



ADR in the time of Covid-19, and why virtual and hybrid hearings are here to stay

Philip Jeyaretnam SC, Chairman, Maxwell Chambers, Professor Lawrence Boo, Board Member, Maxwell Chambers and George Lim SC, Chairman, Singapore International Mediation Centre (SIMC) spoke to Asian-mena Counsel about the latest developments in Alternative Dispute Resolution in light of the pandemic.

Maxwell Chambers is the world's first integrated Alternative Dispute Resolution (ADR) complex housing both 'best-of-class' hearing facilities as well as top international ADR institutions. But what effect has the current global pandemic had on the chamber's activities and ADR in Singapore?

According to Philip Jeyaretnam SC, Chairman of Maxwell Chambers, "The biggest impact of Covid-19 has been forcing parties who do not want to delay proceedings to adopt virtual or hybrid hearings. To many practitioners' surprise, virtual hearings have not been as difficult as feared, and in some ways have advantages over physical hearings, particularly when witnesses are not involved. So virtual and hybrid hearings are definitely here to stay and will endure even when travel restrictions and safe distancing requirements are lifted." He continues, "The technology to support virtual hearings has greatly advanced since the early days of remote witness conferencing, and will continue to improve. Maxwell Chambers has quickly geared up to provide effective support for both fully virtual and hybrid hearings, with the introduction of dedicated moderators coupled with the top-notch systems and software.

"Singapore's strength as an international ADR hub is founded on numerous supportive factors, including a robust legal framework, a deep talent pool and peerless connectivity," says Mr Jeyaretnam. "If no one can travel, then the advantage of being a top international ADR hub lessens. But that is only one of a basket of characteristics conducive to arbitration, and in time ease of air travel will return to



*Philip Jeyaretnam SC, Chairman,
Maxwell Chambers*

importance, because parties still prefer a physical hearing if possible.

“Challenges are inevitable during a time as such. The addition of technology to facilitate hearings increases efficiency but at the same time, introduces multitudinous challenges.” For example, “during a physical hearing, cross-border disputes are complex as they involve the management of several parties involved. Gathering each member of the dispute via an online platform to conduct a remote hearing, further accentuates these challenges. However, with the introduction of dedicated moderators coupled with the latest systems and software, we have essentially maintained our stronghold in the ADR landscape without compromising on our offerings.”

Professor Lawrence Boo observes, “A whole spectrum of our society has been affected by Covid-19 in one way or another. At this point in time however, the ADR landscape has not, in my view, been too badly mauled. While our mode of operation has significantly changed, conducting remote and hybrid hearings instead of in-person hearings, the cases and the scope of work have not in fact changed much. Although there has been a drop in hearings over the last few months, I can see that hearings are now returning with most legal practitioners accepting that cases cannot be postponed infinitely as businesses have to continue operations and disputes have to be resolved regardless of the current situation.

“With the continuous introduction of new cutting-edge technologies, we should all be prepared for a greater use of Artificial Intelligence (AI) in our daily work,” notes Professor Boo, “The assimilation of AI in a traditional hearing set-up will likely come sooner than expected. Whether it’s the use of new hardware, better cameras, sensors or the systems as a whole, each and every individual has to be able to adapt to new technologies to maintain our relevancy in the ADR sphere.”

On a more personal note, Professor Boo observes that “the prevailing travel restrictions have resulted in most of us gaining extra hours during this period. These pockets of time can be harnessed to learn new skills, whether a language or an area of practice interest, and at the same time, think of ways in which we can innovate to better adapt to newer technologies, allowing us to seamlessly integrate ourselves and our skills into the ‘new-normal’.”



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Professor Boo concludes, “Maxwell Chambers is one of a kind and its offerings are niche and unique. However, like any other organisation, it has to update, upgrade and upskill its services constantly with the evolving needs of ADR users and offer the most efficient processes (both hardware and software) during and even after the pandemic wanes.”

The role of mediation to resolve international commercial disputes has been growing rapidly, and according to George Lim SC, Chairman of the Singapore International Mediation Centre (SIMC), the interest in mediation will continue to grow, especially with the coming into force of the Singapore Convention on Mediation on September 12, 2020, “as businesses realise how much more effective it is to take control of their disputes and collaborate to forge a win-win solution before engaging in legal proceedings, which may not always yield an outcome that they find to be in their favour.”

SIMC has now moved to Maxwell Chambers Suites, and Mr Lim notes they are seeing an increasing number of lawyers encouraging their clients to mediate their disputes, “Lawyers who understand mediation and how to act as



mediation advocates play an important role in putting their clients on the road to settlement. Clients value counsel who can propose effective and lasting solutions that also save time and cost. Mediation checks all these boxes. When lawyers propose commercially-sensible solutions, clients are happy and they naturally get repeat business.

“Disputes can and should be mediated. This is especially the case during the Covid-19 pandemic,” says Mr Lim. “As businesses come under increasing pressure, companies that use mediation will be able to resolve their disputes quickly instead of being bogged down by protracted legal battles. This puts them in a stronger position despite the economic pressures.”

Mr Lim also highlights SIMC’s Covid-19 Protocol, which provides an expedited, economical, and effective way for businesses to resolve their disputes. Importantly, mediations can be conducted online, given the current travel restrictions.

With the online component, Mr Lim suggests that designing a mediation session now involves coordinating the participation of mediators, parties and counsel across time zones and levels of technology competency and rethinking the manner by which joint and private sessions take place, with a view to ensuring that an online mediation would be as successful as if parties had all appeared in-person.

However, online mediation throws up new challenges in building bridges across cultures and overcoming constraints, even as it can be seen as a leveller. Mr Lim says, “For example, parties may feel less invested in the mediation when they are comfortable dialling in from home. Some parties who are less technologically savvy may also feel cut out from the proceedings, if they are not run well. To mediate effectively online, we need to learn how to effectively communicate and build rapport online. For example, how do we compensate for the decreased personal touch and the relative lack of body language?”

“Institutional mediation can play an important role in helping mediators and parties adapt to the online context by providing end-to-end support, allowing participants to take their mind off the technology and mediate in peace. In mediations administered by SIMC, we work closely with the Maxwell Chambers team and are present throughout the mediation to ensure that the relevant documents are shared quickly



George Lim SC, Chairman, Singapore International Mediation Centre (SIMC)

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and to move the participants from room to room on the online platforms.”

Mr Lim continues, “Given the novelty of remote and hybrid hearings, and the growing trend of mediation, in-house counsel and lawyers would need to equip themselves with mediation advocacy skills and ODR techniques. As Professor Boo suggests, we can make use of the extra time now to learn new skills and adapt to the ‘new-normal’.”

