



## *China and the Singapore Convention on Mediation*

**Mr. Aloysius Goh and Ms. Violet Huang**

**Date:** 10 June 2020 **Time:** 1:00pm CEST

### Presentation Summary:

Mr. Aloysius Goh (Founder and Chief Executive Officer of Sage Mediation, IMI and SIMI Certified Mediator) and Ms. Violet Huang (LL.B. Law (Candidate)) presented an interesting conversation on the topic ‘China and the Singapore Convention on Mediation’.

Ms. Huang began the presentation with an overview of China (officially the People’s Republic of China). The country’s population stands at about 1.3 billion people. There is also a rapid emergence and rapid growth of the middle class. The people in China tend to operate within a strongly hierarchical and bureaucratic structure of society complemented with deference for authority. This approach is very much evident in the court mediation system. Ultimately, China is a high context culture and the people tend to make compromises and resolve disputes in a less litigious manner. However, Ms. Huang opined that practices and culture vary in different regions and provinces of the country and thus, there is no one fixed recommended practice that could be said to fit all.

Mr. Goh stated that China has developed great interest in mediation especially in recent years. The Belt and Road Initiative (BRI) (一带一路) and Chief Justice Zhou Qiang’s decision to include mediation as a key part of China’s dispute resolution process were some external factors that could be attributed to the growth in interest in mediation. With as many as 26 million cases fought in the courts every year, it was important for China to have a dispute resolution mechanism that could maintain harmony in China.

To overcome the backlog of cases, China has adopted some interesting ways to use mediation. For instance, the introduction of a judicial mediation model with an initiative to prioritize mediation for all disputes pending litigation. This model is similar to court annexed mediation but the difference is that of a seamless transition between both adjudication and mediation. Under this model, a judge could play both the role of mediator and adjudicator. However, in addition to being a part of their mandate, judges are also incentivized to encourage the parties to settle their disputes amicably.

The [China Council for the Promotion of International Trade](#) (CCPIT) has helped the various provinces to implement the People's Mediation Law of the People's Republic of China.<sup>1</sup> This law was introduced in 2010 to govern mediations in specific areas of dispute. However, as each center exercise their own autonomy to train mediators and conduct mediations, there has divergence in quality and standards. At the same time, independent mediation institutions such as the Shanghai Commercial Mediation Center (SCMC) have been used as a vehicle to spearhead international standards of mediation.

Mediators in China are usually volunteers who consider the role of a mediator to be a badge of honor. They have a mandate to settle disputes as quickly as possible to maintain harmony whilst reducing backlog of cases in the courts. Many of these mediators are unable to pay for formal training to an accredited mediator. Accordingly, it is not unusual for them to settle disputes by appealing to the parties' sense of "do what is good for everyone". As a result, disputants rarely refer high value disputes for mediation.

The country's signing of the Singapore Convention on Mediation (SCM) has already created momentum for the development of mediation domestically.<sup>2</sup> For example, there are ongoing discussions about ratification and coordination of China's domestic mediation laws to be on par with international standards and the SCM.

Both speakers identified some challenges that China would need to overcome as they move forward in the development of mediation. This included but is not exhaustive to:

- Drafting domestic legislation for commercial mediation law as none exists currently;

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<sup>1</sup> A copy is available via the International Labour Organization [here](#).

<sup>2</sup> Officially named United Nations Convention on International Settlement Agreements Resulting from Mediation.

- Creating a framework for commercial mediation and incentivizing mediators to undergo formal training and accreditation;
- Recognizing standards for mediators, mediation centers, and mediation processes including hybrid ones such as Arb-Med-Arb or Med-Arb;
- Standardizing mediation practices and aligning them to international standards so that China can gain legitimacy as an international dispute resolution hub; and
- Encouraging end-users to use mediation by introducing guidelines on the principles of non-disclosure and confidentiality in mediation. It is anticipated that this would encourage corporate companies to use mediation.

Mr. Goh concluded the presentation on the note that China is prepared to adapt current approaches to align with international standards, but that they would not be adopting foreign standards wholesale. The country is working hard towards creating their own standards that could help champion values and methods that are synchronous to their philosophy of dispute resolution. Mr. Goh is confident that China will ratify the SCM within the next 2 years.

#### Q&A Discussion

Some questions addressed by Mr. Goh and Ms. Huang during the interactive Q&A discussion:

- How are mediations conducted in autonomous provinces such as Guangxi Nanning?
- Would China be interested in adopting foreign models of mediation when settling domestic and international disputes?
- How is mediation conducted for disputes involving government organizations and/or agencies?
- How does China ensure that judge-led settlement agreements are complied with?
- How are investment mediations conducted in China?
- Will mediation be used for disputes relating to the Belt and Road Initiative?
- What would the future for international standards bodies be when working with mediation organizations in China?

We invite you to listen to Mr. Goh's and Ms. Huang's answers from the video record of the session [here](#), as well as to catch up on their responses to other questions not listed above.

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

- Formal accreditation by a standards body for individual mediators:<sup>3</sup>
  - [International Mediation Institute \(IMI\) Certified Mediator](#)
  - [Singapore International Mediation Institute \(SIMI\) – Credentialing Scheme](#)
- [United Nations Convention on International Settlement Agreements Resulting from Mediation](#) also known as the ‘Singapore Convention on Mediation’
- [The People’s Mediation Law of the People’s Republic of China](#) (Translated into English)

The team at SIMI and IMI would like to express our gratitude to Mr. Goh and Ms. Huang for sharing their time to be speakers at the Singapore Convention Seminar Series and to participants for joining us live for the session. Do join us for our next seminar by Tony Nguyen on ‘*Vietnam and the Singapore Convention on Mediation*’!

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#### About the speakers



Aloysius Goh is the Chief Executive Officer and Founder of Sage Mediation. He is a certified international mediator and has mediated over 300 cases worldwide. He is accredited by both IMI and SIMI as a IMI and SIMI Certified Mediator. Aloysius is also empanelled on the International Panel on the Singapore International Mediation Centre (SIMC) and the Japan International Mediation Centre in Kyoto (JIMC in Kyoto). Aloysius currently serves as a member of the International Mediation Institute’s Appraisal Committee. Aloysius subscribes to a directive approach to mediation, and his expertise has most definitely been impactful to the mediation industry.



Violet is a graduate of the NUS Faculty of Law, and is a native of Guiyang, People's Republic of China. Violet's experience is truly an international one, having interned with McDermott Will & Emery in Frankfurt, finished an exchange program in Jerusalem, attended a public international law course by the Hague Academy of Law, and was selected

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<sup>3</sup> There is cross recognition offered between IMI’s Certified Mediators and SIMI’s Certified Mediators. Individual mediators accredited on other levels by IMI or SIMI do not qualify for cross recognition by virtue of having not met the minimum required experience.

for a Singapore State Courts Clerkship Program. Violet also recently wrote a thesis comparing China's mediation system with Singapore's, and she is presently pursuing further education and training to becoming a professional mediator herself. Violet looks forward to sharing about her research and observations about China's mediation system at the upcoming webinar.