



Trending in International Dispute Resolution

Technological advancements reshaping Dispute Resolution

Introduction

In recent years, Legal Technology (LegalTech) has grown in sophistication and brought many benefits to stakeholders in the Dispute Resolution space. Services such as electronic filing systems and case management software have made processes more efficient and less menial.

With measures in place to mitigate the spread of COVID-19 pandemic, it is no surprise that businesses are moving towards digitalisation to cope with changing demand and the new business landscape. Technological advancement in the Dispute Resolution scene then comes under spotlight to enable Dispute Resolution processes to continue.

In a survey report published this year by the Singapore International Dispute Resolution Academy (SIDRA)⁽¹⁾, the respondents ranked eDiscovery, platforms for the conduct of virtual hearings and analytics for appointment of judges, arbitrators, mediators and/or counsels, as the top three useful technology tools employed in cross-border commercial disputes.

This publication underpins the benefits these tools bring to the table and explores how such technological advancements will shape the Dispute Resolution scene in the near future. It aims to highlight what businesses must keep in mind with the increasing dependence on technology.

Top 3 useful technology tools employed in cross-border Disputes Resolution

eDiscovery



51%

62%

33%

Platforms for the conduct of virtual/online hearings

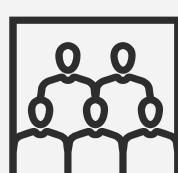


34%

47%

35%

Analytics for appointment of judges, arbitrators, mediators and/or counsels



29%

38%

36%

Source: SIDRA Survey 2020

Litigation

Arbitration

Mediation

eDiscovery: Digitising the discovery process

The discovery and inspection phase of legal proceedings can be time-consuming and costly as parties to the disputes are often required to disclose documentary evidence pertinent to the case.

By digitising the discovery process, stakeholders are able to better manage time and cost.

Currently, eDiscovery software enables collection, storage, processing and retrieval of electronically-stored information (ESI) on a single platform, from where the information can be extracted and transferred between parties easily.

Users are also able to manage documents such as removing duplicates and perform searches using keywords to identify and analyse the data. In addition, digitised evidence and transcripts can be tagged and classified as plaintiff and defendants' documents in the software, making the search for information even easier. Lastly, eDiscovery processes safeguard the chain of custody and integrity of the electronic data. Not only does eDiscovery software help to streamline the discovery process, but also acts as a single tool for strategising and managing the case, making the discovery process more efficient.

Despite the convenience that eDiscovery software brings, the volume of responsive documents is still substantial and there is much room for improvement. As the next step, eDiscovery software companies have begun incorporating the power of Artificial Intelligence (AI) and machine learning into their platforms to assist in document reviews. Users will have to first define their criteria and train the AI system on these criteria. The system can then continuously refine its understanding of the users' criteria to automate the document review process, bringing value, accuracy and efficiency in the discovery process.



Virtual Court hearings and Online Dispute Resolution mechanisms: Much of their potential remains untapped

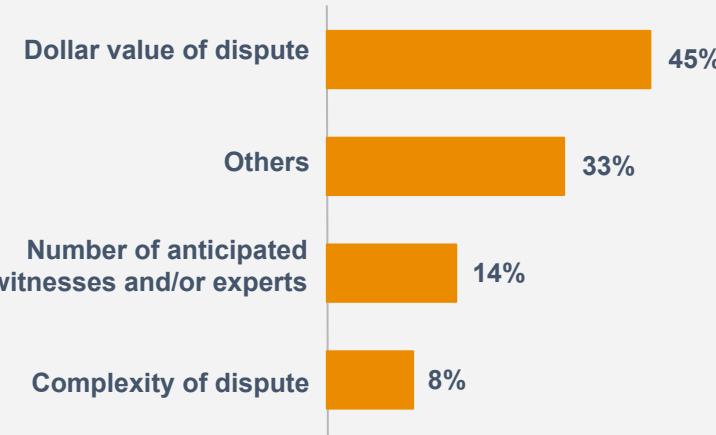
Social distancing and remote working measures to tackle the COVID-19 pandemic has resulted in fundamental procedural changes in the Dispute Resolution process. This puts the spotlight on virtual hearings to ensure that legal proceedings can continue in a safe manner.



The Singapore Judiciary had introduced temporary measures to allow court cases to be heard via video-conferencing. While COVID-19 restrictions are being eased locally, court cases continue to be heard virtually. With the prevalence of virtual court hearings as a test bed during this period, and the relative success of virtual hearings, it is probable that the adoption of virtual hearings will remain post-pandemic.

The advent of Online Dispute Resolution (ODR), synonymous with online facilitation of Alternative Dispute Resolution (ADR) (e.g. arbitration, mediation and negotiation), has brought about more flexibility and convenience. In Singapore, the State Courts developed the Community Justice and Tribunals system, enabling small claims disputes, community disputes and employment claims disputes to be resolved online. Parties can not only file and manage their cases online, but also choose to mediate online, making the settlement of the disputes expedient and efficient ⁽²⁾. While ODR is not novel, much of its potential still remains untapped.

Factors affecting the use of online processes in Arbitration



- 45% of SIDRA Survey 2020 respondents indicated the dollar value of the dispute would influence their choice
- Respondents indicated the number of anticipated witnesses and/or experts and complexity of issues would also affect their choice.

This means users are more likely to adopt online processes only if the issues are straightforward and the disputed sums are not exorbitant.

Source: SIDRA Survey 2020

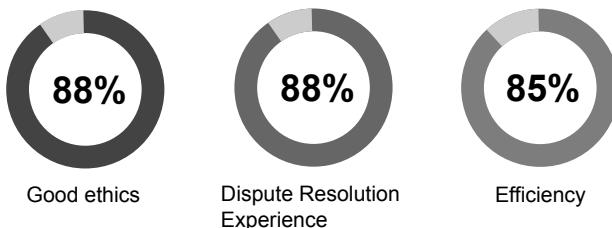
Moving forward, continuous enhancement and development of the ODR processes, such as offering a seamless end-to-end e-filing and case management systems and encrypted video-conferencing platforms, would likely shift the perceptions of Dispute Resolution users.



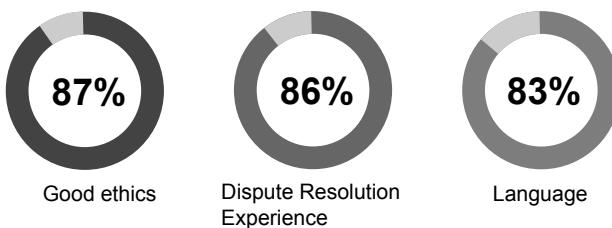
Analytics in selection of tribunals, arbitrators, mediators and/or counsels

The majority of the SIDRA Survey 2020 respondents indicated that good ethics, Dispute Resolution experience and efficiency are the most important factors in their selection of arbitrators, while they ranked good ethics, Dispute Resolution experience and language as the most important factors in their selection of mediators.

Selection of Arbitrator



Selection of Mediator



Source: SIDRA Survey 2020

Recommendations and impressions are often relied upon when appointing key stakeholders to preside or advocate their interests in the Dispute Resolution process. A platform, software or database that connects Dispute Resolution users to tribunals, arbitrators, mediators and/or counsels would prove beneficial in making informed selections. With technology evolving rapidly, there are opportunities around using analytics to drive these decisions.

Using data-driven analytics, Dispute Resolution users can readily assess and identify individuals who are best suited to deal with the complexities of the disputes, which potentially alleviate inefficiencies in the Dispute Resolution process. At the same time, this improves both the diversity and predictability of appointment of tribunals, arbitrators, mediations and/or counsels. This in turn can reduce potential conflicts, as well as reduce process delays caused by selecting key stakeholders from a limited pool of known entities.



Embracing digital transformation in Dispute Resolution

While users have greatly benefited from developments in LegalTech, concerns over security, privacy and data protection should not be downplayed. Based on PwC's Global Economic Crime and Fraud Survey 2020, in Singapore alone, cybercrime has grown in prominence - from 29% in 2018 to 41% in 2020 ⁽³⁾. Hence, it is imperative to establish and implement best practices and protocols as the dependence on technology increases.

Key considerations of incorporating technology

1

Determine your goals/needs: In order to incorporate the right tools, organisations need to have clear end-goals in mind. While some tools may be widely adopted, it might not be the most suitable one for your needs given its specific limitations.

2

Functionality of tool: Understand the functionality and limitations of the LegalTech tools. The parties should agree on the tools to be used, as well as when these tools could be used in the process.

3

Security of platform: Ensure that the video-conferencing platforms are secured.

4

Establish the jurisdiction and laws: Determine the territorial scope of the dispute and applicable security, privacy and data protection laws early, especially with the use of online or cloud-based storage systems

(3) <https://www.pwc.com/sg/en/publications/assets/global-economic-crime-and-fraud-survey-2020-sg.pdf>

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