SINGAPORE INTERNATIONAL DISPUTE RESOLUTION ACADEMY

SINGAPORE CONVENTION ON MEDIATION

# A HANDBOOK ON THE SINGAPORE CONVENTION ON MEDIATION

The Singapore International Dispute Resolution Academy (SIDRA) is a platform for thought leadership in international dispute resolution theory, practice and policy. A research centre at the Singapore Management University Yong Pung How School of Law, SIDRA leads the way through projects, publications and events that promote dynamic and inclusive conversations on how to constructively engage with and resolve differences and disputes at global, regional and national levels. Specifically, SIDRA has three research focus areas:

- The International Dispute Resolution (IDR) Survey Research Program;
- The Singapore Convention on Mediation (SCM) Research Program; and
- The Belt & Road Initiative (BRI) Dispute Resolution Research Program.

https://sidra.smu.edu.sg/

SIDRA has produced this handbook for the purposes of the UNCITRAL Academy 2021.

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# 1. ABOUT THE CONVENTION

On 12 September 2020, the United Nations Convention on International Settlement Agreements Resulting from Mediation, also known as the Singapore Convention on Mediation entered into force ("**Singapore Convention on Mediation**" or "**Singapore Convention**"). This multi-national treaty has changed the face of international dispute resolution. It is the third complementary piece to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("**New York Convention**") and the Convention of 30 June 2005 on Choice of Court Agreements ("**Convention on Choice of Court Agreements**").

3

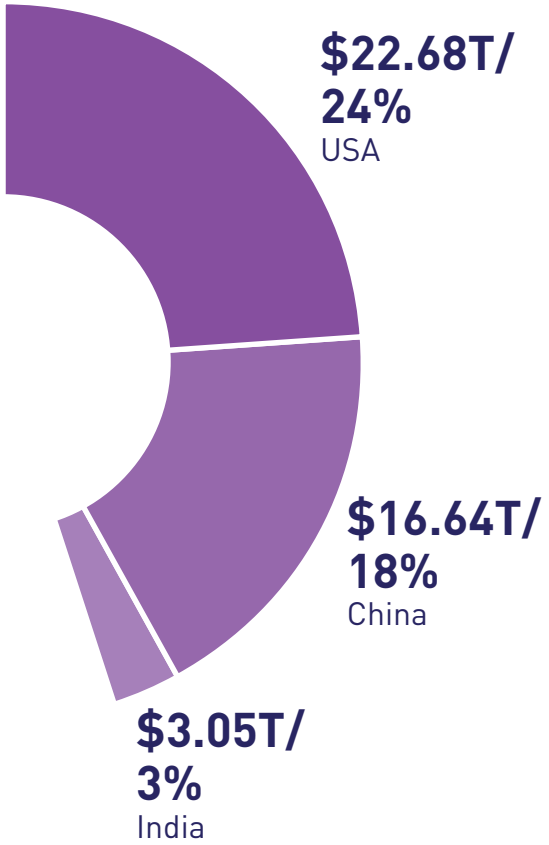
**OF THE WORLD'S LARGEST ECONOMIES HAVE SIGNED, WITH A COMBINED GDP OF**

US$42.4T

**AND A SHARE OF**

45%

**OF GLOBAL GDP.**

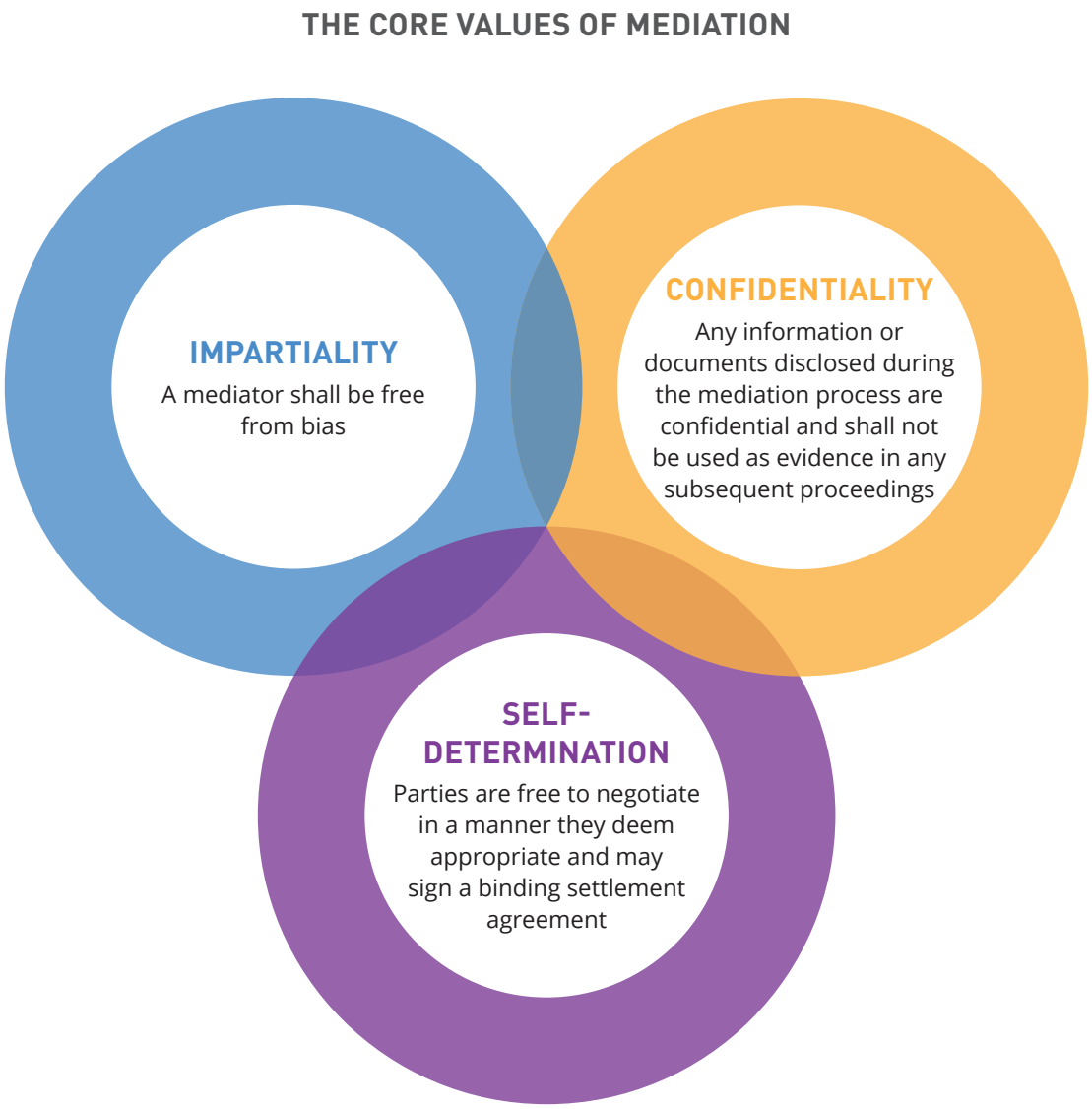



Source: International Monetary Fund, April 2021

This Handbook sets out the benefits of mediation in cross-border disputes and explains how the Singapore Convention is the complementary third piece in the international dispute resolution framework.

# 2. WHAT IS MEDIATION?

Mediation is a universal dispute resolution mechanism and has been used throughout the centuries for the resolution of various types of conflicts and disagreements. In modern times, mediation refers to a dispute resolution process in which a neutral third-party, otherwise known as a mediator, facilitates a negotiation process between disputing parties. A mediator does not have the adjudicative power to decide a dispute, unlike an arbitrator or judge. The main role of a mediator is to facilitate communication and assist disputing parties in reaching a mutually acceptable solution by consensus. If parties reach a consensus at the end of the mediation process, they are free to sign a settlement agreement. The core values of mediation are impartiality, confidentiality, and self-determination.



# 3. BENEFITS OF MEDIATION

Mediation is an important mechanism for the resolution of disputes around the world. Mediation offers significant benefits to businesses. The core benefits and advantages of mediation pertain to time and cost savings in the dispute resolution process, the preservation of commercial relationships, the control parties have over the process and outcome of mediation, the confidentiality of the mediation process, the opportunity of a mutually satisfactory solution between parties to the mediation, and a high rate of voluntary compliance with the outcome of the mediation process. Mediation is also of utmost importance for States, as it provides savings in the administration of justice.

## THE CORE BENEFITS OF MEDIATION

| | | |
|---|---|---|
| Mediation offers rapid resolution of disputes, which saves a significant amount of time |   | Mediation is a cost-effective way to resolve disputes |
| Mediation is a non-adversarial means of dispute resolution, which aims to preserve commercial relationships between parties |   | Parties to mediation retain full control over the mediation process and whether or not to sign a settlement agreement |
| Parties to mediation can achieve a mutually satisfactory solution |   | The mediation process is confidential. Anything disclosed during the process cannot be used as evidence |
| Parties voluntarily comply with the outcome of the mediation process in most cases |   | Mediation can reduce the backlog of cases in a State's court system |

These benefits are reinforced in the Singapore International Dispute Resolution Academy (SIDRA)'s International Dispute Resolution Survey: 2020 Final Report ("**SIDRA Survey**"), which reveals that a greater proportion of international dispute resolution users are satisfied with the costs (65%) and speed (68%) of mediation than with the costs and speed of arbitration (25% and 30%) and litigation (48% and 45%). The research carried out by International Institute for Conflict Prevention and Resolution (CPR) and Centre for Effective Dispute Resolution (CEDR) reveals that of the 90 respondents, only one respondent reported difficulties in relation to the opposing party's compliance with the mediated outcome.

# 4. ADOPTION OF THE SINGAPORE CONVENTION: CURRENT STATE OF PLAY AND ITS IMPACT

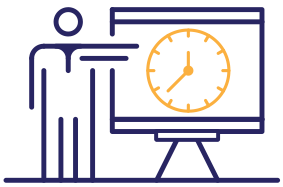
**4.1 WHAT IS THE SINGAPORE CONVENTION?**

The Singapore Convention regulates the recognition and enforcement of international mediated settlement agreements ("**iMSAs**"). The Singapore Convention marks a milestone for international commercial mediation, as it establishes a uniform regime for the recognition and enforcement of iMSAs. Prior to the entry into force of the Singapore Convention, the lack of a harmonised regime for the enforcement of mediated outcomes was widely considered to be a major obstacle to the greater use of mediation. The Singapore Convention on Mediation removes this obstacle, and hence businesses now have greater assurance that mediation can be relied on to resolve their cross-border disputes, as they will be able to enforce international mediated settlement agreements directly if the need arises. The Singapore Convention aims to facilitate international trade and promote the use of mediation in international commercial disputes by establishing an expedited enforcement regime for iMSAs. The Singapore Convention will bring certainty and stability into the field of international commercial mediation, as businesses now can enforce iMSAs directly in an expedited manner under the framework of the Singapore Convention.

**GOALS**

1

**ESTABLISH EXPEDITED ENFORCEMENT REGIME**



2

**PROMOTE USE OF MEDIATION**

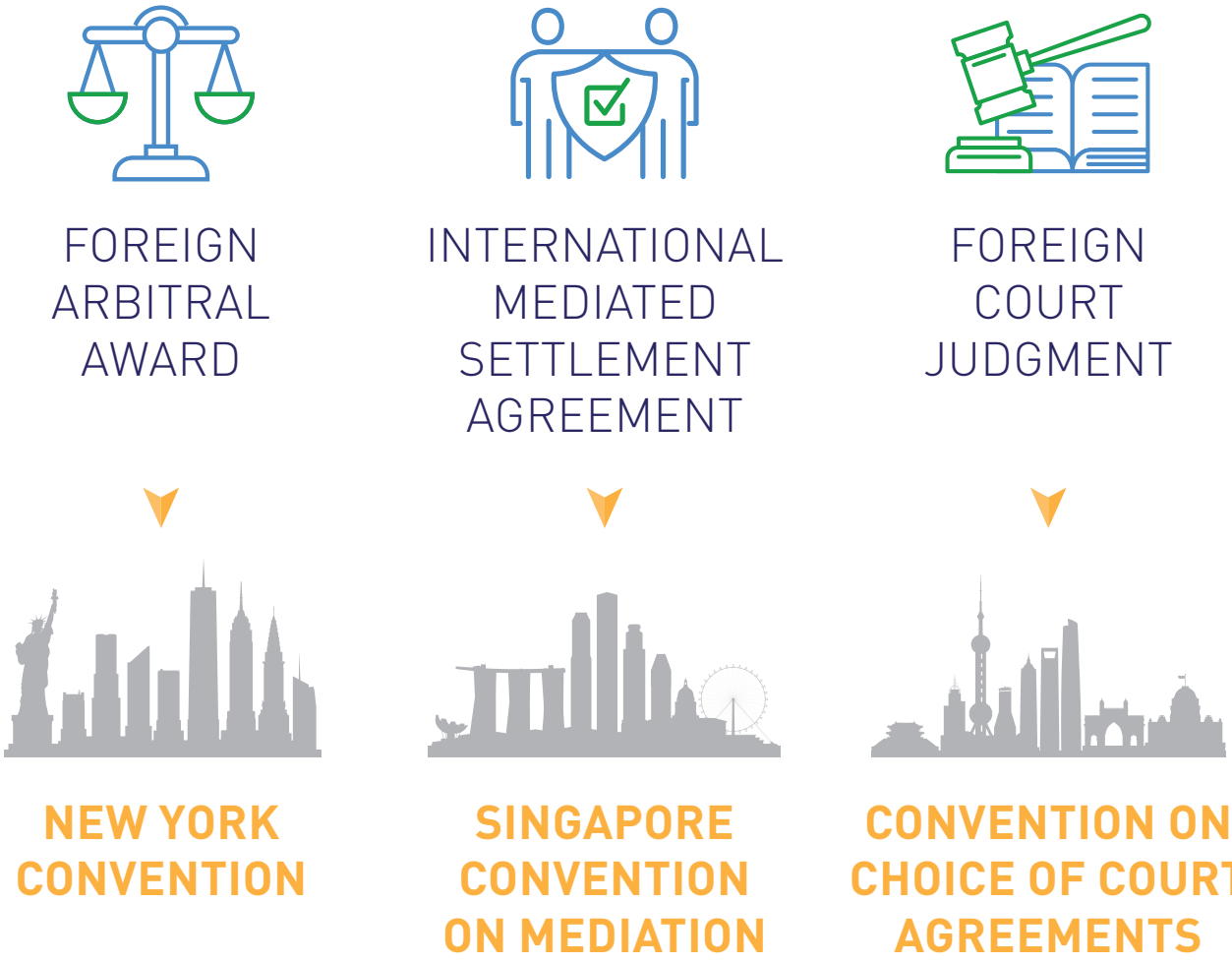
3

**FACILITATE INTERNATIONAL TRADE**

## 4.2 THE SINGAPORE CONVENTION AND THE DISPUTE RESOLUTION ECO-SYSTEM

The Singapore Convention is the third complementary piece in international dispute resolution. With the Singapore Convention's entry into force, mediation now enjoys the uniform framework for the enforcement of iMSAs, the same way foreign arbitral awards enjoy the enforcement framework under the New York Convention, and foreign court judgments under the Convention on Choice of Court Agreements.

The SIDRA Survey reveals that enforceability (71%) is the main criterion in the selection of a dispute resolution mechanism. In this regard, the Singapore Convention will provide businesses with predictability and uniformity in the enforcement of iMSAs.

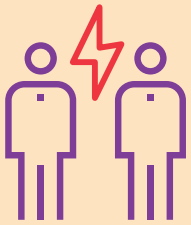


**4.3 IMPACT OF THE SINGAPORE CONVENTION: A CASE STUDY**

The Seller and the Buyer signed a sale of goods contract. The Seller failed to deliver the goods as per the contract and therefore, the Buyer did not pay the price of the contract. The Buyer and the Seller decided to go to mediation. The mediation process was successful and the Buyer and the Seller signed a settlement agreement. According to the settlement agreement, the Seller had to replace the goods with a different product within 1 week of the signing of the settlement agreement and the Buyer had to pay the price within 2 days of the delivery of the new product. The Seller delivered the new product as per the settlement agreement. However, the Buyer did not accept the delivery of the new product and tried to enforce the original contract. What can the Seller do?

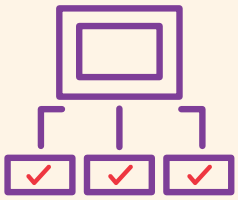
## THE SINGAPORE CONVENTION ON MEDIATION

### BEFORE



Before the Singapore Convention on Mediation, the Seller had to enforce the settlement agreement like a contract, or according to the domestic laws (if any) of the jurisdiction where enforcement is sought.

### AFTER



With the entry into force of the Singapore Convention, the Seller can invoke the settlement agreement to prove that the matter had been resolved in the settlement agreement. Where the Buyer seeks to enforce the settlement agreement in a jurisdiction that is a Contracting Party to the Singapore Convention, the settlement agreement is a complete defence. The Seller also can enforce the settlement agreement directly, similar to how awards or judgments are enforced, in any Contracting Party under its rules of procedure and in accordance with the conditions set out in the Singapore Convention.

## 4.4 SIGNING CEREMONY

The United Nations General Assembly adopted the Singapore Convention on 20 December 2018. The signing ceremony for the Singapore Convention was held on 7 August 2019 in Singapore. Forty-six States signed the Singapore Convention on Mediation on that day, an historically unprecedented number of first-day signings for an UNCITRAL treaty.

Singapore and Fiji were the first two States to ratify the Singapore Convention on 25 February 2020, followed by Qatar on 12 March 2020. As a result, in accordance with Article 14(1) of the Singapore Convention, the Singapore Convention entered into force six months after the deposit of the third instrument of ratification, acceptance, approval or accession, i.e. on 12 September 2020.

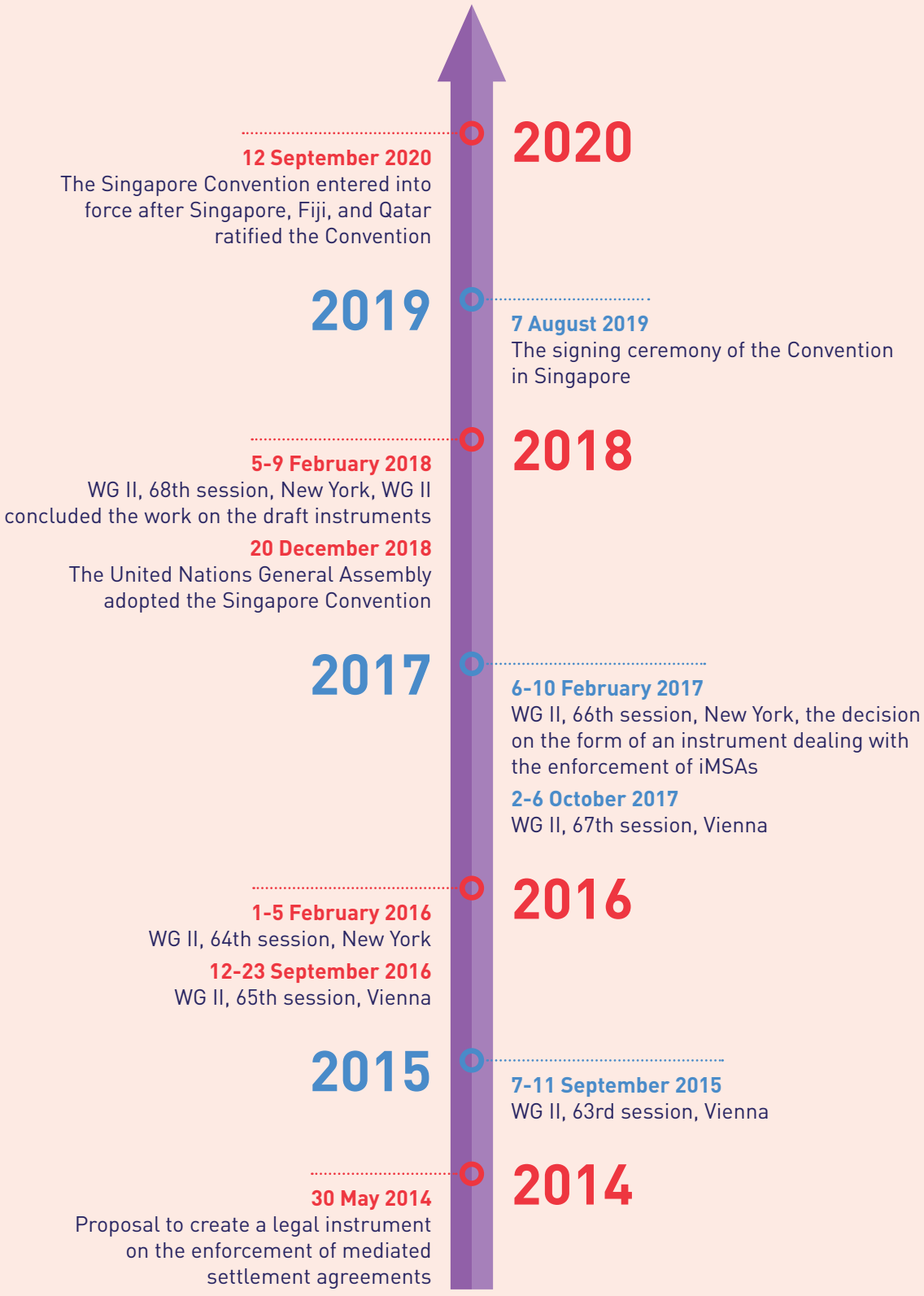

**Pictured:**
Prime Minister of Singapore **Lee Hsien Loong** (in the middle), with Minister for Home Affairs and Minister for Law of Singapore **K Shanmugam** to his right, United Nations Assistant Secretary-General for Legal Affairs **Stephen D. Mathias** to his left, and the official representatives of the signatory states to the Singapore Convention at the signing ceremony of the Singapore Convention in Singapore, 7 August 2019.

Source: https://www.singaporeconvention.org/

"Aranda Singapore Convention on Mediation" marks the historic moment of the signing of the Convention. It is the first orchid to be named after a United Nations treaty. It can now be found at the Singapore Botanic Gardens.

## 4.5 TIMELINE

The adoption of the Singapore Convention was a result of a series of negotiation sessions conducted at the United Nations Commission on International Trade Law (UNCITRAL)'s Working Group II on Dispute Settlement. The timeline below provides the negotiation and adoption process, leading up to the entry into force of the Singapore Convention:



**4.6 STATUS**

As at 20 August 2021, fifty-four States have signed the Singapore Convention, out of which six States have ratified/approved it.


- States that have signed the Singapore Convention
- States that have ratified/approved the Singapore Convention

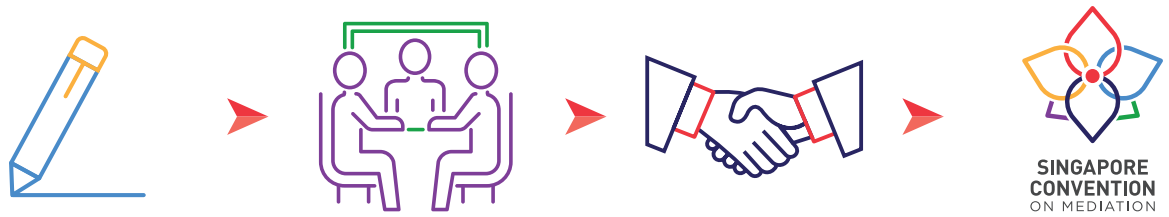
Source: adapted from the original by the Singapore International Mediation Centre (SIMC). Land Area and boundaries are illustrative only.

# 5. HOW DOES THE SINGAPORE CONVENTION WORK?

**5.1 WHAT IS AN iMSA AND HOW DOES THE SINGAPORE CONVENTION ENFORCE IT?**

The Singapore Convention regulates the recognition and enforcement of international mediated settlement agreements – iMSAs. An iMSA is contractual in nature. It encompasses parties' understanding of how to resolve their differences and specifies their rights and obligations. The term "international" refers to circumstances when 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 the State in which substantial obligations under the iMSA are performed or the State with which the subject matter of the iMSA is most closely connected. Under the new enforcement regime established by the Singapore Convention, if a party does not comply with the terms of an iMSA, the other party can enforce the iMSA directly, similar to how arbitral awards or judgments are enforced. Enforcement in any State or Contracting Party takes place under its rules of procedure and in accordance with the conditions set out in the Singapore Convention.

**An illustration:**




| DISPUTED COMMERCIAL CONTRACT | MEDIATION | iMSA | ENFORCEMENT |
|---|---|---|---|
| The Seller and the Buyer sign a sale of goods contract.<br><br>The Buyer fails to pay the price of the contract. | The parties go to mediation to settle the dispute. | The mediation process is successful and the parties sign an iMSA. | The Buyer fails to comply with the iMSA. The Seller takes the iMSA to the competent authority of a country which is a Contracting Party to the Singapore Convention and enforces it directly. |

### 5.2 iMSAS AS "SWORD" AND "SHIELD"

An iMSA has both a "sword" and "shield" function under the Singapore Convention. First, a party can directly enforce an iMSA if the other party does not comply with its terms. The enforcement capability of an iMSA functions like a "sword". Second, if a party starts formal proceedings on the matter that has been resolved by mediation and recorded as an iMSA, the other party may invoke the iMSA to prove that the matter has been already resolved between the parties. The invocation aspect of an iMSA functions like a "shield".

SINGAPORE CONVENTION ON MEDIATION

**"SWORD"**

**Enforces an iMSA if a party does not honour its terms**

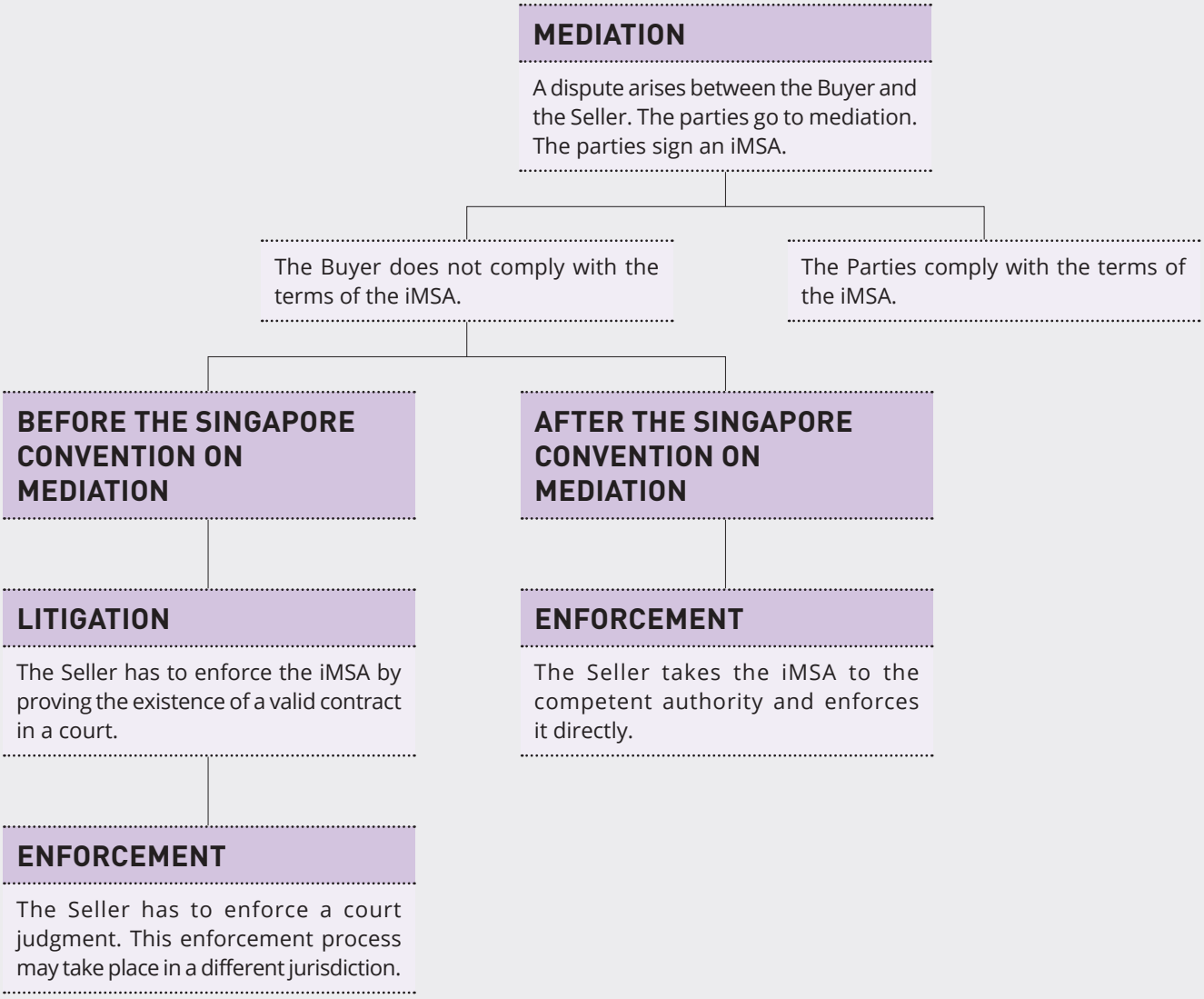
**"SHIELD"**

**Allows the other party to invoke an iMSA to prove that the matter has been resolved and documented in the iMSA**

### 5.3 ENFORCEMENT PROCESS OF iMSAS BEFORE AND AFTER THE SINGAPORE CONVENTION

An iMSA is contractual in nature. Before the Singapore Convention, a party had to engage in expensive and time-consuming litigation to enforce an iMSA. With the entry into force of the Singapore Convention, a party can simply take an iMSA to the **competent authority** that is a court or other body designated by a State or other Contracting Party to the Singapore Convention for the enforcement of iMSAs and enforce it directly. There is no need to prove the existence of a contractual agreement, provided there is compliance with the Convention requirements (see below).

Compulsory enforcement of an iMSA is not a necessary step after the conclusion of the mediation process. In fact, parties normally voluntarily comply with mediated outcomes. However, with the entry into force of the Singapore Convention, businesses now have the assurance that if a party to an iMSA does not comply with the iMSA, the other party can enforce the iMSA directly, similar to how arbitral awards or judgments are enforced.



## 5.4 THE ENFORCEMENT AND INVOCATION PROCESS UNDER THE SINGAPORE CONVENTION

The Singapore Convention establishes a simple and expedited process in relation to the invocation and enforcement of iMSAs. The Singapore Convention itself does not prescribe rules of procedure for granting relief in relation to iMSAs. According to Article 3 of the Singapore Convention, the competent authority grants relief in accordance with the rules of procedure of a State of enforcement and the conditions set out in the Singapore Convention (see Article 4). Two pieces of evidence must be submitted to the competent authority:

1. The iMSA signed by the parties; and
2. Evidence that the iMSA is the result of mediation.

**"Mediation" means a process, irrespective of the expression used or the basis upon which the process is carried out, whereby parties attempt to reach an amicable settlement of their dispute with the assistance of a third person or persons ("the mediator") lacking the authority to impose a solution upon the parties to the dispute.**

### EVIDENCE OF MEDIATION

A party may submit the mediator's signature on the iMSA; an attestation by the mediator or mediation institution; or any other evidence. The Singapore Convention does not set out an exhaustive list of evidence.

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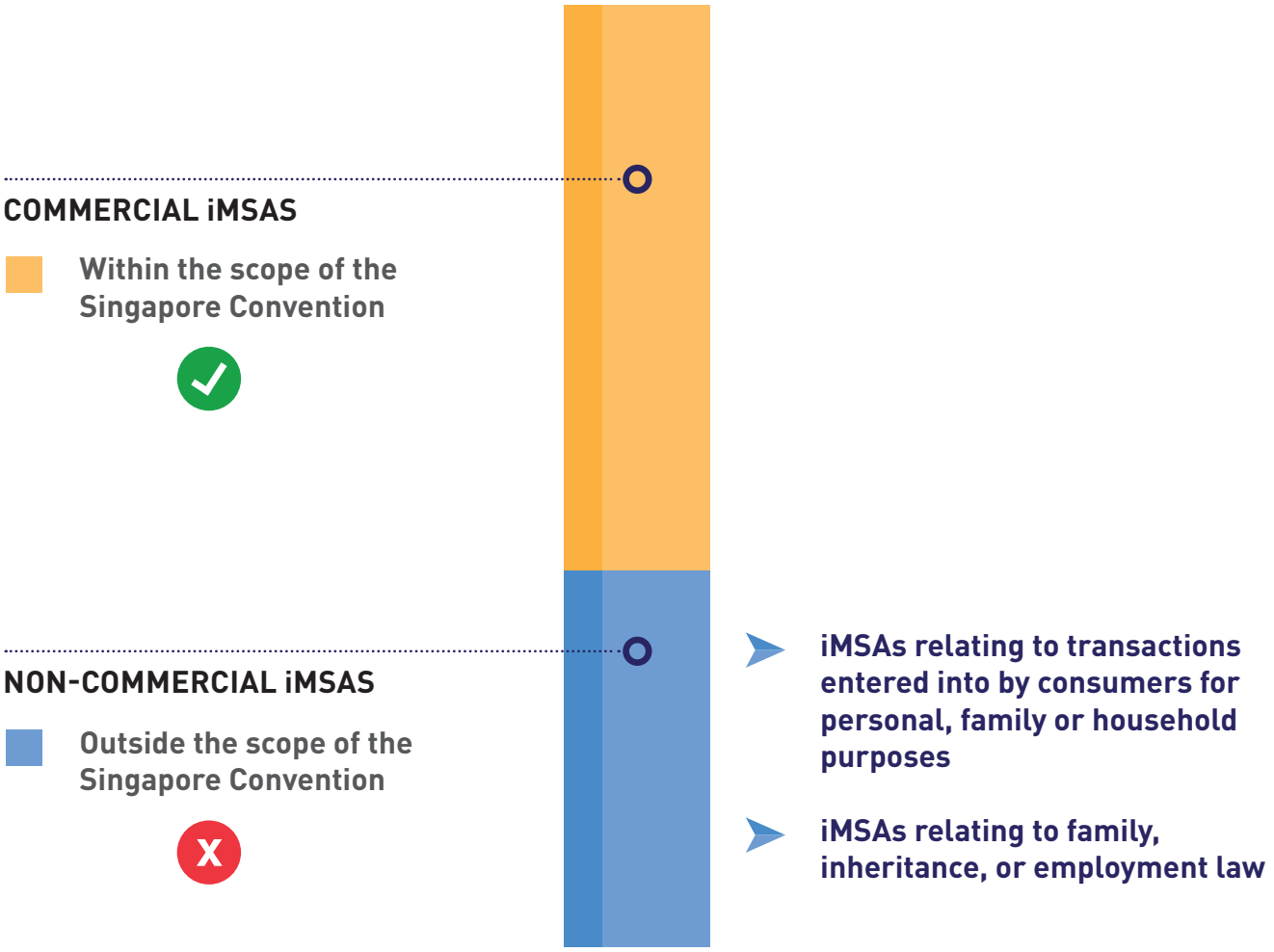
### THE iMSA

The iMSA must be submitted **in writing**. The competent authority may request a translation if the iMSA is not in an official language of a state where enforcement is sought.

**An iMSA is "in writing" if its content is recorded in any form. The requirement that an iMSA be in writing is met by an electronic communication if the information contained therein is accessible so as to be useable for subsequent reference.**

**5.5 WHAT ARE COMMERCIAL iMSAS?**

The Singapore Convention applies to iMSAs resulting from **commercial** mediation. The Singapore Convention does not define the term "commercial". Reference may be made to the UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation, 2018 ("**Model Law on Mediation**"), which provides a non-exhaustive illustrative list of commercial relationships. Contracting Parties to the Singapore Convention may elect to use provisions from the Model Law on Mediation to implement the Singapore Convention into their legal system. According to the Model Law on Mediation, the term "commercial" is broad and covers all relationships of a commercial nature. By way of example, commercial relationships include but are not limited to supply of goods and services, licensing, leasing, distribution, banking, financing, agency, factoring, and consulting. Article 1(2) of the Singapore Convention expressly carves out non-commercial types of iMSAs from its scope of application:



### 5.6 INVESTOR-STATE DISPUTES AND THE SINGAPORE CONVENTION

Mediation is becoming a popular means to resolve investor-State disputes. The drafters of the Singapore Convention envisaged the possibility of applying the Singapore Convention to iMSAs resulting from investor-State disputes. The term **commercial**, amongst other matters, includes investment relationships. At the same time, it is conceivable that Contracting Parties could exclude investor-State disputes from the scope of application of the Singapore Convention under Article 8(1)(a). This exclusion does not encompass private investment disputes that do not involve States. For more information on reservations, see section 5.10.

The SIDRA Survey shows that twice as many parties used ad hoc mediation (where the administration of the mediation process is not carried out by a mediation institution) compared to institutional mediation (where the administration of the mediation process is carried out by a mediation institution) for the resolution of investor-State disputes. However, the overall usage of mediation was low between 2016 and 2018. Given the coming into force of the Singapore Convention, the increasing inclusion of mediation in bilateral investment treaties (BITs), and the proliferation of institutional mediation rules focusing on investor-State matters, we expect investor-State mediation to be a growth area.

Rules which institutions have developed for investor-State mediation include:

- Mediation Rules of the International Centre for Settlement of Investment Disputes
- Guide on Investment Mediation by Energy Charter Conference
- International Bar Association's Investor-State Mediation Rules.

Recent investment treaties that provide comprehensive mediation rules for the resolution of investor-States disputes include:

- EU-Singapore Investment Protection Agreement
- EU-Vietnam Investment Protection Agreement
- The Mainland and Hong Kong Closer Economic Partnership Arrangement.

Some other treaties that refer to mediation without including comprehensive rules on the usage include:

- Hong Kong, China SAR-United Arab Emirates Bilateral Investment Agreement
- The ASEAN Comprehensive Investment Agreement 2012
- Indonesia-Australia Comprehensive and Economic Partnership Agreement.

**5.7 EXCLUSIONS FROM THE SINGAPORE CONVENTION**

Article 1(3) of the Singapore Convention excludes iMSAs from the scope of application that are enforceable as **arbitral awards** or as **court judgments**. The exclusions are justified, on the basis that the New York Convention deals with the enforcement of foreign arbitral awards and the Convention on Choice of Court Agreements deals with the enforcement of foreign court judgments.

## EXCLUSIONS

### COURT JUDGMENTS

The Singapore Convention does not apply to iMSAs approved by a court or concluded in the course of court proceedings that are enforceable as a judgment.

### ARBITRAL AWARDS

The Singapore Convention does not apply to iMSAs that have been recorded and are enforceable as an arbitral award.

### 5.8 GROUNDS FOR REFUSING TO GRANT RELIEF

Article 5 of the Singapore Convention contains the grounds for refusing to grant relief in relation to iMSAs. The grounds envisaged under this Article are exhaustive and the competent authority cannot refuse to grant relief in relation to iMSAs based on a ground which is not provided under Article 5 of the Singapore Convention.

Most importantly, the grounds under Article 5 are **permissive**. This means that the competent authority may still grant relief in relation to an iMSA even though one of the grounds under Article 5 may be present. The grounds under Article 5 may be classified into four different categories: 1. grounds that are contractual in nature, 2. grounds pertaining to the mediator's misconduct, 3. a ground pertaining to public policy, and 4. a ground pertaining to the "mediability" of the subject matter of the iMSA. The contractual grounds and grounds pertaining to mediator's misconduct have to be raised by a party, while the grounds pertaining to public policy and "mediability" can be considered by the competent authority on its own initiative.

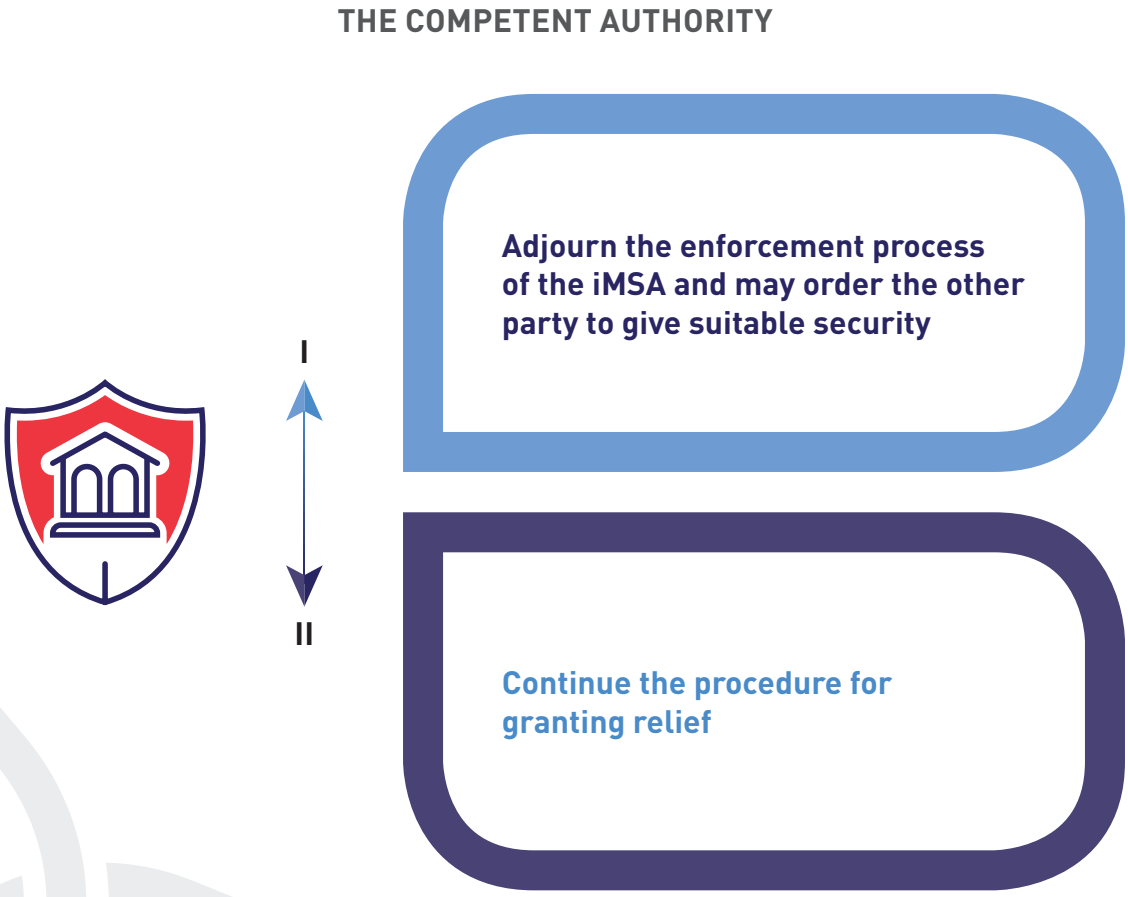
| CONTRACTUAL GROUNDS | MEDIATOR'S MISCONDUCT | PUBLIC POLICY | MEDIABILITY |
|---|---|---|---|
| Has to be raised by a party | Has to be raised by a party | Can be considered by the competent authority on its own initiative | Can be considered by the competent authority on its own initiative |
| **Incapacity** of a party | A **serious breach of standards** applicable to the mediator or the mediation without which that party would not have entered into the iMSA | Granting relief would be **contrary to the public policy** of a Contracting Party to the Singapore Convention where relief is sought | **Subject matter** of the dispute is **not capable of settlement by mediation** in a Contracting Party to the Singapore Convention where relief is sought |
| The iMSA is **null and void**, **inoperative** or **incapable of being performed** | A failure by the mediator to disclose circumstances to the parties which give rise to **justifiable doubts regarding the mediator's impartiality and 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 iMSA | | |
| The iMSA is **not binding or final** | | | |
| The iMSA has been **subsequently modified** | | | |
| The **obligations** in the iMSA have been **performed** | | | |
| The **obligations** in the iMSA are **not clear or comprehensible** | | | |
| **Granting relief** would be **contrary to the terms** of the iMSA | | | |

**5.9 PARALLEL CLAIMS**

Article 6 of the Singapore Convention addresses a situation when there are parallel proceedings relating to an iMSA in different jurisdictions. Parallel proceedings broadly fall into three categories of claims and applications:

1. Claims relating to the substance and content of an iMSA;
2. Applications or claims to annul an iMSA; and
3. Parallel enforcement claims in different jurisdictions.

In the case of parallel proceedings, a court has two options: first, adjourn the procedure for granting relief i.e. enforcement or invocation of the iMSA and on the request of a party, may order the other party to give suitable security or second, continue the procedure for granting relief.



### 5.10 RESERVATIONS

The Singapore Convention allows Contracting Parties, e.g. States, to make only two reservations. First, a Contracting Party (e.g. a State) may declare that it will not apply the Singapore Convention to iMSAs 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. Second, a Contracting Party may declare that it shall apply the Singapore Convention only to the extent that the parties to the iMSA have agreed to the application of the Convention. No other reservation is permitted under the Singapore Convention.

**GOVERNMENT IS NOT BOUND!**

**ARTICLE 8(1)(A)**

This reservation effectively excludes from the scope of application of the Singapore Convention iMSAs to which governments are parties.

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**MUST OPT-IN!**

**ARTICLE 8(1)(B)**

Parties to an iMSA have to opt into the application of the Singapore Convention. If parties do not opt in, the Singapore Convention does not apply and the iMSA cannot be enforced or invoked under its terms.

# 6. MEDIATION ECO-SYSTEM

## 6.1 ON MODEL LAWS AND CONVENTIONS

The Singapore Convention aims to promote the use of mediation in international dispute resolution. To this end, the success of the Singapore Convention will depend on the extent to which a State's regulatory and institutional frameworks support the use of mediation. The story of arbitration is illustrative. The success of the New York Convention is largely due to the significant institutional and regulatory capacity building for international arbitration that took place after its ratification. It is here that UNCITRAL model laws can be helpful. Of the 168 Contracting States to the New York Convention, 85 States (in a total of 118 jurisdictions) have adopted UNCITRAL Model Law on International Commercial Arbitration (1985), with amendments as adopted in 2006 ("**Model Law on Arbitration**"), as the basis for a robust regulatory system for arbitration that supports the implementation of the New York Convention.[1] The Model Law on Arbitration has played a significant role in the promotion of arbitration and helped the New York Convention to achieve its dominant status today. Similarly, the success of the Singapore Convention lies in the hands of Contracting Parties to (1) build capacity for mediation through the development of mediation service providing institutions and the development of a professional cadre of mediators, and (2) enhance the legitimacy of mediation by developing mediation law and jurisprudence that goes beyond the terms of the Singapore Convention to regulate other aspects of mediation such as (a) the recognition and enforcement of mediation clauses and (b) the confidentiality of the mediation process.

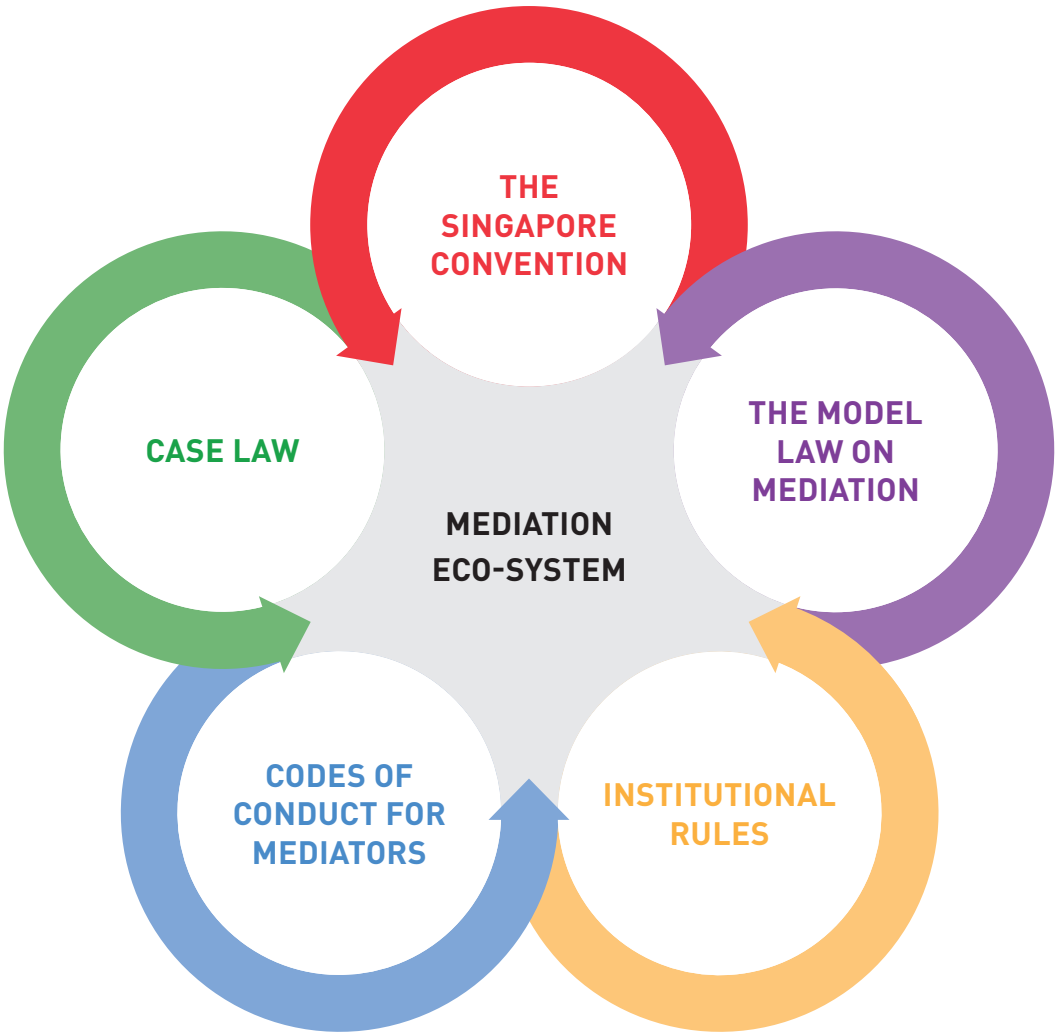
On 20 December 2018, the United Nations General Assembly adopted the Model Law on Mediation, which amended UNCITRAL's Model Law on Conciliation 2002. The Model Law on Mediation serves as a model that States can use for general mediation legislation. The Model Law includes provisions that effectively mirror the Singapore Convention for the benefit of non-signatory States that prefer to pass domestic legislation without entering into a multilateral treaty. Further, **the Model Law on Mediation is an important legal text, which is designed to assist States in developing their laws on commercial mediation**. The Model Law on Mediation addresses a variety of issues pertaining to mediation, including the commencement of mediation proceedings, appointment of mediators, conduct of the mediation process, confidentiality of the mediation process, enforcement of mediation clauses, and enforcement of mediated settlement agreements. In addition to the Model Law on Mediation, UNCITRAL has updated the UNCITRAL Conciliation Rules (1980). These Rules will be known as the UNCITRAL Mediation Rules and their aim is to ensure the consistency of rules with the Singapore Convention and the Model Law of Mediation.

1 Turkmenistan is the only non-Contracting State to the New York Convention that used the Model Law on Arbitration as the basis for adopting its national arbitration legislation.

### 6.2 ELEMENTS OF A MEDIATION ECO-SYSTEM

In addition to these legal instruments and texts, a robust mediation eco-system comprises case law, practice directions, institutional rules, model mediation clauses and agreements, and codes of conduct for mediators. Mediator codes of conduct are an essential element of a mediation eco-system. Under the Singapore Convention, one ground for refusing to enforce an iMSA pertains to a **serious breach of standards** applicable to the mediators and mediation, without which a party would not have entered into the settlement agreement. Further, a court may refuse to enforce an iMSA if a mediator failed to disclose information which may give rise to **justifiable doubts about the mediator's impartiality and independence** and without which a party would not have entered into the settlement agreement. Ethical standards typically take the form of non-legislative codes adopted by the professional community of mediators. By way of example, the Singapore International Mediation Institute ("**SIMI**") provides a code of professional conduct, which is applicable by default to any mediation process conducted by SIMI's mediators.

The Singapore Convention, the Model Law on Mediation, and other sources of hard and soft law, such as case law, practice directions and institutional rules and systems, create an eco-system in which mediation has the potential to become a mainstream mechanism for the resolution of commercial disputes.




This chart illustrates the main legal instruments and texts of a State's mediation eco-system

## 6.3 OVERVIEW OF THE MODEL LAW ON MEDIATION

The Model Law on Mediation offers a model for States to consider adopting as part of their domestic legislation to implement the Singapore Convention (dualist approach). But the Model Law goes further. It also offers model legislation that addresses other essential aspects of cross-border mediation practice. The main features of the Model Law on Mediation are set out here.

### SCOPE OF THE MODEL LAW

The Model Law on Mediation applies to international commercial mediation and international settlement agreements.

While implementing the Model Law on Mediation, States have the freedom to apply the Model Law on Mediation to international as well as domestic mediation.

The terms "international" (in relation to iMSAs), "commercial", and "mediation" have the same meanings as they are used in the Singapore Convention.

### COMMENCEMENT OF MEDIATION

A party can trigger the mediation process by sending an invitation to another party.

If a party who sent an invitation does not receive a reply within 30 days or within the timeframe specified in the invitation, this party may treat this action as a rejection to mediation.

### APPOINTMENT OF MEDIATORS

The general rule is that one mediator shall conduct the mediation process unless parties agree to appoint two or more mediators.

Parties can request a mediation institution to appoint a mediator or to recommend a mediator.

When a person is approached in connection with his or her possible appointment as mediator, he or she shall disclose any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence.

### CONDUCT OF MEDIATION PROCESS

Parties are free to agree to a set of rules on a manner that mediation is to be conducted.

If parties do not agree to such rules, the mediator is free to conduct the mediation process in a manner the mediator deems appropriate.

The mediator shall maintain the fair treatment of the parties at all times during the mediation process.

### CONFIDENTIALITY OF MEDIATION PROCESS

If the mediator receives information about a dispute from one party, the mediator may disclose this information to another party unless the party gives information to the mediator on the condition that it be kept confidential.

All information relating to mediation shall be kept confidential unless disclosure is required by law or for the purposes of implementation of the settlement agreement.

### ADMISSIBILITY OF EVIDENCE

Parties, mediators, or anyone involved in the mediation process shall not give testimony or shall not rely on evidence in arbitral or court proceedings pertaining to any of the following:

- An invitation by a party to engage in mediation or the fact that a party was willing to engage in mediation
- Views expressed or suggestions made in the mediation in respect of a possible settlement
- Statements or admissions made by a party
- Proposals made by the mediator
- The fact that a party indicated its willingness to accept a proposal for settlement made by the mediator
- A document prepared solely for the purposes of the mediation proceedings.

| MEDIATOR AS ARBITRATOR | ENFORCEMENT OF MEDIATION CLAUSES | ENFORCEMENT OF iMSAS |
|---|---|---|
| The default rule is that the mediator shall not act as an arbitrator in respect of a dispute that was or is the subject of the mediation proceedings or in respect of another dispute that has arisen from the same contract or legal relationship or any related contract or legal relationship. Parties can agree otherwise. | If parties agree to mediation, such an agreement shall be given effect if a party decides to bring a claim to court or arbitration. | If parties signed a settlement agreement, such a settlement agreement is binding and enforceable. States are free to enforce domestic mediated settlement agreements the same way they enforce iMSAs.<br><br>The Model Law on Mediation gives freedom to States to apply the enforcement provisions of the Model Law on Mediation to settlement agreements irrespective of whether they are derived from mediation. |

# 7. RATIFICATION/ACCEPTANCE/APPROVAL

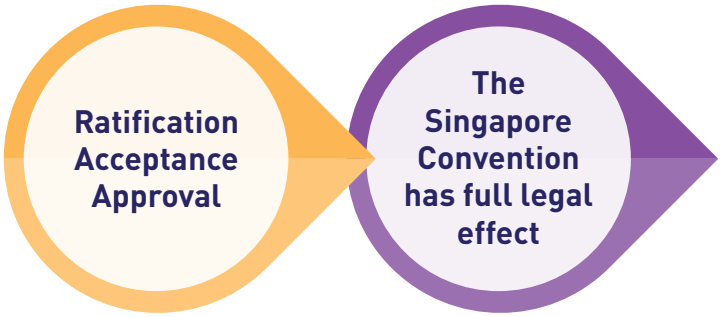
The Singapore Convention is subject to ratification, acceptance, or approval. The Singapore Convention is also open for accession by all States that are not signatories as from the date it is open for signature. Signing the Singapore Convention will not make it binding upon the signatories. Signatory States shall either ratify, accept, or approve the Singapore Convention in order to give effect to the Singapore Convention. Ratification, acceptance, and approval are, in each case, the international act so named whereby a State establishes on the international plane its consent to be bound by a treaty. States should refrain from acts that would defeat the purpose and object of the Singapore Convention in the period between signature and ratification, acceptance, and approval.

| RATIFICATION | ACCEPTANCE | APPROVAL |
|---|---|---|
| An act whereby a State indicates its consent to be bound by a treaty if the parties intended to show their consent by such an act. | An act that has the same legal effect as ratification. A State can express its consent through acceptance to be bound by a treaty. | An act that has the same legal effect as ratification. A State can express its consent through approval to be bound by a treaty. |
| The instrument of ratification has to be deposited with the depositary. | The instrument of acceptance has to be deposited with the depositary. | The instrument of approval has to be deposited with the depositary. |
| The Singapore Convention designates the Secretary-General of the United Nations as the depositary. | It is used at a national level when the constitutional law of that State does not require the ratification of a treaty. | Similar to acceptance, it is used at a national level, when the constitutional law of that State does not require the ratification of a treaty. |
| Singapore, Fiji, Qatar, Saudi Arabia and Ecuador have ratified the Singapore Convention so far. | None of the signatory States to the Singapore Convention have used the instrument of acceptance so far. | Belarus has used the instrument of approval so far. |

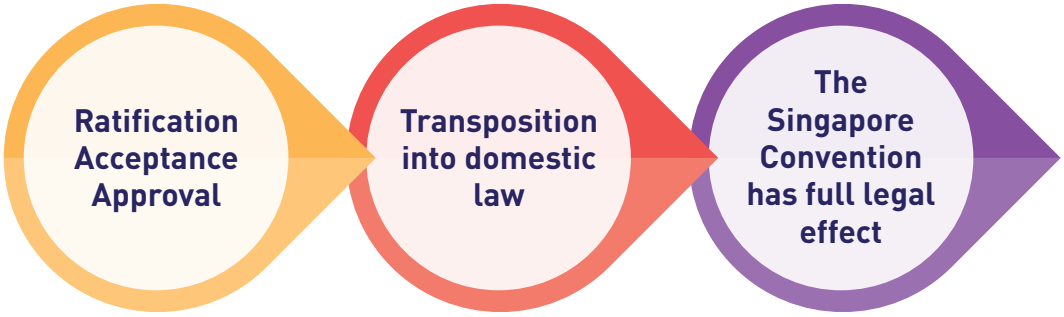
## MONISM AND DUALISM

There are two approaches by which an international treaty can become effective in a State's legal system – monist and dualist approaches. In States that follow the monist approach, international law is considered as an integral part of that State's legal system. Once a State ratifies, accepts, or approves a treaty, the treaty will become binding upon the State and produce the full legal effect in that State's legal system. In States that follow the dualist approach, international law is not considered as an integral part of a State's legal system. An international treaty will become effective only if that State transposes this international treaty into its domestic legislation.

## MONIST APPROACH




## DUALIST APPROACH




States that follow the dualist approach have to take extra care in the transposition of the Singapore Convention into their legal system. While enacting laws to give effect to the Singapore Convention, States may not modify or amend the provisions of the Singapore Convention in a way, which does not give full legal effect to the Singapore Convention. States following the dualist approach may choose to use the Model Law on Mediation to transpose the Singapore Convention into their legal system.

# 8. USEFUL MATERIALS

**LEGAL INSTRUMENTS AND TEXTS:**

1. United Nations Convention on International Settlement Agreements Resulting from Mediation
   Available at: **https://uncitral.un.org/**

2. The travaux préparatoires of the United Nations Convention on International Settlement Agreements Resulting from Mediation
   Available at: **https://uncitral.un.org/**

3. UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation, 2018
   Available at: **https://uncitral.un.org/**

4. UNCITRAL Mediation Rules
   Available at: **https://uncitral.un.org/**

5. UNCITRAL Notes on Mediation
   Available at: **https://uncitral.un.org/**

6. Guide to Enactment and Use of the UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation (2018)
   Available at: **https://uncitral.un.org/**

**BOOKS:**

1. Nadja Alexander and Shouyu Chong, **The Singapore Convention on Mediation: A Commentary**, Kluwer Law International, The Netherlands (2019).

**JOURNAL ARTICLES:**

1. Nadja Alexander, "**The Singapore Convention: What Happens After the Ink has Dried?**", American Review of International Arbitration ARIA 30 (2019).

2. Shouyu Chong and Felix Steffek, "**Enforcement of International Settlement Agreement Resulting from Mediation Under the Singapore Convention – Private International Law Issues in Perspective**", Singapore Academy of Law Volume 31 (2019), 448-486.

3. Vakhtang Giorgadze (2020) "**Dispute Resolution Clauses and the Enforcement of International Mediated Settlement Agreements under the Singapore Convention on Mediation**" (TDM, ISSN 1875-4120) November 2020, www.transnational-dispute-management.com.

4. Eunice Chua, "**The Singapore Convention on Mediation–A Brighter Future for Asian Dispute Resolution**" (2018) 9(2) Asian Journal of International Law 195–205.

5. Eunice Chua, "**Enforcement of International Mediated Settlements without the Singapore Convention on Mediation**" (2019) 31 Singapore Academy of Law Journal 572–597.

6. Eunice Chua, "**Enforcement of Mediated Settlement Agreements in Asia–A Path towards Convergence**" (2019) 15(1) Asian International Arbitration Journal 1–27.

7. Nadja Alexander & Shouyu Chong, **UN Treaty on Mediation signed in Singapore**, Nederlands-Vlaams tijdschrift voor mediation en conflictmanagement. 23, (2-3), 71-76, (2019).

8. Natalie Y Morris-Sharma, "**Constructing the Convention on Mediation: The Chairperson's Perspective**" (2019) 31 Singapore Academy of Law Journal 487-519.

9. Khory McCormick and Sharon S M Ong, "**Through the Looking Glass: An Insider's Perspective into the Making of the Singapore Convention on Mediation**" (2019) 31 Singapore Academy of Law Journal 520-546.

**WEBSITES:**

1. The website of the Singapore Convention
   **https://singaporeconvention.org**

SINGAPORE CONVENTION ON MEDIATION

2. The website of the Singapore International Dispute Resolution Academy (SIDRA)
   **https://sidra.smu.edu.sg/**

SMU SINGAPORE MANAGEMENT UNIVERSITY | Singapore International Dispute Resolution Academy

3. The website of the United Nations Commission on International Trade Law (UNCITRAL)
   **https://uncitral.un.org/**

4. The website of Investment Policy Hub, United Nations Conference on Trade and Development (UNCTAD)
   **https://investmentpolicy.unctad.org/**

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