



PREMIER LAW

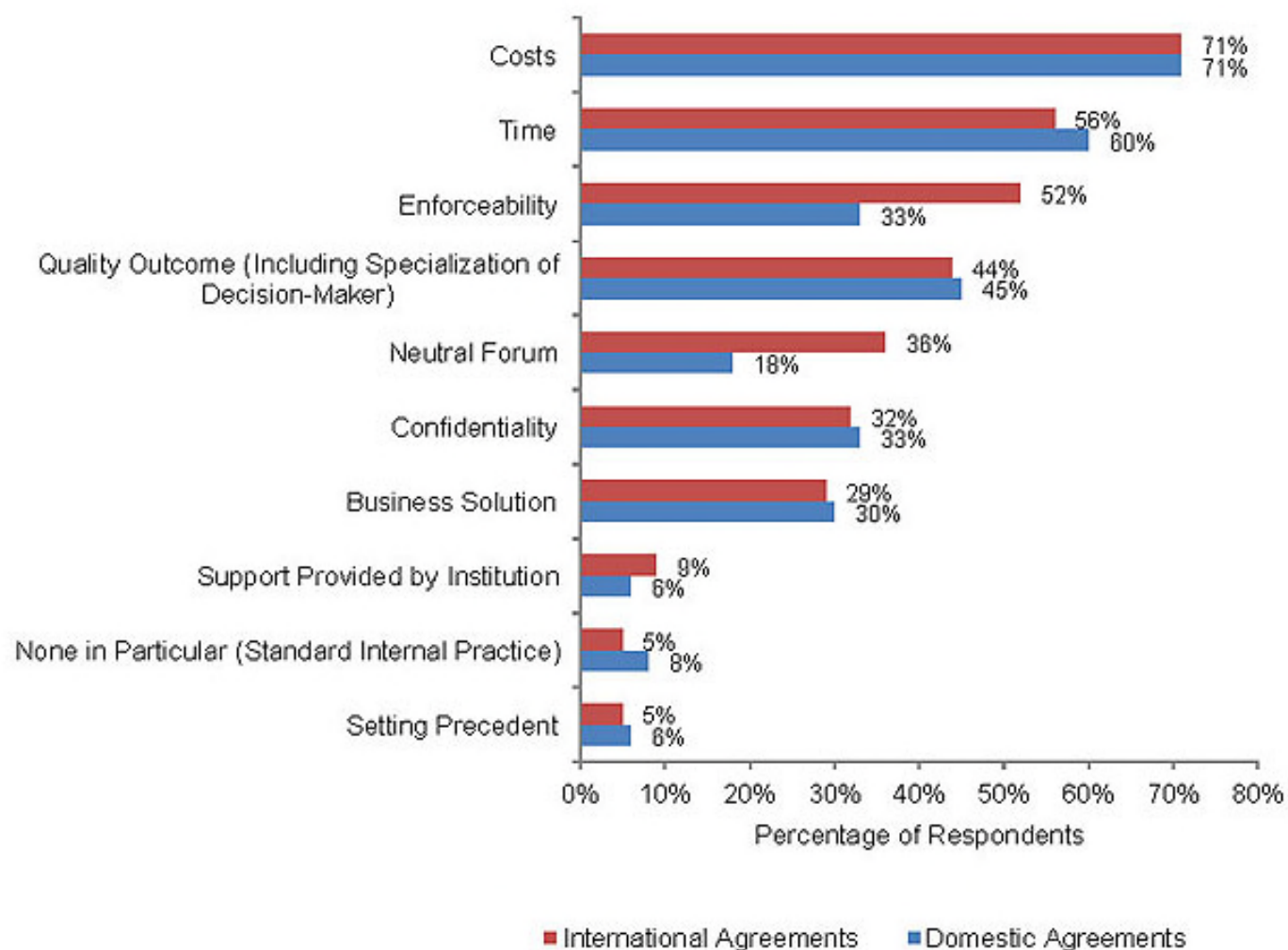
Strategic Dispute Management

Optimising the outcome

**RPC Premier Law
Singapore Venture Capital & Private Equity Association
Singapore Mediation Centre**

13 March 2018

Main Considerations When Negotiating Dispute Resolution Clauses



Source: WIPO Arbitration and Mediation Center, International Survey on Dispute Resolution in Technology Transactions

Main Methods of Resolving Disputes

- Litigation
- Arbitration
- Mediation
- Others (Hybrids)

Litigation

- Generally public process and outcome
- Formal rules of procedures and etiquette
- Binding decision made by neutral third party – Judge
- Singapore International Commercial Court
 - To complement local Court and international commercial arbitration
 - 15 International Judges from Australia, France, HK, Japan, UK, USA, Canada

Arbitration (SIAC / SCMA / WIPO)

- Private and confidential
- Some autonomy, e.g. parties free to appoint own arbitrators
- Finality of award with limited avenues of challenge
- Enforceability in more than 150 countries through New York Convention
- Service providers – SIAC, Singapore Chamber of Maritime Arbitration, WIPO Arbitration and Mediation Centre
- SIAC 2017 Annual Report:
 - 452 new cases from 58 countries in 6 continents with aggregate USD 4.07 billion
 - Top 10 foreign users include India, China, Switzerland, USA, Germany, HK, UAE, Indonesia, Japan, South Korea, Malaysia and UK

Mediation (SMC / SIMC)

- Neutral facilitates, not adjudicate
- Allows party autonomy
- Preserves business relationship
- Comparatively quicker and cheaper means of conflict resolution
- Enforceability as contract and through Mediation Act
- SMC 2017
 - 538 cases with total aggregate of \$2.7 billion
- SIMC: parties from China, India, Japan, South Korea, Indonesia

	<u>LITIGATION</u>	<u>ARBITRATION</u>	<u>MEDIATION</u>
<i>Confidentiality</i>	Public. Judgment reported.	Private but may become public if court intervenes.	Private.
<i>Formalities</i>	Formal, rigid rules of procedure and evidence.	Less formal than litigation. Arbitral rules apply.	Very informal.
<i>Third party involvement / autonomy</i>	Judge controls process and outcome. Parties have no control.	Arbitrator controls outcome. Parties control choice of arbitrator and applicable rules.	Mediator facilitates process. Parties control outcome.
<i>Time</i>	Generally, 12 to 18 months.	Average of 13.8 months.	Generally 1 day.
<i>Costs (WIPO)</i>	Average USD 475,000 to USD 800,000	Average USD 400,000	Typically does not exceed USD 100,000

	<u>LITIGATION</u>	<u>ARBITRATION</u>	<u>MEDIATION</u>
<i>Remedies</i>	Strictly only legal remedies.	Legal remedies.	Wide ranging with possible creative solutions.
<i>Nature of process</i>	Adversarial trial. Focus on legal rights.	Adversarial. Focus on legal rights.	Collaborative. Principled, interest-based negotiations.
<i>Effect on relationship</i>	Often destroys relationship.	Likely to destroy relationship.	Allows preservation of relationship.
<i>Enforceability</i>	Local judgment. Subject to foreign laws if enforced overseas.	International enforceability in more than 150 countries.	Binding contract. Singapore Mediation Act and UNCITRAL



- **Decreased party control**
- **Decreased flexibility**
- **Rights-based approach**

- **Increased party control**
- **Increased flexibility**
- **Interest-based approach**

Others – Some data (GPC Singapore)

Session 2, Question 5 – Group Results

Currently, the most effective dispute resolution processes usually involve which of the following?

(Please rank your 3 preferred answers in order of priority: '1st choice' = 3 points, '2nd choice' = 2 points, '3rd choice' = 1 point).

(257)

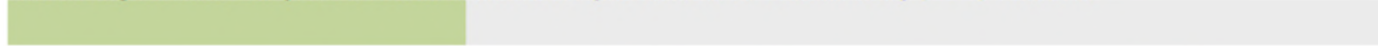
2. Combining adjudicative and non-adjudicative processes (e.g. arbitration/litigation with mediation/conciliation) (435)



5. Pre-dispute or pre-escalation processes to prevent disputes (287) 37.00%



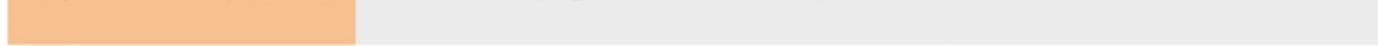
4. Non-adjudicative dispute resolution methods (mediation or conciliation) (255) 33.00%



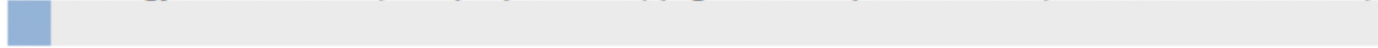
3. Encouragement by courts, tribunals or other providers to reduce time and/or costs (201) 26.00%



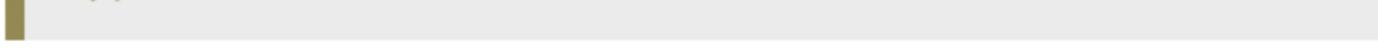
1. Adjudicative dispute resolution methods (litigation or arbitration) (192) 25.00%



6. Technology to enable faster, cheaper procedures, (e.g. Online Dispute Resolution, electronic administration, remote



Other (8) 1.00%



Others – Hybrid models

- Med-Arb
 - Parties first attempt mediation
 - If not resolved, mediator becomes arbitrator and gives binding award
- Arb-Med
 - Parties start with arbitration and a non-binding award is issued
 - Parties work with mediator to attempt resolution
- Arb-Med-Arb (SIAC / SIMC)
 - First referred to arbitration before mediation is attempted
 - Mediated settlement recorded as Consent Award

Plenary Discussion



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Upcoming Events

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| 13 March | Strategic Dispute Management –
Optimising the Outcome |
| April | 26 th Annual AGM cum
Networking Reception |
| 17 May | SVCA Southeast Asia PE/ VC Conference –
PE/ VC: Are the lines blurring? |