

New Mediation Protocol for Global Businesses to Manage Disputes During the Covid-19 Pandemic

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SINGAPORE — The Singapore International Mediation Centre (SIMC) on 18 May 2020, launched the SIMC COVID-19 Protocol to provide businesses with an expedited, economical and effective route to resolve any international commercial disputes during the COVID-19 pandemic period.[1]

The Protocol responds to the pressing need to resolve cross-border disputes in a swift and inexpensive manner. The pandemic has severely impacted business communities – fracturing business and contractual relationships, sparking disputes and destroying the value and viability of businesses.

With expedited mediation, businesses can devote their resources towards navigating other challenges, instead of diverting them to conduct potentially protracted and expensive legal proceedings. This will put businesses in a stronger position to recover amidst the growing economic uncertainty – the World Trade Organization has projected a plunge in world trade of up to 32 per cent this year.[2]

Mediation allows businesses to address their differences in a way that drives commercial solutions and looks to the future. In mediation, the disputants engage an experienced and neutral third party – the mediator – to assist them in reaching an amicable settlement of their dispute.

Mediation is a confidential process that addresses underlying interests and encourages mutually-beneficial solutions. Such outcomes are satisfying and preserve relationships. Moreover, the settlement agreements are binding and may be enforced under the law. Compared to other forms of dispute resolution, mediations generally conclude much faster and are far more inexpensive. At SIMC for example, most mediations are concluded within a day or two. The successful settlement rate is about 80 percent.

Some key aspects of the Protocol are summarised[3] as follows:

Parties may refer their disputes for mediation under the Protocol by submitting a request form at SIMC's website and paying a S\$250 filing fee.

1. SIMC will organise the mediation within 10 working days.
2. Parties will enjoy reduced fees (see Annex I) based on dispute amount. For example, for disputes of less than \$1M, each party pays \$3,000, mediator's fees included. SIMC will exercise flexibility in appropriate cases.
3. Cases will be matched with experienced mediators to facilitate settlement.
4. Mediation is conducted online.
5. The Protocol shall be in force until 31 Dec 2020.

The Protocol is also designed to complement the COVID-19 (Temporary Measures) Act (“the Act”),^[4] which imposes a moratorium on certain legal actions, to give parties breathing room to work out their differences. Under the Protocol, such parties may mediate *at any time* to settle their disputes even if they enjoy relief under the Act. This is important because contractual obligations are not absolved under the temporary relief measures under the Act.

Mr George Lim SC, Chairman of SIMC, says, “All around the world, COVID-19 has affected businesses and individuals in unprecedented ways, and the repercussions will reverberate for years down the road. By choosing to mediate differences now, businesses may preserve their commercial relationships for the future, and would be better placed to mitigate the challenges of a post COVID-19 world.

Furthermore, the Protocol keeps the user in mind. In my experience as a mediator, parties appreciate the opportunity to work out a viable solution and are often relieved with an outcome that they have agreed upon rather than one that is imposed on them.”

Mr Chuan Wee Meng, CEO of SIMC, says, “During this period of uncertainty, instead of being mired in protracted legal proceedings, businesses could use mediation first to resolve their disputes.

“Many disputes arising from the global pandemic are not the fault of either party. Therefore, mediation stands out as an important mechanism to ensure that relationships are not derailed. The speed, cost and effectiveness of mediation will also ensure that bottom lines remain intact.”

Eversheds Harry Elias (EHE) Partner Francis Goh, the Head of International Arbitration and Head of Private Client Advisory, says “In this time of unprecedented global economic crisis, it is not productive to fight over rights and obligations. Instead you want to talk about how we can do the right thing to help each other through the difficult times. Mediation helps to achieve this objective. This Protocol sends a powerful signal to international parties that they can now confidently resolve their cross-border disputes under the auspices of the SIMC. EHE is proud to support SIMC in this initiative.” Francis is also a SIMC Specialist Mediator and Ambassador.

For more information: www.simc.com.sg/simc-covid-19-protocol.

[1] SIMC expresses its appreciation to Eversheds Harry Elias: Mr Shaun Leong, Partner, International Arbitration, who worked closely with SIMC on this initiative and the support of Mr Francis Goh, Partner, Head of International Arbitration and Head of Private Client Advisory.

[2] April 8, 2020, WTO: Trade set to plunge as COVID-19 pandemic upends global economy. https://www.wto.org/english/news_e/pres20_e/pr855_e.htm

[3] Subject to conditions

[4] For more information about the Act, visit: <https://www.mlaw.gov.sg/covid19-relief/>