

Singapore Infrastructure Dispute-Management Protocol

On October 23, 2018 Singapore's Ministry of Law launched the Singapore Infrastructure Dispute-Management Protocol (Protocol), as a way to help parties to mega infrastructure projects navigate disputes and minimize the risks of time and cost overruns.

The Protocol was developed by a Working Group convened by the Ministry, comprising eminent infrastructure and dispute resolution specialists from the private sector, the Singapore International Mediation Centre (SIMC) and the Singapore Mediation Centre (SMC) and launched by the nation state's Finance Minister at the 8th Asia-Singapore Infrastructure Roundtable, an annual conference that brings together government leaders, policymakers, investors and infrastructure companies.

The Protocol is recommended for infrastructure projects of more than S\$500m (approx. \$US360m) in value and is offered for adoption by parties by incorporation into their contracts.

Containing 14 clauses over 11 pages, the Protocol's main feature – no doubt heavily inspired by the FIDIC model – provides for the involvement of a Dispute Board (DB) from the outset of the project. The DB may comprise one, two or three expert professionals depending on the complexity and needs of the project and its members can be selected by agreement of the parties or failing such agreement, appointment by a designated appointing authority (such as the SIMC).

The other key tenets of the Protocol are:

- a. A proactive dispute prevention approach: The DB is appointed from the start of the project, rather than only after disputes have arisen. It helps anticipate issues and prevent differences from snowballing and escalating into full-blown disputes which become difficult and expensive to resolve.
- b. A wider range of dispute resolution methods: Including mediation, opinion and determination.
- c. Full professional and administrative support: The Singapore International Mediation Centre (SIMC) and the Singapore Mediation Centre (SMC) will support the process and the DB, including by identifying and appointing Dispute Board members as well as handling arrangements for meeting, escrow and other administrative services.
- d. Enforcement of binding but not final results: The Protocol expressly provides that a mediated settlement, opinion or determination of the DB, may be enforced by an arbitral tribunal or court: including “summarily or by expedited procedure”, without prejudice to a party's right to have the merits of the dispute finally determined by a arbitral tribunal or court.

Singapore's Ministry of Law reported that the Protocol has already attracted interest from parties to several mega projects in the region.

The Protocol comes amidst a wave of high value infrastructure expenditure across the Asia-Pacific, spurred in part by China's Belt and Road Initiative. The Asian Development Bank projected that over US\$1.7 trillion (S\$2.3 trillion) will be spent on infrastructural projects per year from 2016 to 2030 (Meeting Asia's Infrastructure Needs, 2017).

Singapore already serves as a key dispute resolution and infrastructure hub for the region, with the latest findings of the School of International Arbitration at Queen Mary University of London placing Singapore as the third most preferred arbitration seat globally, after London and Paris, and ahead of Hong Kong – making it the most popular seat in Asia. Capitalizing on its unique position, Singapore has introduced a swathe of new measures to enhance its legal services

and dispute resolution offerings – including the launch of the Singapore International Commercial Court (which adopts a hybrid model of court and arbitration procedure, allows foreign lawyers to appear in court and offers an international bench of jurists), Singapore International Mediation Centre, permitting third party financing for arbitration and arbitration-related proceedings and now the launch of the Protocol.

Commenting on the new Protocol, Singapore’s senior minister of state for law said “Singapore is well-placed to help parties navigate the challenges of large-scale infrastructure projects. We are a trusted and neutral venue, and have over the years built up deep expertise, institutions and human capital in dispute resolution... The new protocol builds on this strong foundation and leverages the suite of services that Singapore offers as a dispute resolution hub.”

If you have any questions about the issues raised in this legal update, please contact your usual Mayer Brown contact or:

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