, the filing of pleadings and document production, that the parties gain a greater appreciation of the strength of the claims in the dispute. Parties are then better positioned to come up with solutions that can meet the interests of *both* sides without completely negating the interests of one party or the other. Second, in appropriate cases, it may be a gamechanger to have parties hear the views of the court in encouraging them to consider ADR, or proposing solutions that the parties might consider in trying to resolve their dispute amicably. This move may assuage a party's reservations that initiating ADR may be perceived as a sign of weakness by their opponent. Third, even if ADR does not resolve the entire dispute, it may resolve parts of a dispute and narrow the scope of matters that require adjudication by the court. For example, parties can resolve their dispute on liability issues and litigate only on quantum of damages. This can still mean considerable savings in time and cost.

[55] ROC 2021, O 5 r 3(5); *Singapore Rules of Court: A Practice Guide* at para 05.006.
[56] ROC 2021, O 5 r 3(1).

32. With these advantages in mind, we really should rid ourselves of any notion that the court's involvement in encouraging ADR is an unwelcome interference into the way we want to conduct our cases in court. Instead, as counsel, we have a responsibility to our clients to find the most suitable and cost effective way to obtain a fair and just outcome. From the very outset therefore, counsel must advise clients on the possible modes of dispute resolution. And even after proceeding with litigation, this conversation must be revisited with the clients at appropriate junctures in the proceedings.

IV. Continuity under the 2021 Rules

33. Let me bring our discussion of domestic litigation to a close before I turn to the international sphere. The 2021 Rules were intended to be transformative and progressive. They have been hailed as an overhaul, and they will change our strategy and execution of litigation. However, it merits saying that the 2021 Rules have in fact retained many of the core principles underlying our pre-existing civil procedure. This should not come as a surprise since our system was functioning well and delivering results. So, where the court has had the occasion to decide issues of interpretation under the 2021 Rules thus far, there appears to have been more continuity than departure from the established principles of civil procedure under the old Rules. For example, the General Division of the High Court has held that the well-known principles relating to the consolidation of actions,[57] summary

[57] ROC 2014, O 4 r 1(1); ROC 2021, O 9 r 11.

judgment,[58] and striking out[59] under the old Rules continue to apply to the equivalent provisions in the 2021 Rules.[60]

34. An interesting example of such continuity may be found in the case of *Interactive Digital Finance Ltd v Credit Suisse AG*.[61] In that case, the 1st defendant filed and served on the claimant a Notice to Produce documents that were referred to in the claimants' pleadings, otherwise known as an "NTP". While the 2014 Rules had prescribed the procedure and form for an NTP, the 2021 Rules did not expressly provide for it. This led the claimants to argue that the NTP procedure was no longer applicable; and it was contended that, without the court's direction or approval, any application for production of documents had to be made as part of the single application pending trial. Justice Chua Lee Ming rejected this argument. He held that the principle underlying the NTP procedure remained relevant under the 2021 Rules – and this principle was that the requesting party should be conferred the same advantage as if the documents referred to had been fully set out in the pleadings.[62] Pursuant to its power under Order 11 rule 4 of the 2021 Rules to order a party to produce a copy of any document at any time, the court could make an order at a Case Conference for the production of documents referred to in the pleadings.[63] Thus, even though the 2021 Rules were silent on an NTP procedure, the fact that the court had the flexibility to deal with document

[58] ROC 2014, O 14; ROC 2021, O 9 r 17.
[59] ROC 2014, O 18 r 19(1) and O 41 r 6; ROC 2021, O 9 rr 16(1) and 16(4) and O 15 r 25.
[60] *Horizon Capital Fund v Ollech David* [2023] SGHC 164 at [36] and [58]; *Asian Eco Technology Pte Ltd v Deng Yiming* [2023] SGHC 260 at [11]–[21].
[61] *Interactive Digital Finance Ltd v Credit Suisse AG and another* [2023] 5 SLR 1735 ("***IDFL v Credit Suisse***").
[62] *IDFL v Credit Suisse* at [32]–[33].
[63] *IDFL v Credit Suisse* at [30].

production at any point in time allowed it to uphold the established principle behind allowing parties to issue such NTPs. So, while there is continuity in the sense that the underlying principle continues to apply, this case is also instructive for showing that the 2021 Rules achieved the same result not through exhaustive prescription but through one of its many provisions conferring maximum flexibility on the court.

35. All in all, the intent of the 2021 Rules was not to completely dismantle all the processes that had been developed through many years of practice, wisdom, and experience. Rather, its intent was to retain what was good and effective under the old Rules, while being forward-thinking and novel in the areas that needed to be improved to adapt to changing needs.

V. The Landscape for International Commercial Litigation in the SICC

36. Having explored domestic litigation under the 2021 Rules, I turn more briefly now to international commercial litigation in the SICC. The SICC is in its 10th year of operation since it was established in 2015. It hears: (a) cases of an international and commercial nature where the parties have submitted to the SICC's jurisdiction under a written jurisdiction agreement; (b) cases that have been transferred to the SICC from the General Division of the High Court; (c) proceedings relating to international commercial arbitration that the General Division of the High Court may hear under the International Arbitration Act 1994; and (d) proceedings relating to corporate insolvency, restructuring or dissolution under the Insolvency, Restructuring and Dissolution Act 2018 that are international and commercial in

nature.[64] The SICC has its own dedicated set of procedural rules that were designed for the resolution of complex international commercial disputes. They were carefully crafted based on lessons from the best practices and innovations from courts globally as well as the collective experiences of the SICC bench, which include, as I am sure you already know, a number of prominent foreign retired judges, foreign legal practitioners, and arbitration specialists, all of whom have extensive commercial dispute resolution experience.

37. Similar themes that mark the domestic landscape arise in relation to international commercial litigation in the SICC, with the necessary modifications to account for the SICC's international users and the complexity of its cases. I will briefly comment on each theme, beginning with judicial control.

A. Judicial Control and Party Autonomy

38. In the SICC, the balance between judicial control and party autonomy is tipped differently, and for good reason. Greater weight is placed on party autonomy, and in particular, autonomy over *procedural design*. This was an intentional decision to cater to the needs of court users from all over the world who may be more familiar with civil law systems or international arbitrations. If you think about it, party autonomy obviously had to be the imperative given that the value proposition of the SICC was for it to be a trusted, quality option for dispute

[64] Supreme Court of Judicature Act 1969, s 18D; SICC Rules, O 2 rr 1(1)–1(2) and r 4; O 23 r 3; O 23A r 2.

resolution targeted at commercial actors that would otherwise, in many cases, have chosen international arbitration as their preferred mode of dispute resolution.

39. With party autonomy in mind, and leaving aside cases involving proceedings under the International Arbitration Act and the Insolvency, Restructuring and Dissolution Act, litigants in the SICC may agree to choose one of three adjudication tracks:[65] (a) the Pleadings Adjudication Track;[66] (b) the Statements Adjudication Track;[67] or (c) the Memorials Adjudication Track.[68] The first two tracks should be familiar to most common law litigation practitioners. The Pleadings Adjudication Track generally follows the writ action procedure under the old Rules. The Statements Adjudication Track is the originating summons procedure under the old Rules. The Memorials Adjudication Track may require some explanation. In essence, it involves the filing of a claimant's memorial followed by a defendant's counter-memorial. These memorials set out the parties' factual account, their legal submissions on the facts and the law, and the reliefs claimed, including the amounts of all quantifiable claims. Together with the memorials, the parties must also file their witness statements, expert reports and documentary exhibits supporting their claim or defence.[69] The use of the memorials procedure is well established in international arbitration.

40. Having selected an adjudication track, the SICC Rules give parties immense

[65] SICC Rules, O 4 r 6.
[66] SICC Rules, O 6.
[67] SICC Rules, O 7.
[68] SICC Rules, O 8.
[69] SICC Rules, O 8 rr 2(1)–2(2).

flexibility to make procedural modifications according to their needs, but of course, subject to any directions from the court. Parties may modify the default procedures that apply to their chosen adjudication track.[70] They may also decide to modify the document disclosure regime, including by changing the timing and manner of disclosure or even dispensing with disclosure altogether.[71] The SICC also has power, where the parties agree, to disapply the rules of evidence under Singapore law, and to apply other rules of evidence proposed by the parties.[72]

41. Nonetheless, despite the breadth of procedural options offered to parties, there remains a strong emphasis in the SICC Rules on judicial control to guide the case through the court system expeditiously. Just as in the domestic rules, Case Management Conferences are a cornerstone of the proceedings, and the lead counsel or the counsel fully instructed on the matter is expected to attend.[73] To facilitate the efficient use of the first Case Management Conference for the initial directions for the case, counsel must agree in advance on the agenda and the directions to be sought (including the agreed adjudication track), attempt to agree on the real issues in dispute (including any preliminary issues), and also consider the suitability of the case for ADR.[74] While I would expect it to be rarely done, the court can override the parties' agreement as to which adjudication track the matter should proceed on. What is more likely to happen is that the court may modify aspects of the adjudication track to such extent as it considers appropriate to suit

[70] SICC Rules, O 4 r 6(3).
[71] SICC Rules, O 12 r 5(1).
[72] SICC Rules, O 13 rr 15(1)–15(2).
[73] SICC Rules, O 9 r 2(1).
[74] SICC Rules, O 9 r 3.

the needs and particular circumstances of the case.[75] At later case management conferences in the proceedings, as parties head towards a hearing on the claim, the court will expect counsel to have agreed on matters such as the list of issues to be determined at the hearing, and if there is to be a trial, a trial timetable to set out how much time parties will take with opening statements, and for cross-examination of each of the witnesses.[76] The SICC judges will expect counsel to adhere, as far as possible, to these timelines set out in the trial timetable. In the SICC, judicial control will be exercised to ensure that there is an expeditious but fair resolution of the dispute. This is what commercial parties expect from a commercial court, just as they do in international commercial arbitrations at established arbitral institutions, where there is often a relatively tight timeline for the evidential hearing, and from when the evidence is completed to when an award is expected to be handed down by the tribunal.

B. Efficient and Proportionate Process

42. Just as for the domestic rules of court, the objective of adopting efficient processes that are suited to the parties' needs is similarly central to SICC proceedings. This is expressly set out in the General Principles of the SICC Rules.[77] For this, we can look to two innovations in the SICC Rules which seek to enhance the efficient resolution of complex disputes in the SICC. First, on document disclosure. Before the "arbitration-style" disclosure was introduced to

[75] SICC Rules, O 4 r 6(3).
[76] SICC Rules, O 9 r 4.
[77] SICC Rules, O 1 r 3(1)(*a*).

domestic litigation in the Rules of Court 2021, it had already been adopted in proceedings before the SICC.[78] This is one critical way in which the SICC Rules had drawn on international best practices, particularly from international commercial arbitration. The SICC's rules on document disclosure are based partly on the IBA Rules on the Taking of Evidence in International Arbitration.[79] These rules were drawn up to simplify the process of discovery in the context of complex commercial disputes, where traditional common law style discovery was often expensive, protracted, and sometimes even oppressive.

43. Another innovation is the establishment of the Technology, Infrastructure and Construction ("**TIC**") disputes list, which was launched in August 2021. This is a specialised list of the SICC that deals primarily with technology-related disputes and disputes relating to infrastructure and construction projects. The common denominator here is that these types of disputes often tend to be complex and highly technical, and rely heavily on expert evidence. Cases placed on this list can take advantage of procedures designed to streamline or downsize complex disputes, such as the use of Scott Schedules for the presentation of parties' cases instead of the use of written submissions.[80] For cases on the TIC list, the court will exercise more active management of expert evidence, including steps such as the court communicating directly with the experts at case management conferences.[81]

[78] ROC 2014, O 110 r 14.
[79] SICC Rules, O 12; *IBA Rules on the Taking of Evidence in International Arbitration* (adopted on 17 December 2020) ("**IBA Rules**"). *E.g.*, see similarities in what a requesting party must state in its request (SICC Rules, O 12 r 2(3) and IBA Rules, Art 3(3)) and the grounds for resisting disclosure (SICC Rules, O 12 r 4(2) and IBA Rules, Art 9(2)).
[80] SICC Rules, O 28 r 9.
[81] SICC Rules, O 28 r 7.

Typically, experts are also to issue joint reports for areas of agreement and individual reports only on the areas of disagreement.[82] For cases with a large number of distinct claims, parties may voluntarily opt to use the Simplified Adjudication Process Protocol. This protocol breaks down an outsized dispute into buckets of claims according to their value and importance. Smaller-value claims are then channeled toward a simplified process. Parties adopting this protocol can benefit from not having to fully adjudicate each smaller-value claim individually, which may expend a disproportionate amount of resources and time.[83]

C. Appropriate Dispute Resolution

44. Turning finally to ADR, in the world of international commerce, there is an even deeper recognition that litigation forms only one part of a wider suite of dispute resolution options. As a starting point, the SICC Rules encourage the amicable resolution of disputes. Parties must consider the possibility of ADR and inform the court of whether the case is suitable for ADR.[84] Costs awards by the court may factor in how the parties have conducted themselves, and this includes their conduct in participating in or refusing to participate in ADR.[85]

45. Going beyond this, deliberate efforts have been made to integrate the SICC into the broader dispute resolution ecosystem. Increasingly, the SICC has been moving toward incorporating integrated dispute resolution mechanisms which

[82] SICC Rules, O 28 r 6(2).
[83] SICC Rules, O 28 r 10(6) and Appendix E.
[84] SICC Rules, O 9 r 3(*c*).
[85] SICC Rules, O 22 r 3(2)(*e*).

utilise multiple modes of dispute resolution in tandem. This has been backed by the understanding that users of dispute resolution services will benefit from having clear and flexible pathways between mediation, arbitration, and litigation. In January 2023, the SICC and the SIMC launched the Litigation-Mediation-Litigation Protocol which allows parties litigating in the SICC, who have agreed to the protocol, to obtain a case management stay of the court proceedings for up to 8 weeks once the dispute has been referred to mediation at the SIMC, with the prospect of continuing proceedings in the SICC after the mediation if no settlement is reached.[86] The 8-week case management stay can be extended by the court if there are good reasons. If the mediation is successful, the settlement terms may be recorded as an order of court. This protocol also allows parties to obtain interim relief from the SICC while the mediation process is ongoing despite the case management stay. Another significant development is the SICC's partnership with the SMC to pilot the Integrated Appropriate Dispute Resolution Framework ("**INTEGRAF**") beginning in January 2024.[87] INTEGRAF will allow parties to apply one or more dispute resolution solutions, including mediation and neutral evaluation, to different aspects of a dispute. If parties have agreed to the SICC-INTEGRAF clause in their contract, the dispute between the parties can first be referred to the SMC for resolution in accordance with the INTEGRAF rules, and the SICC will act as the forum of last resort if the ADR processes are unsuccessful.

[86] SICC and SIMC, "Singapore International Commercial Court Launches Mediation-Friendly Protocol with Singapore International Mediation Centre to Advance Singapore as Asian Hub for Dispute Resolution" (12 January 2023), <https://www.judiciary.gov.sg/news-and-resources/news> (accessed 25 March 2024).

[87] The Honourable Chief Justice Sundaresh Menon, "Response delivered at the Opening of the Legal Year 2024" (8 January 2024), <https://www.judiciary.gov.sg/news-and-resources/news> (accessed 25 March 2024); "SICC and INTEGRAF", available at <https://www.sicc.gov.sg/sicc-and-integraf> (accessed 25 March 2024).

So, it is assuring to see that concerted efforts are being made to allow parties to seamlessly transit from one mode of dispute resolution to another, all with the overarching objective of allowing parties to find the best possible way to find a dispute resolution mechanism that best fits their needs and particular circumstances. This adds a new dimension to what the SICC can offer, and tremendous value to the parties' experience of litigation in the SICC.

VI. Conclusion

46. Let me conclude. As we look ahead, we can expect Singapore to continue to lean into its potential as a dispute resolution hub for the region. To realise our aspirations of achieving justice in a manner that is efficient and effective, it is essential that Judges and counsel collaborate to ensure the best experience and outcome for litigants. Certainly, as we contemplate the evolving technologies and trends all around us, there remains much room to reimagine our practice of litigation for the future. But for now, the new rules, both the 2021 Rules and the SICC Rules, provide plenty of material for us to rethink what effective litigation entails – and that is our agenda for this day 2 of the Litigation Conference. With that, I hope that all of you will find the discussions in the day ahead useful and thought-provoking. Thank you.