

The Impact of the Singapore Mediation Convention and its Adaptation Study in Our Country

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Abstract

The United Nations Convention on International Commercial Conciliation and Reconciliation Agreements (hereinafter referred to as the Singapore Conciliation Convention), for the first time in the form of an international convention, gives legal enforceability to the international commercial reconciliation agreements reached after the investigation, so as to break the dilemma of difficult implementation of the settlement agreements in the international arena. However, this is extremely inconsistent with China's legal provisions and long-standing legal concepts. According to Chinese law, the settlement agreement does not have the enforcement force of legal effect, and it can be enforced only after being reviewed by the court or other institutions. This is where the contradiction between the Singapore Mediation Convention and China arises. The promulgation of the Singapore Mediation Convention has brought impact and opportunities to China's commercial mediation agreements. We must improve China's commercial mediation system so as to link up with the Convention. This paper uses the methods of literature analysis, value analysis and historical analysis to analyze the major difficulties of China's accession to the Singapore Mediation Convention, and to improve the review and implementation procedures to overcome the possibility of seeking the application of the Singapore Mediation Convention in China.

Keywords

Singapore Conciliation Convention; Commercial Mediation; International Business; China's Commercial Mediation System.

1. The Content and Characteristics of the Singapore Conciliation Convention

1.1. Content

1. The Convention clarifies the legal effect of international commercial mediation agreements, provides for the integration of international commercial mediation and arbitration, litigation procedures and the supervision of mediation procedures.
2. The Convention stipulates the obligations and rights of the parties and the disputing parties to implement and invoke the settlement agreement respectively.
3. The Convention defines the reasons why the court can voluntarily refuse to grant relief, and provides the flexibility for the parties to make reservations.

1.2. Features

1.2.1. The Disputes Referred to in the Convention Must be International Commercial Disputes

As for the definition of "commercial disputes", the Singapore Mediation Convention implements international principles and clearly divides international disputes from domestic disputes. In terms of individuals, families, etc., disputes arising from personal interests do not fall within the scope of the Convention. At the same time, in terms of law, the Singapore Mediation

Convention does not apply to settlement agreements signed for disputes related to inheritance law, employment law, etc.

1.2.2. The Mediation Process must Involve a Third Party

The Singapore Conciliation Convention does not allow the parties to negotiate on their own to reach a settlement agreement and then directly apply for enforcement, a mediator must intervene to mediate as a neutral third party. That is, the Convention applies to non institutional mediation, personal mediation by mediators, as well as institutional mediation, individuals (mediators) must also participate in.

1.2.3. The Settlement Agreement should Originate from an Independent Mediation Procedure

If the settlement agreement between the parties arises in the course of court proceedings or arbitration by arbitration institutions, this agreement shall not apply to this Convention. At the same time, the Convention does not prohibit judges or arbitrators from acting as mediators in other cases. Therefore, if a judge or arbitrator participates in the mediation process, it should be judged whether the agreement is applicable to the Convention according to whether the judge or arbitrator is a third party and whether the settlement agreement originated from an independent mediation procedure. In this way, conflicts between the Singapore Conciliation Convention and the New York Convention can be avoided.

1.2.4. The Settlement Agreement Must be in Writing, and the Oral Agreement Will not be Recognized by This Convention

According to the United Nations International, The UNCITRAL Model Law on International Commercial Arbitration and the New York Convention, as well as the Singapore Conciliation Convention, have adopted a compromise approach to the conclusion of agreements, which caters to the trend of the development and widespread use of electronic information technology. They do not stick to the traditional written form, but also avoid the misleading and uncertainty that may be brought about by the parties' mediation in the form of capitulation.

2. The Impact of the Ratification of the Singapore Conciliation Convention on China

2.1. Positive Impact

The ratification and implementation of the Singapore Mediation Convention have exerted a positive and far-reaching impact on China's commercial mediation industry, the commercial legal system and Chinese enterprises.

Firstly, for the commercial mediation industry, the ratification and implementation of the convention illuminate the future development of our commercial mediation industry. China's signing of the convention has aroused people's attention to the commercial mediation industry. The gradual improvement of the commercial mediation market and the establishment and expansion of commercial mediation institutions have not only greatly improved the level of commercial mediation in China, but also attracted more talents to enter the commercial mediation industry and trained a large number of high-level and high-quality commercial mediators.

Secondly, to the legal system of commercial affairs, the signing of the convention has widened the method of resolving commercial disputes and greatly improved the legal system of commercial affairs. The Convention's pursuit of commercial autonomy and fair mediation is in line with China's goal of developing a commercial dispute settlement mechanism. Meanwhile, the pertinence and accuracy of commercial laws brought by the Convention is a magic weapon for China to safeguard overseas interests and international security with the rule of law thinking and method.

Thirdly, for Chinese enterprises, acceding to the Convention has provided them with advantages and convenience for their development, especially in the international arena. Since China's accession to the Convention, with the increase in the number and types of international commercial disputes, China's mediation industry has gained more practical opportunities and handling experience earlier, ensuring that Chinese enterprises are at the forefront of international commercial mediation capabilities and enhancing the competitiveness of Chinese enterprises in the international market.

Fourthly, it improves the status of mediation in resolving commercial disputes. Mediation is efficient, voluntary and non-adversarial. Features can not only effectively and effectively solve international commercial disputes, but also stabilize the international trade environment and ensure the smooth operation of the global economy. The implementation of the Singapore Mediation Convention is undoubtedly an insurmountable milestone in the history of commercial mediation system.

2.2. Negative Impacts

Firstly, a large number of cases of international mediation agreements arising in the short term after the ratification of the Singapore Mediation Convention may increase the judicial burden on our courts. In addition, the risk of infringement of public interest arising from false mediation is a new challenge for the judiciary.

Secondly, our commercial mediation system is not yet perfect and optimized, and some enterprises or individuals may take advantage of the loopholes in the system.

Avoid the law, avoid debt. At the same time, due to institutional reasons, some state-owned enterprises may not be willing to use the convention to resolve their commercial disputes with foreign investors.

Thirdly, the sudden introduction of the new convention will impact the domestic commercial mediation market and disturb the scope of commercial reconciliation.

3. Some Difficulties in China's Accession to the Singapore Conciliation Convention

Everything has two sides. The implementation of the Singapore conciliation convention in China is also a "double-edged sword". The Singapore mediation convention will facilitate China's commercial mediation on a macro level, but domestic legal professionals still have doubts about whether to accede to the Singapore mediation convention. There are hidden worries in the following aspects in the connection between China and the Singapore mediation convention.

3.1. The Legal Basis of Commercial Mediation is Weak

Forethought makes success, failure makes waste. Whether China is ready to join the Singapore Mediation Convention or not, if it enters the Singapore Mediation Convention without sufficient preparation, it will only add to the trouble, which is the common opinion of the domestic legal circles. The basis of domestic commercial mediation is indeed weak. Compared with other developed countries, it started late and developed slowly.

The weak foundation is reflected in the lack of special legislation on commercial mediation. Compared with the western developed countries in the early years to promote the development of commercial mediation and promulgated relevant laws according to local conditions, our commercial mediation is still in the initial stage. Although the "People's Mediation Law" promulgated in 2010 has filled the gap in the special legislation of mediation to a certain extent, it is not closely related to commercial mediation in essence. This is because the People's Mediation Law mainly regulates the actual operation of people's mediation, but there are

differences between people's mediation and commercial mediation in procedural rules, value orientation, legal procedures and many other aspects. The people's mediation organization is a mass organization. The main normative object of the People's Mediation Law is "semi-official" people's mediation, and the normative function of commercial mediation is very limited. [1] However, commercial mediation organizations are independent commercial organizations, and professional and professional are essential characteristics of commercial mediators. It is precisely because of these differences that "People's Mediation Law" is not applicable to commercial mediation cases, so commercial mediation in our country has been in the state of "unable to follow".

Although the People's courts and relevant judicial institutions have successively issued the Opinions of the Supreme People's Court on Establishing and Improving the Contradiction and Dispute Settlement Mechanism Connecting Litigation and Non-Litigation and the Reform Opinions of the People's Court on Further Deepening the Diversified Dispute Settlement Mechanism, these documents related to commercial mediation only have guided value and are not strictly judicial interpretations. These broad provisions are difficult to promote the development of commercial mediation substantively. Therefore, to speed up the legislation of commercial mediation, ensure that there are laws to be followed, and better connect with the convention, is to join the Singapore Convention on Mediation Business is urgent.

3.2. The Lack of Commercial Mediation Institutions and Talents Commercial Mediation is Not an Ordinary Mediator

The complexity, professionalism, international and comprehensive nature of international commercial disputes determine the high requirements for mediators and the necessity of training high quality commercial mediation talents. According to the judicial department, there are currently 3.669 million people's mediators in China, of which only 497,000 are full-time mediators. The Chinese People's Mediation Committee is defined by the People's Mediation Law as a mass organization for the mediation of civil disputes. [2] Due to the large population base, extensive land area and the national condition of China in the primary stage of socialism, most of these mediators are basic legal service personnel, mainly mediate some family disputes, neighborhood conflicts and other civil disputes, and their professional quality of commercial disputes is very difficult to possess. To sum up, there is a lack of professional and international indicators for commercial mediators in China, and no special commercial dispute education system or certification examination to train talents. In addition, the concept of commercial mediation is vague, and the construction of commercial mediation institutions and talented personnel lacks the fundamental impetus for development, international competitiveness and international credibility, so it is difficult to meet the needs of the Singapore Mediation Convention.

To sum up, the development of our legal system and institutional talent team lags behind, and it is difficult to fully meet the challenges after joining the Singapore Mediation Convention. However, this does not mean that our country should escape from reality. On the contrary, we should take the Singapore Mediation Convention as an opportunity to improve the legislation of commercial mediation and cultivate talents, accelerate the development of our commercial mediation and speed up the practice of international standards.

3.3. Conflict between Singapore Mediation Convention and Chinese Law

In terms of the mechanism of commercial settlement agreement, there are great differences between Singapore Mediation Convention and China. "Enforcement" is the soul of the Singapore Mediation Convention, and its core value lies in providing a convenient, fast and effective enforcement mechanism for international commercial settlement agreements. Article 3 (1) of the Convention requires that the States parties should comply with their own procedural rules

when performing international commercial settlement agreements. The biggest feature of the Singapore Mediation Convention is that it enforces the execution and judgment of international commercial settlement agreements under it. International commercial settlement agreements that meet the conditions of the Convention can be used as the direct basis for execution after the application of the parties and the review of the relevant institutions of the executing country.[3] In contrast, in our country, the mediation settlement agreement is divided into litigation and mediation settlement agreement and non-litigation and mediation settlement agreement according to the difference of legal effectiveness. In addition to the litigation mediation meeting the requirements of the Convention, the "09" Opinion of the Supreme People's Court on Establishing and Improving the Settlement Mechanism of Disputes between Litigation and Non-litigation "defines the settlement agreement reached through commercial mediation organizations and signed and sealed by the parties as a civil contract, and also sets up a" judicial confirmation "procedure for it. However, this judicial confirmation procedure is for the purpose of determining whether the agreement is valid rather than for final implementation. [4] Thus, China does not grant settlement agreements reached without non-litigious mediation procedures a legal status beyond contract. As for the settlement agreement reached through mediation, we can only seek reasonable and feasible ways to implement it within the framework of Chinese legal system.

3.4. The Challenge of Singapore Conciliation Convention to the Judicial System

False mediation may enter the country after joining the Singapore Mediation Convention, which will undoubtedly affect the credibility of the domestic judicial system. One of the distinctive features of the Singapore Mediation Convention is the inclusive mechanism, which excludes the restrictions on the "place of mediation" and "nationality" in the arbitration mechanism, and stipulates that the contracting parties undertake the international obligation to implement the commercial settlement agreements of all countries. [5] The purpose of the inclusive mechanism is to expand the scope of application of the Convention, but to the same extent, it also increases the international obligations and judicial difficulties of States parties. The procedural threshold for the relief of commercial mediation agreements set in the Singapore Mediation Convention is relatively simple. For example, although Article 4 of the Convention requires the parties to prove that the settlement agreement was completed through mediation, the place where the settlement agreement was reached and the place of judicial review are frequently inconsistent, which leads to a straight-line increase in the difficulty coefficient of identifying the authenticity of the mediator's signature, which consumes a lot of time in actual situations Human cost and judicial review are extremely difficult, especially when the parties have false intentions. For our country, in the current law of our country, only Article 227 of the Civil Procedure Law provides for the objection of outsiders to reject the application for enforcement, and there is no special definition of false mediation and no punitive measures. In addition to the immaturity of China's mediation system and the imperfection of the social public trust system, it is unavoidable to obtain the illegal interests of the parties at a very low legal risk cost through false mediation, which leads to the high frequency of false mediation.

In addition, after joining the Singapore Mediation Convention, the predictable pressure on the court's judicial enforcement has increased dramatically. At that time, more cases of commercial settlement agreement enforcement will inevitably enter the court. While squeezing the resources of judicial enforcement, it will also increase its own enforcement pressure, making the judicial system carry a heavy load forward. For a large developing country like China, the population base is huge, the number of enterprises is large, and the court system and human resources are extremely limited. What's more, China is in an important stage of reform and opening up. With the development of the Belt and Road strategy, Chinese enterprises are actively integrating with the world. The implementation of our "going out" and "bringing in"

strategies has increased the judicial pressure. Once joining the Singapore Conciliation Convention, or the preparation is insufficient, we will have to face enforcement applications from all over the world. Whether our judicial institutions have enough resources to deal with these informal and unusual cases of implementation of the International Commercial Conciliation Agreement is always questionable.

4. Countermeasures to Conflicts

4.1. Filling the Legislative Vacancy of Commercial Mediation in China

In the short term, the connection with the Singapore Conciliation Convention can be preliminarily realized through judicial interpretation. However, in order to prevent China's commercial mediation from being in a passive position all the time, it is necessary to establish and improve the commercial mediation market, regulate market behavior, and formulate a special commercial mediation law. According to international standards, in combination with China's national conditions and the trend of domestic law reform, strengthen the theoretical research of international commercial mediation law, and improve the infrastructure of superstructure construction. As it is not realistic to realize mediation legislation in a short time, the State Council can formulate relevant administrative regulations and rules, and then formulate a commercial mediation law at the legal level, in combination with the current situation and the need for convention convergence. [6]The implementation of legislation focuses on the development and innovation of international commercial mediation law, and enhances the universality and internationality of China's international commercial mediation law. Clarify the scope of commercial affairs, distinguish domestic commercial mediation from international commercial mediation, subdivide the category of commercial mediation, and achieve targeted treatment.

4.2. Establish and Improve Mediation Institutions to Cultivate High-Quality Talents

Lead China's commercial mediation organization to develop in the direction of marketization and be independent of arbitration institutions. Market-oriented, the overnment appropriately participates in supervision, gives the Council full autonomy, downplays the administrative color[7],and reduces the concerns of foreign parties when choosing China's commercial mediation agency. In addition, the members of the board of directors should be professional and international, have rich mediation experience and authority, and encourage a certain proportion of foreign countries. Experts serve as directors to ensure that the Council supervises the public, openness and transparency of decision-making.

In view of the current situation of commercial mediation in China, the training of commercial mediators should emphasize the requirements of specialization, internationalization and professionalization, and strengthen business training in a targeted way. Due to the comprehensive complexity of international business, professional integration has many theoretical knowledge such as law, negotiation, psychology and so on, and is a talent specially cultivated for mediation. Internationality requires mediators to be proficient in at least one foreign language and pay attention to international commercial developments from time to time; professionalization requires the establishment of professional qualifications for mediators. Certificate examination, clarify the qualifications. At the same time, talent training is inseparable from the strong cooperation of colleges and universities. Commercial mediation majors can be set up in relevant commercial law universities to provide talent resources for international business.

4.3. Clarify the Relief Function to Prevent False Mediation

The Singapore Conciliation Convention has a broader range of grounds for refusing relief, giving the competent authorities of States parties greater discretion, so it is necessary to introduce a kernel system. In terms of specific system design, in addition to referring to the relevant provisions of the arbitral award in terms of the verification path and requirements, when designing an international commercial settlement agreement denial of relief mechanism, consideration may be considered to report it to the International Commercial Court after examination and verification by the Higher People's Court of the jurisdiction for preliminary review by the Expert Committee of the International Commercial Court. Nuclear, using its professionalism and understanding of foreign mediation procedures and laws, to better grasp the scale and standards of the review.[8]

The core of establishing and improving the false mediation and punishment system is to increase the objection system for outsiders. While considering the particularity of international commercial mediation, you can refer to the outsider execution objection system and the implementation rotary system stipulated in the Civil Procedure Law. For example, it is necessary to disclose mediation information in a specific situation, evaluate the potentially executed property, and sort out the stakeholders of the interests laid by the property. Secondly, the key to preventing false mediation lies in the review system of the settlement agreement. It is recommended that the Supreme People's Court establish a special review body for international commercial mediation, formulate necessary premises, and achieve procedural justice.

5. Conclusion

In today's era of global informatization, facing the challenges of COVID-19, flexible and efficient mediation to solve cross-border commercial disputes is undoubtedly the best way to solve them. Although there are many difficulties in acceding to the Singapore Conciliation Convention, it is an inevitable trend. As the largest developing country, China should establish the image of a responsible, international and modern country and contribute Chinese wisdom to international commercial mediation.

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