



The Singapore Convention on Mediation: A Commentary

Prof. Nadja Alexander

Date: 03 June 2020 **Time:** 1:00pm CEST

Presentation Summary:

Prof. Nadja Alexander (Professor of Law at Singapore Management University, Director at Singapore International Dispute Resolution Academy, IMI and SIMI Certified Mediator) gave an interesting presentation on her book ‘The Singapore Convention on Mediation: A Commentary’.

Prof. Alexander began her presentation with a question: ‘Why bother?’. Why should one bother with the Singapore Convention on Mediation (SCM) when settlement agreements are generally complied with?¹ Why bother with the SCM when hybrid dispute resolution mechanisms such as the Arbitration-Mediation-Arbitration already ensure enforcement of settlement agreements under the New York Convention?² She answered these questions by sharing the findings of the International Dispute Resolution (IDR) Survey 2019, a program conducted by the Singapore International Dispute Resolution Academy (SIDRA).³ The results of IDR 2019 showed that users of dispute resolution preferred using arbitration to resolve international disputes because of the expedited enforcement mechanism that is available under the New York Convention. Users of dispute resolution also demonstrated an inclination towards hybrid dispute resolution mechanisms such as Arb-Med-Arb as it allows them to preserve business relationships whilst also ensuring finality and enforceability. Prof.

¹ Officially named United Nations Convention on International Settlement Agreements Resulting from Mediation.

² Officially named the United Nations Convention on the Recognition and Enforcement of the Foreign Arbitral Awards, 1958.

³ More information on the International Dispute Resolution Survey 2019 can be found [here](#).

Alexander emphasized that the IDR 2019 survey's findings suggests that more people would use mediation should an expedited enforcement under the SCM exists.

Prof. Alexander envisaged that the dispute resolution landscape in the near future would have clearer distinctions when it comes to enforcement of agreements or judgements: (i) enforcement of arbitral awards to be governed by the New York Convention, (ii) mediated settlement agreements would be governed by the SCM, and (iii) foreign judgments would be governed by the Hague Judgements Convention.⁴

The SCM was described to be a minimalist framework expediting the enforcement of international mediated settlement agreements. It is both sword and shield as not only does it allow mediated settlements to be enforced directly, it also allows the mediated settlement to be used to stop or dismiss other dispute resolution proceedings relating to the dispute. It was noted that the scope of the SCM covers only mediated settlements of international commercial disputes that were concluded 'in writing'. What constitutes as a settlement agreement 'in writing' has been broadly defined under the SCM. Apart from that, settlement agreements enforced as judgments and arbitral awards would be excluded from the ambit of the SCM.

Prof. Alexander went on to share that consent awards not enforced under the New York Convention could be enforced under the SCM. Consequently, parties should be aware of the relevant effective enforcement mechanism to record their settlement agreement accordingly.

A settlement agreement could be directly enforced if the copies following documents are submitted before the enforcing courts:

1. Written settlement agreement – The definition of 'in writing' is wide enough that it covers emails and WhatsApp messages for instance.
2. Proof of mediation – This can be achieved with the signature of the mediator on the settlement agreement or a separate document stating that mediation was conducted or any other supporting evidence that the enforcing authority will accept.

Using a hypothetical scenario, Prof. Alexander explained how the SCM allows settlement agreements to be directly enforced in court as a binding legal instrument. However, the

⁴ Officially named the Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters.

substantial effectiveness of the SCM is dependent on domestic courts' interpretations of the SCM's provisions.

It was noted that mediation does not adopt the concept of seat like that in arbitration. The SCM recognizes that the practice of mediation and the mediation process is often conducted in different parts of the world and through various mediums of communication (e.g. virtual or in-person meetings).

Article 5 of the SCM deals with grounds for refusing to grant relief and this has brought concern to some. Prof. Alexander encouraged participants to familiarize themselves with existing mediation jurisprudence in enforcing countries and study how the domestic courts in these countries could interpret the terms under the SCM.

Prof. Alexander concluded her presentation by referencing Article 8 of the SCM. She opined that the opt-in reservation under Article 8 might play a role in the success of the SCM but that the opt-out provision would be better suited for the effective implementation of the SCM.

Q&A Discussion

Some questions addressed by Prof. Alexander during the session are as follows:

- What changes in domestic legislation would be necessary for the SCM to effectively function?
- Does 'commercial' in the SCM include international trade disputes between a state and a private party?
- What are Prof. Alexander's suggestions for countries that are considering ratifying the SCM with reservations?
- What is the definition of the term 'international' under the SCM?
- How should States ensure that settlement agreements are granted relief and not succumb to grounds of refusal under Article 5?
- Would the New York Convention or the SCM apply to hybrid clauses (e.g. Med-Arb)?
- How would professional standards be relevant for the SCM?

We invite you to listen to Prof. Alexander's answers from the video record of the session [here](#), as well as to catch up on her response to other questions not listed above.

Links to other requested resources that came up during the session are provided below:

- [United Nations Convention on International Settlement Agreements Resulting from Mediation](#) also known as the ‘Singapore Convention on Mediation’
- Professional Standards body for mediators and mediation organizations:
 - [International Mediation Institute](#) (IMI)
 - [Singapore International Mediation Institute](#) (SIMI)
- [UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation](#)
- [The Singapore Convention on Mediation: A Commentary](#) by Nadja Alexander and Shouyu Chong

The team at SIMI and IMI would like to express our gratitude to Prof. Alexander for sharing her time to be a speaker at the Singapore Convention Seminar Series and to participants for joining us live for the session. Do join us for our next seminar by Mr. Aloysius Goh on ‘*China and The Singapore Convention*’!

About Prof. Nadja Alexander

Prof. Nadja Alexander is an international dispute resolution specialist who mediates and consults on cross-border mediation policy. She is recognized as a global thought leader in the field of mediation (Who’s Who Legal). Nadja is also a Professor of Law (Practice) and Director of the Singapore International Dispute Resolution Academy (SIDRA) at the Singapore Management University School of Law. She holds honorary professorial appointments in Australia and the United States, and she is also a foundation member of the International Advisory Board of the United Nations Global Mediation Panel. Nadja is a International Mediation Institute (IMI) Certified Mediator, and a Singapore International Mediation Institute (SIMI) Certified Mediator. She is also a director and board member of SIMI.

An award-winning author, educator, mediator and consultant, Nadja’s expertise has contributed significantly to the design and drafting of dispute resolution legislation in more than 10 jurisdictions including Singapore, Hong Kong and Vietnam.