

# JOYCE A TAN & PARTNERS

LAWASIA & UIA Webinar: Alternative Dispute Resolution in the New Normal –  
Steady Rise of Arbitration and Mediation”

## Singapore Mediation Convention

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## Mediation



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## 7 August 2019



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## Milestones

**Dec 2018:** adoption, by consensus, by UN General Assembly of “UN Convention on International Settlement Agreements Resulting from Mediation” or “Singapore Convention”; authorised the signing ceremony in Singapore on 7 August 2019

**7 Aug 2019:** 46 countries, including the world’s 2 largest economies, the US and China, and 3 of the four largest economies in Asia: China, India and South Korea, signed the Convention on the day it opened for signature, while another 24 countries attended the signing ceremony to show their support for the Convention. To-date, 53 countries have signed. UK, EU, Australia and Canada have not signed.

**4 Feb 2020:** Singapore Parliament passed domestic Singapore Mediation Act

**25 Feb 2020:** Singapore and Fiji: 1<sup>st</sup> 2 countries to deposit their instruments of ratification of the Convention at UN Headquarters in NY.

**12 Mar 2020:** deposit of 3<sup>rd</sup> instrument of ratification by Qatar.

**12 September 2020:** Convention will enter into force

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# The Convention In a Nutshell

Effective Means of Enforcement	Uniform, Efficient and Harmonised Framework	Fills Gap in International Dispute Resolution Framework
Benefits Businesses with Mediation as an Additional Dispute Resolution option	Simplified and Streamlined Process to Ensure Settlement is Binding	Leverages on Cost-effectiveness of Mediation compared to Litigation or Arbitration
Contributes to strengthening Access to Justice and the Rule of Law	Facilitates International Trade and Commerce	Contributes to the development of a mature, rule-based global commercial system



# Key Features

- applies to international commercial settlement agreements resulting from mediation.
- International is defined as the situation where at least two parties to the settlement agreement have their places of business in different states; or the state in which the parties to the settlement agreement have their places of business is different from either:
  - (i) The state in which a substantial part of the obligations under the settlement agreement is performed; or
  - (ii) The state with which the subject matter of the settlement agreement is most closely connected.
- **does not apply** to settlement agreements that are enforceable as a judgment or as an arbitral award.
- **does not apply** to settlement agreements concluded for personal, family or household purposes by one of the parties (a consumer), as well as settlement agreements relating to family, inheritance or employment law.



## Role of the Court of Convention Country

- To enforce a settlement agreement in accordance with its rules of procedure and under the conditions laid down in the Convention.
- To allow a party to invoke the settlement agreement in accordance with its rules of procedure and under the conditions laid down in the Convention, in order to prove that the matter was already resolved by the settlement agreement.

### May refuse to grant relief on the grounds laid down in the Convention, including:

- If a party to the settlement agreement was under incapacity;
- If the settlement agreement is not binding, null and void, inoperative or incapable of being performed under the law to which it is subjected;
- If there was a serious breach by the conciliator of standards applicable to the conciliator, without which breach that party would not have entered into the settlement agreement;
- If granting relief would be contrary to the public policy of the contracting party.

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## Key Observations

1. The success of the Convention (when entered into force) will in large part depend on the extent to which it is accepted and ratified by States.
2. Whether the Singapore Convention will become as commonplace as the New York Convention only time will tell.
3. Nonetheless, the Convention is likely to encourage parties involved in cross-border projects and transactions to consider mediation as a time and cost-efficient process as part of their dispute resolution toolkit.

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## Hot Off the Press



Straits Times, 17 August 2020

A mediation session hosted by the Singapore International Mediation Centre, with participants from overseas linked up via videoconferencing facilities. This photo was taken with the consent of all parties present.

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## Recent Developments

1. SIMC Covid-19 Protocol, which provides an economical, efficient and effective way for parties to resolve their disputes during this period (until 31 December 2020). <http://simc.com.sg/simc-covid-19-protocol/>
2. focuses on international matters, enables businesses to address disputes in a way that is commercially driven, future-oriented and helps overcome challenges posed by the pandemic
3. designed to complement legislation on Covid-19. In Singapore, parties who enjoy relief under the Covid-19 (Temporary Measures) Act can mediate at any time - even after an assessor's determination.
4. SIMC has worked with its mediators and stakeholders to provide reduced and fixed rates so that parties can resolve their conflicts outside of court through mediation; as a way of contributing to the business community during this pandemic.

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## The Future



"To me, this is what mediation is about: to achieve a beautiful reconciliation to a seemingly intractable problem by addressing what is truly important to the parties."

SIMC chief executive Chuan Wee Meng

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## Thank you



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