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Eunice CHUA
Singapore Management University, eunicechua@smu.edu.sg

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The Singapore Convention on Mediation—A Brighter Future for Asian Dispute Resolution

Eunice CHUA*
Singapore Management University, Singapore
eunicechua@smu.edu.sg

Abstract
On 26 June 2018, the United Nations Commission on International Trade Law [UNCITRAL] approved, largely without modification, the final drafts of the Convention on International Settlement Agreements Resulting from Mediation (the Singapore Convention) and amendments to the Model Law on International Commercial Mediation prepared by Working Group II. These instruments aim to promote the enforceability of international commercial settlement agreements reached through mediation in the same way that the New York Convention facilitates the recognition and enforcement of international arbitration awards. This paper provides a critical analysis of the Singapore Convention, and some commentary from an Asian perspective.

On 26 June 2018, the United Nations Commission on International Trade Law [UNCITRAL] approved, largely without modification, the final drafts of a Convention on International Settlement Agreements Resulting from Mediation (the Singapore Convention)[1] and amendments[2] to the Model Law on International Commercial Conciliation (the Model Law).[3] These instruments were the product of negotiations that began in 2014, following a proposal made by the US to develop a multilateral convention that would promote the enforceability of international commercial settlement agreements reached through mediation in the same way that the New York Convention facilitates the recognition and enforcement of international arbitration awards.[4] This paper provides a critical analysis of the Singapore Convention, and some commentary from an Asian perspective.

* Advocate and Solicitor (Singapore). Assistant Professor, School of Law, Singapore Management University. I wish to thank my family for their wonderful support that enabled me to work on this piece.

1. United Nations, *Report of UNCITRAL, Fifty-first session* (25 June-13 July 2018), UNCITRAL, UN Doc. A/73/17 (2018), Annex I.
2. *Ibid.*, at Annex II.
3. UNCITRAL *Model Law on International Commercial Conciliation with Guide to Enactment and Use* 2002, para. 55. In this paper, "conciliation" and "mediation" are used interchangeably to refer to a process where parties request a third person to assist them in their attempt to reach an amicable settlement of their dispute.
4. *Planned and Possible Future Work—Part III, Proposal by the Government of the United States of America: Future Work for Working Group II*, Note by the Secretariat, UNCITRAL, UN Doc. A/CN.9/822 (2014).

I. KEY ELEMENTS OF THE SINGAPORE CONVENTION

Before addressing the substance of the Singapore Convention, the fact that there was a convention instead of a softer instrument is an achievement in itself. In the 65th session of the UNCITRAL Working Group II (the Working Group), many delegations supported preparing model legislative provisions instead of a convention due to concerns about the lack of a harmonized approach to the enforcement of settlement agreements, both in legislation and in practice.[5] The Working Group recognized that a binding instrument such as a convention would bring certainty and would contribute to the promotion of mediation in international trade.[6] However, it also recognized that the notion of mediation was new in certain jurisdictions and that flexible model legislative provisions would be more feasible. Nevertheless, at its 66th session, the Working Group arrived at a creative compromise proposal on five key issues, including the form of the instrument, which would involve a model law and convention being prepared simultaneously.[7]

A. *Scope of Application*

Article 1(1) provides for the Singapore Convention to apply to an "agreement resulting from mediation and concluded in writing by parties to resolve a commercial dispute … which at the time of its conclusion, is international". The terms "international", "writing", and "commercial" are defined terms.

From an early stage, many in the Working Group felt that the scope of the instrument should be limited to "international" settlement agreements and that clear and simple criteria should be provided for determining whether this requirement was met.[8] The current definition of "international" in Article 1(1) is based on Article 1(4) of the Model Law. However, instead of referring to the state with which "the subject matter of the dispute" is most closely connected, Article 1(b)(ii) refers to "the subject matter of the settlement agreement". Article 2(1) further provides for how to determine the relevant place of business if a party has more than one place of business, and to stipulate that, in respect of individuals where there is no place of business, reference may be made to a party's habitual residence. Article 2(1) of the Singapore Convention is similar to Article 1(5) of the Model Law. The only difference is that, where a party has more than one place of business, the relevant place of business has been changed from that which has the "closest relationship to the agreement to conciliate" to that which has the "closest relationship to the dispute resolved by the settlement

5. *Report of Working Group II (Dispute Settlement) on the Work of its Sixty-fifth Session*, UNCITRAL, UN Doc. A/CN.9/896 (2016), at para. 139. See also Edna SUSSMAN, "A Path Forward: A Convention for the Enforcement of Mediated Settlement Agreements" (2015) 6 Transnational Dispute Management 1 at 5–6, describing the various ways by which mediated settlement agreements can be enforced.

6. Chang-Fa LO, "Desirability of a New International Legal Framework for Cross-Border Enforcement of Certain Mediated Settlement Agreements" (2014) 7 Contemporary Asia Arbitration Journal 119 at 135–6.

7. *Report of Working Group II (Dispute Settlement) on the Work of its Sixty-sixth Session*, UNCITRAL, UN Doc. A/CN.9/901 (2017), para. 52.

8. *Report of Working Group II (Arbitration and Conciliation) on the Work of its Sixty-fourth Session*, UNCITRAL, UN Doc. A/CN.9/867 (2016), para. 94.

agreement". These changes are sensible. With respect to Article 1(1), the focus for the purposes of enforcing a settlement agreement should be on the subject matter of the agreement, which could be different from the subject matter of the dispute. With respect to Article 2(1), the focus is rightly placed on the dispute rather than the agreement to mediate, which could have been part of a dispute resolution clause in the original contract with little bearing on the eventual dispute.

The "writing" requirement has also been crafted in a practical manner and will be fulfilled if the content of the agreement is "recorded in any form", including electronic communications such as electronic mail.

"Commercial" is not defined in the Singapore Convention, but is defined in the Model Law in a footnote to Article 1(1). This footnote remains unchanged. This is desirable because, first, being consistent with the Model Law may be important to countries that have adopted the Model Law. Second, non-commercial civil matters could be subject to quite diverse and localized cultures and legal rules[9] which are not conducive to a harmonized approach of enforcement. Third, retaining a "commercial" requirement is consistent with the desire to enhance mutual trust in international business and to facilitate international trade.[10]

Another limitation to the scope of the Singapore Convention is Article 1(3), which excludes settlement agreements: (1) that are approved by a court or concluded in the course of court proceedings; (2) that are enforceable as a judgment in the state of that court; and (3) that have been recorded and are enforceable as an arbitral award. The reason for this limitation is the existence of other international instruments such as The Hague Convention on Choice of Court Agreements[11] (the Choice of Court Convention) and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards[12] (the New York Convention) to govern enforceability of those types of settlement agreements.[13] It should be noted that the mere involvement of a judge or arbitrator would not exclude the settlement agreement from the scope of the Singapore Convention.[14]

B. *General Principles*

The Singapore Convention has avoided prescribing a specific mode of enforcement, but has provided guidance on the conditions to be fulfilled for a state to enforce a settlement agreement. Article 3(1) states that each State Party "shall enforce a settlement agreement in accordance with its rules of procedure, and under the conditions laid down in this Convention". This is consistent with the New York Convention. Notably,

9. *Supra* note 6 at 131.

10. *Ibid*.

11. *Convention of 30 June 2005 on Choice of Court Agreements*, The Hague, 30 June 2005, online: HCCH <https://www.hcch.net/en/instruments/conventions/full-text/?cid=98>.

12. *Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, New York, 10 June 1958, online: <http://www.uncitral.org/pdf/english/texts/arbitration/NY-conv/New-York-Convention-E.pdf>.

13. The Hague Judgments Project could also potentially lead to the development of another instrument to enforce settlement agreements that have been recorded as court orders or judgments.

14. *Supra* note 8 at para. 131.

the Singapore Convention goes further than the European Union Directive on Mediation (the EU Directive),[15] which has not produced the hoped-for impact of growing the use of mediation in the EU.[16] Article 6 of the EU Directive does not set out a procedure for enforceability, but prescribes two essential requirements in broad terms. First, Member States must ensure that it is possible for the parties, or for one of them with the explicit consent of the others, to request that the content of a written agreement resulting from mediation be made enforceable. Second, the content of the agreement must not be contrary to the law of that state and the law of that state must provide for its enforceability. The ambiguity of this provision is such that it may be argued that the ability to sue on a mediated settlement agreement according to general contract law principles would suffice.[17] The requirement for explicit consent of the parties to the application may also pose problems where one party wishes to resist enforcement. This is not the case with the Singapore Convention, which does not require consent. Further, unlike the EU Directive, it circumscribes the defences that may be used to avoid enforcement (Article 5).

Article 3(2) provides that a state shall allow a party to "invoke the settlement agreement in accordance with its rules of procedure and under the conditions laid down in [the Singapore Convention], in order to prove that the matter has been already resolved". This provision avoids using the tricky term "recognition", which has been ascribed different meanings under domestic and international law,[18] but instead speaks to the practical effect of recognition, which is to allow a settlement agreement to be used as a defence. Consistent with Article 3(1), the exact mode of invocation is left to the state to determine in accordance with its rules of procedure.

This author is optimistic that the failure to specify a method of enforcement will not be detrimental. The experience of the New York Convention suggests that the absence of a single method of enforcement does not impede effective enforcement. The great divergence in legislation and practice among states concerning the method of enforcement means that it would be unwise to prescribe a single enforcement procedure, which could jeopardize widespread support for the Singapore Convention. Such support is needed before the Singapore Convention can serve the purpose of promoting the use of mediation for cross-border commercial disputes.

C. *Requirements for Enforcement*

The form requirements of a settlement agreement need to provide certainty and comfort to the state of enforcement, but at the same time need to avoid being overly

15. *Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on Certain Aspects of Mediation in Civil and Commercial Matters*, 2008, Official Journal of the European Union (L 136).

16. Giuseppe de PALO *et al.*, *"Rebooting" the Mediation Directive: Assessing the Limited Impact of its Implementation and Proposing Measures to Increase the Number of Mediations in the EU* (2014, European Parliament Publications Office) PE 493.042.

17. Eunice CHUA, "The Future of International Mediated Settlement Agreements: Of Conventions, Challenges and Choices" (2015) Tan Pan Online: A Chinese-English Journal on Negotiation 1–11. Research Collection School of Law.

18. Anna K.C. KOO, "Enforcing International Mediated Settlement Agreements" in Muruga Perumal RAMASWAMY and João RIBEIRO, eds., *Harmonising Trade Law to Enable Private Sector Regional Development* (UNCITRAL Regional Centre for Asia and the Pacific, 2017), 91–2.

prescriptive or detailed such that they complicate the enforcement procedure. Unlike the New York Convention, which does not contain form requirements for arbitral awards, the Singapore Convention needs to specify form requirements because settlement agreements can be arrived at after mediation, negotiation, or other means of informal discussion. Accordingly, Article 4 of the Singapore Convention prescribes that a party relying on a settlement agreement shall supply to the competent authority of the state where relief is sought: (1) the settlement agreement signed by the parties; and (2) evidence that the settlement agreement resulted from mediation. Such evidence includes the mediator's signature of the settlement agreement, a document signed by the mediator indicating that mediation was carried out, an attestation by the institution administering the mediation, or, in the absence of all of the above, any other evidence acceptable to the competent authority. As with the earlier writing requirement, the signing requirement can be met through electronic communication if there is a sufficiently reliable method to identify the parties or the mediator and to indicate their intention through the electronic communication.

Notably, Article 4 does not exhaustively prescribe the evidence of a settlement agreement resulting from mediation. It gives several options while leaving it open to the competent authority in the state of enforcement to accept other types of evidence should the listed evidence not be available. This approach is advantageous as it allows a response to the varied circumstances under which settlement agreements may be concluded, for example, the mediator may not be able or willing to sign the settlement agreement. The reference to attestation by an institution administering the mediation as one of the recognized types of evidence is particularly helpful given the growing number of institutions around the world that offer mediation services.

One can imagine further requirements such as an "opt-in" provision in the settlement agreement that requires the parties to demonstrate awareness of the Singapore Convention and the result of cross-border enforcement before they can rely on it. At the Working Group, it was argued that such a provision could serve the dual purpose of informing parties who may not be aware of the nature of enforceability of the settlement agreement and reminding those parties who already do of their obligations.[19] It would also be consistent with the importance placed on party autonomy in the context of mediation.[20] However, having an opt-in requirement might run contrary to the broad scope of the Singapore Convention and raise complexities with the system of allowing declarations.[21] For example, it could result in imbalance between the parties seeking enforcement in different jurisdictions where the settlement agreement may be enforceable in one but not the other.[22] It may also be impractical at the conclusion of a settlement agreement where parties tend to be focused on the substantive terms of the agreement.[23] More importantly, an opt-in approach could be contrary to the expectations of the parties as they would generally expect the other party to comply with the settlement agreement and thus its

19. *Supra* note 6 at 131.
20. *Supra* note 7 at para. 37.
21. *Supra* note 8 at para. 181.
22. *Supra* note 7 at para. 40.
23. *Supra* note 8 at para. 181.

possible enforcement.[24] Ultimately, as part of the compromise proposal at its 66th session, the Working Group agreed that the instrument would provide that a party may declare that it shall apply the Singapore Convention only to the extent that the parties to the settlement agreement have agreed to the application of the Singapore Convention.

Commentators have also raised other possible requirements relating to the genuineness of the mediation procedure, including the requirement of a neutral third party serving as mediator,[25] and a reference to the voluntariness of the mediation process.[26] Instead of adding to the list of requirements for an enforcement application, which would unduly complicate the application process, the Working Group has wisely dealt with these concerns through defences to enforcement instead.

D. *Defences to Enforcement*

Article 5(1) of the Singapore Convention allows a state to refuse relief only if one of the following grounds can be proved:

(a) A party to the settlement agreement was under some incapacity; or

(b) The settlement agreement sought to be relied upon:

  (i) Is null and void, inoperative or incapable of being performed under the law to which the parties have validly subjected it or, failing any indication thereon, under the law deemed applicable by the competent authority of the Party to the Convention where relief is sought under article 4;

  (ii) Is not binding, or is not final, according to its terms; or

  (iii) Has been subsequently modified;

(c) The obligations in the settlement agreement:

  (i) Have been performed; or

  (ii) Are not clear or comprehensible;

(d) Granting relief would be contrary to the terms of the settlement agreement;

(e) There was a serious breach by the mediator of standards applicable to the mediator or the mediation without which breach that party would not have entered into the settlement agreement; or

(f) There was a failure by the mediator to disclose to the parties circumstances that raise justifiable doubts as to the mediator's impartiality or independence and such failure to disclose had a material impact or undue influence on a party without which failure that party would not have entered into the settlement agreement.

24. *Supra* note 7 at para. 36.
25. *Supra* note 6 at 132.
26. *Ibid*., at 133.

In addition, Article 5(2) permits relief to be refused where it is "contrary to the public policy" of the State Party in which enforcement is sought or the "subject matter of the dispute is not capable of settlement by mediation under the law of that Party".

These defences were formulated by the Working Group to be limited, exhaustive, stated in general terms, and not cumbersome to implement.[27] Most have been drawn from Article V of the New York Convention with appropriate modifications to suit the context of mediation and are relatively uncontroversial.[28] For example, Article 5(1)(a) to (c) are similar to Article V(1)(a) and (e) of the New York Convention, which deals with incapacity to enter into an arbitration agreement or other invalidity of the arbitration agreement, as well as when an arbitral award has not yet become binding on the parties or has been set aside or suspended; Article 5(2) of the Singapore Convention mirrors Article V(2) of the New York Convention, which allows refusal of enforcement if the "subject matter of the difference is not capable of settlement by arbitration under the law of [the country where recognition and enforcement is sought]" and where recognition or enforcement "would be contrary to the public policy of that country". Article 5(1)(d) has no equivalent in the New York Convention but that is only because it is unique to the mediation context, where a mediation agreement could possibly preclude or limit enforceability as one of its terms.

Of interest are Article 5(1)(e) and (f), which relate to a serious breach of mediation standards and failure to disclose circumstances without which the party would not have entered into the settlement.

An earlier draft of these defences referenced the mediator's failure to "maintain fair treatment of the parties" or to disclose circumstances "likely to give rise to justifiable doubts as to its impartiality or independence".[29] Unsurprisingly, they provoked divergent views in the Working Group. On the one hand, the differences between mediation and arbitration were highlighted, including the practice of having private communication with one party in mediation that had no counterpart in arbitration as well as the limited number of procedural rules governing the mediation process.[30] These features together with the confidentiality of mediation meant that it would be difficult to assess whether the parties were treated fairly. The fact that mediators did not impose any outcome on the parties and that mediation was a voluntary process from which parties were free to withdraw at any time also prompted some views that it was rare for the mediator to make disclosures as to circumstances that may affect the mediator's impartiality or independence.[31] Some also argued that these defences were superfluous given that there was overlap with some of the existing defences and also

27. *Report of Working Group II (Arbitration and Conciliation) on the Work of its Sixty-third Session*, UNCITRAL, UN Doc. A/CN.9/861 (2015), at para. 93.

28. Similar defences have been proposed in *supra* note 6 at 133–4; Chang-Fa LO and Winnie Jo-Mei MA, "Draft 'Convention on Cross-Border Enforcement of International Mediated Settlement Agreements'" (2014) 7 Contemporary Asia Arbitration Journal 387, 397–8.

29. UNCITRAL, *UNCITRAL Working Group II, 65th Session, Settlement of Commercial Disputes—International Commercial Conciliation: Preparation of an Instrument on Enforcement of International Commercial Settlement Agreements Resulting from Conciliation,* Note by the Secretariat, UNCITRAL, UN Doc. A/CN.9/WG.II/WP.198 (2016), at para. 35.

30. UNCITRAL, *supra* note 5 at para. 192.

31. *Ibid*., at para. 106.

because mediators were subject to terms of the agreement to mediate and codes of conduct.[32] There were concerns that the inclusion of these defences could lead to ancillary disputes, especially where the standards were subjective and could be interpreted differently.[33]

However, in response, it was said that the significant role of the mediator in concluding the settlement agreement needed to be acknowledged by the retention of these defences, even if it might be difficult to prove that a party had been treated unfairly in the process.[34] If the parties were not fully informed of any conflict of interest or if there had been some misconduct by a conciliator, there should be legal consequences, particularly at the enforcement stage, because unlike arbitration, there is no means to challenge the process or the conduct of the mediator.[35]

The current provision reflects a compromise[36] on the issue in three ways. First, it limits the scope of the defences to instances where the mediator's misconduct or failure to disclose had a direct impact on the settlement agreement in that the "party would not have entered into the settlement agreement". Second, it adjusts the language of the defences to highlight the exceptional circumstances that can be raised by using adjectives such as "serious" and "material". Third, by having the text accompanying the instrument, it provides an illustrative list of examples of applicable standards. Although it would take the development of a substantial body of case-law or other pronouncements by enforcing authorities before it can be said with any certainty what types of conduct would cross the line, the words used in the defences are sufficient to establish that the threshold should be high. Whether or not the misconduct of the mediator was such that a party would not have entered into the settlement agreement without it would be a finding of fact that courts and other enforcing authorities are in a position to make based on available evidence.

E. *Reservations*

To ensure the integrity of the Singapore Convention, only reservations that are expressly authorized by Article 8 are permitted, and these are as follows:

> (a) [A State Party] shall not apply this Convention to settlement agreements to which it is a party, or to which any governmental agencies or any person acting on behalf of a governmental agency is a party, to the extent specified in the declaration;
>
> (b) It shall apply this Convention only to the extent that the parties to the settlement agreement have agreed to the application of the Convention.

These reservations relate to the applicability of the Singapore Convention to settlement agreements to which a government agency or a person acting on behalf of a

32. *Ibid*., at para. 192; *supra* note 7 at para. 50.
33. *Supra* note 7 at para. 50.
34. UNCITRAL, *supra* note 5 at para. 193.
35. *Ibid*.
36. UNCITRAL, *Report of Working Group II (Dispute Settlement) on the Work of its Sixty-seventh Session*, UNCITRAL, UN Doc. A/CN.9/929 (2017), at paras. 96–8.

governmental agency is party to and the existence of an opt-in requirement. They essentially reflect an agreement to disagree among the members of the Working Group, since no consensus emerged on these two issues.

As to whether the Singapore Convention should apply to government entities, the Working Group considered that a blanket exclusion was not desirable because government entities may be engaged in commercial activities and might seek to use conciliation to resolve disputes in the context of those activities.[37] The Working Group agreed that this matter could be dealt with by way of permitting reservations or declarations by the states. Nevertheless, the Working Group had difficulty settling on what the default position should be, with this issue only finally being decided in February 2018.[38]

As for the opt-in requirement, although it may be said that permitting such a declaration would water down the effectiveness of the Singapore Convention, this was a necessary compromise for the Working Group to progress in the negotiations. One can always hope that, even if such a declaration is made from an abundance of caution, it may later be removed once a state becomes more confident of the usefulness of the enforcement procedure for international mediation settlement agreements. At least the default position is for the Singapore Convention to apply regardless of any express indication by the parties of their agreement to it, suggesting that most of the members of the Working Group do not foresee that such a declaration would be made.

On balance, although certain compromises were necessary, it was nonetheless a significant achievement that the Working Group prepared an instrument that governs the enforcement of international mediated settlement agreements.

II. AN ASIAN PERSPECTIVE

The Singapore Convention has great potential to impact the conduct of international dispute resolution in Asia, where mediation is viewed as a valuable tool to resolve commercial disputes as it is consistent with Asian sensibilities and culture.[39] In an exploratory survey conducted by the International Institute for Conflict Prevention and Resolution in 2011, out of 122 respondents comprising in-house counsel and external counsel from the Asia-Pacific region, seventy-two percent indicated that their company or firm generally had a positive attitude to mediation (compared to sixty-nine percent for arbitration) and seventy-eight percent indicated that their company or clients had used mediation to resolve disputes in the past three years.[40]

Many Asian countries have actively promoted the use of mediation in recent times. This has taken the form of, amongst others, enacting mediation legislation or

37. *Supra* note 27 at para. 46.

38. UNCITRAL, *Report of Working Group II (Dispute Settlement) on the Work of its Sixty-eighth Session*, UNCITRAL, UN Doc. A/CN.9/934 (2015), at paras. 75–7.

39. See generally, Joel LEE and TEH Hwee Hwee, eds., *An Asian Perspective on Mediation* (Singapore: Academy Publishing, 2009).

40. International Institute for Conflict Prevention and Resolution, "Attitudes Toward ADR In the Asia-Pacific Region: A CPR Survey" (2011), online: CPRADR <https://www.cpradr.org/programs/international-initiatives/asia/asia/_res/id=Attachments/index=0/asia-pacific-survey.pdf>.

regulations. For example, the 2012 amendment to China's Civil Procedure Law adopted the principle of "mediation first" in Article 122; the Malaysian Mediation Act 2012, Hong Kong Mediation Ordinance 2013, and the Singapore Mediation Act 2017 all established frameworks to provide certainty in the use of mediation. Judiciaries have also issued Practice Directions to encourage the referral of cases to mediation by incentivizing counsel and the parties to consider and attempt mediation at an early stage. Examples include Hong Kong's Practice Direction 31, and paragraphs 35B and 35C of the Singapore Supreme Court Practice Directions. Mediation may also be encouraged through establishing institutions and policies to promote mediation. China in 2018 launched an International Commercial Expert Committee to support the settlement of international commercial disputes through mediation and other avenues.[41] As part of efforts to enhance public confidence in mediation in Hong Kong, the Hong Kong Mediation Accreditation Association Ltd was established in 2012 to consolidate the accreditation process of mediators under a single professional body. In Singapore, there is an elaborate commercial mediation ecosystem: the Singapore Mediation Centre and Singapore International Mediation Centre offering commercial mediation services, the Singapore International Mediation Institute serving as a professional standards body, and the Singapore International Dispute Resolution Academy, the newest entrant, which was established in 2016, serving as a research institution and training academy.[42]

Despite these positive signs, international commercial mediation is presently still relatively uncommon compared with international commercial arbitration.[43] A survey commissioned by the Singapore Academy of Law, and published in 2016, of 500 respondents including commercial law practitioners, in-house counsel, and public sector legal professionals in Singapore and around the region reflected that seventy-one percent preferred to use arbitration, twenty-four percent litigation, and a mere five percent mediation, with enforceability, confidentiality, and fairness as leading factors for choosing arbitration.[44]

The Singapore Convention has the potential to address the concerns with enforceability and allow the positive attitudes towards mediation to lead to growth in the actual use of mediation. It is important that international commercial disputes in Asia be settled quickly and efficiently, given the expectation of an increase in the number of disputes in Asia with trade initiatives such as the ASEAN Economic Community, China's Belt and Road Initiative, and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership. It would also be in the interests of the numerous Asian

41. "China Launches International Commercial Expert Committee" *Xinhua* (26 August 2018), online: Xinhua <http://www.xinhuanet.com/english/2018-08/26/c_137420632.htm>.

42. See George LIM, SC and Eunice CHUA, "Development of Mediation in Singapore" in George LIM, SC and Danny MCFADDEN, eds., *Mediation in Singapore: A Practical Guide*, 2nd ed. (Singapore: Sweet and Maxwell, 2017), 21.

43. KIM Shi Yin, "From 'Face-Saving' to 'Cost Saving': Encouraging and Promoting Business Mediation in Asia" (2014) 32 Alternatives to the High Cost of Litigation 158, at 158.

44. Singapore Academy of Law, "Study on Governing Law and Jurisdiction Choices in Cross-Border Transactions" (2016), online: CIArb <http://www.ciarb.org.sg/singapore-academy-of-law-study-on-governing-law-jurisdiction-choices-in-cross-border-transaction/>.

dispute resolution institutions to have greater recognition and enforcement of international mediated settlement agreements.

Compared with the options of cross-border enforcement of mediated settlement agreements as a court order and arbitration award, the Singapore Convention presents a more straightforward, efficient path, given the divergent practice in Asia for enforcing foreign judgments,[45] as well as the complications involved when mixing mediation and arbitration.[46] The Singapore Convention will obligate competent authorities to enforce mediated settlement agreements emanating from other jurisdictions, and restrict the grounds on which they can decline enforcement.[47] The current draft of the Singapore Convention provides a simple framework for making an enforcement application and setting out the exceptions to enforcement. It is hoped that Asian jurisdictions will widely support the Singapore Convention, and thereby usher in a brighter future for Asian dispute resolution.

45. Adeline CHONG, ed., *Recognition and Enforcement of Foreign Judgments in Asia* (Singapore: Asian Business Law Institute, 2017) 3–4.

46. Bobette WOLSKI, "Arb-Med-Arb (and MSAs): A Whole Which Is Less Than, Not Greater Than, the Sum of its Parts?" (2013) 6 Contemporary Asia Arbitration Journal 249; Eunice CHUA, "A Contribution to the Conversation on Mixing the Modes of Mediation and Arbitration: Of Definitional Consistency and Process Structure" (2018) 15 Transnational Dispute Management Journal, online: < https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3235429 >.

47. Laurence BOULLE, "International Enforceability of Mediated Settlement Agreements: Developing the Conceptual Framework" (2014) 7 Contemporary Asia Arbitration Journal 35 at 59.