

# Singapore Infrastructure Dispute-Management Protocol

## The Launch

On 23 October 2018, the Ministry of Law ("**MinLaw**") launched the new Singapore Infrastructure Dispute-Management Protocol ("**Protocol**") which was announced to the international infrastructure community by the Minister for Finance Mr Heng Swee Keat at the 8th Asia-Singapore Infrastructure Roundtable. The Protocol can be accessed [here](#).

## The Designer

The Protocol was designed by a working group comprising eminent private sector infrastructure and dispute resolution specialists, as well as officials from the Singapore International Medication Centre ("**SIMC**"), Singapore Mediation Centre ("**SMC**") and the Singapore Ministry of Law.

**Our Christopher Chuah and Candy Agnes Sutedja were part of that working group.**

*"The Protocol is a laudable effort in line with international best practice to minimise and prevent disputes from snowballing thereby saving much costs and time. It deserves a place in all major infrastructure projects."*

- **Christopher Chuah**  
**Partner, WongPartnership LLP**

## The Stakeholders

All professionals involved in infrastructure disputes would benefit from the Protocol. These would include Project Sponsors, Financiers, Project Consultants and Contractors.

## The Protocol

The Protocol is a dispute management mechanism to help parties in contracts or infrastructure projects, either to proactively manage differences upfront to prevent them from escalating into full-blown disputes; or where disputes have already arisen, to minimise time and cost overruns.

*"The Protocol seeks to prevent and manage disputes which may arise during the lifetime of a project to ensure successful project delivery. Parties adopting the Protocol will have the added benefit of experts overseeing the projects as well as institutional support from established dispute resolution institutions in Singapore."*

- **Candy Agnes Sutedja**  
**Partner, WongPartnership LLP**

The Protocol sets out, amongst others, the framework for a Dispute Board ("**DB**"), its meetings and site visits, dispute resolution processes as well as its powers.

## The Application

The Protocol applies where the parties have agreed to establish a DB for the purpose of matters which form the subject of the Parties' Agreement. Parties who wish to use the Protocol should include an appropriate clause in their contract. A recommended clause which may be adapted for use by the parties is set out in the Appendix to the Protocol.

## The Board

The Protocol in Article 1 defines the DB as one constituted under the Protocol and may consist of one, two or three members. The DB is appointed, pursuant to Article 3.0, with the flexibility of opting for a panel comprising one, two or three neutral expert professionals, depending on the complexity of the project.

The idea is for the DB to follow the project from start to finish and proactively help to manage legal, technical or operational issues as they arise, advise on or suggest solutions. In this way, parties may avoid expensive and time consuming litigation or arbitration altogether. If a dispute is unavoidable, a time and cost saving exercise is also performed by having extraneous matters eliminated and issues for adjudication or mediation narrowed.

Professional and administrative support is provided through the SIMC and SMC in identifying and appointing DB members.

The powers of the DB, stipulated in Article 13.0, include ordering the production of documents and materials, examining the parties, their representatives and relevant witnesses, and appointing experts.

## The Threshold

To be cost-effective, the Protocol is intended for use in mega infrastructure projects of at least SGD500 million.

## The Process

The DB commences its work by meeting the parties to establish a schedule of DB meetings and site visits. These are prescribed by Article 4.0 of the Protocol. The meetings and site visits will enable the DB to observe potential issues or differences. These potential issues or differences will be escalated to the parties and assistance will be offered to settle those differences.

- *Resolution of Differences*

Differences may be resolved through assistance provided by the DB through discussions with senior representatives of the parties. Such assistance is to enable the parties to proceed or continue with their negotiations to avoid or resolve the difference on their own without further reference to the DB.

- *Resolution of Disputes*

In the event of a dispute, the Protocol provides several methods of resolution - mediation, opinion or determination.

A settlement agreement reached between the parties at a mediation, an opinion (which is not objected to) and a determination (not contested to) are binding on the parties.

## The Enforcement

Parties must comply with the mediated settlement agreement, opinion or determination of the DB, failing which, the other party may refer such failure to the courts or arbitration, to obtain the relevant enforcement order.

## The Significance

The Protocol is the first in Asia offering a framework under which a combination of dispute-resolution methods could be applied in a customised way, one that combines mediation, non-binding opinions, determination and high level management consultations.

One can see that the role of the DB starts much further upstream with a view to helping parties sort out not just legal issues, but where appropriate even technical or operational ones before they can become full blown disputes.

As 'prevention is better than cure', issues are anticipated and differences are prevented from snowballing and escalating into full-blown

disputes which may become challenging to resolve. In averting a dispute altogether, the other modes of dispute resolution need not be triggered, thus saving time and cost.

However, if a dispute is unavoidable, the Protocol, on a cost and time saving exercise, assists by eliminating extraneous matters and narrowing down issues for adjudication or mediation.

If you would like information and/or assistance on the above or any other area of law, you may wish to contact the partner at WongPartnership that you normally deal with or any of the following partners:



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