

Singapore Convention Series - Why China Should Sign the Singapore Mediation Convention: Response to Concerns (Part II)

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In Part I, I introduced and responded to concerns relating to China's legal and judicial system if China signs the Singapore Mediation Convention. This part will focus on other concerns relating to the interests of various bodies of China.

1. Concern over possible harm to the interest of Chinese companies

In recent years, the number of cross-border disputes involving Chinese companies has been on the rise. There are therefore concerns that if China becomes a contracting state of the Singapore Mediation Convention, this might result in opening the gate for enforcing the properties of Chinese companies. For example, the court may seal up, seize or freeze the bank account or equity interest of Chinese companies, or may auction the real estate owned by Chinese companies in order to pay off the debt and jeopardizing their interests.

Response:

As already discussed above, the fundamental principle for developing a legal system should be fairness rather than showing favoritism to a certain group. If there are justifiable grounds to enforce the properties of certain Chinese companies, we shall not grant special protections to them. In fact, by reference to the New York Convention, the Singapore Mediation Convention has provided a self-contained and highly pragmatic defense mechanism that the enforcement debtor can avail itself of to raise objections.

In addition, if China does not sign the Convention, foreign companies would not be incentivized to use mediation to resolve their disputes with Chinese companies, and would have to resort to litigation or arbitration. Litigation or arbitration proceedings are time-consuming and costly, and their outcome is uncontrollable. By contrast, mediation enables the parties to cost-effectively reach a solution that reflects their consensus, which is controllable and predictable.

Further, as far as a country is concerned, convenient conditions for dispute resolution is a strong indicator of its benign and open business environment. It can be foreseen that in the future, whether a country is a contracting state of the Singapore Mediation Convention will be an important index in valuing a country's friendliness towards foreign investment, exactly as whether a country is a contracting state of the Washington Convention or the New York Convention now is. For China, being a contracting state of the Singapore Mediation Convention will not only help Chinese companies to expand their international businesses, but will further improve China's investment environment and escalate its opening and reform.

2. Concern over the competition Chinese mediation institutions might face

Because the regulatory rules on mediation are unsophisticated and the practices of commercial mediation are inadequate in China, there are fears that China's mediation institutions would be lacking a competitive advantage in the market for international mediation services in the event that the Singapore Mediation Convention enters into force in China.

Response:

If China signs and later ratifies the Singapore Mediation Convention, certainly China's mediation institutions will have to experience head-on competition with international mediation institutions. However, to cite Director Zhang Wei, "competition gives rise to development". The competition brought about by the Singapore Mediation Convention is virtuous and interactive in that it creates opportunities for mediation institutions in different countries to learn from each other. As a result, China's mediation industry will gain in its international and professional strength. Moreover, China is endowed with a large number of highly competent legal professionals, a vast market as the second largest economy of the world, and the cultural tradition of valuing harmony. With those unique advantages, fears towards competition, if any, are completely unnecessary.

3. Concern over the adverse impact on Hong Kong's position as an Asia-Pacific Dispute Resolution Center

In the 13th Five-Year Plan for Economic and Social Development and the Development Plan for the Guangdong-Hong Kong-Macao Greater Bay Area, China's central government explicitly pledged support for Hong Kong in its building of the Asia-Pacific Dispute Resolution Center. Hong Kong and Singapore are known to be competing for the dominant position in Asia-Pacific dispute resolution. Accordingly, some critics contend that if China signs the Singapore Mediation Convention, it would serve as an endorsement to Singapore and further enhance Singapore's international competitiveness, which will have a negative impact on Hong Kong's construction of the Asia-Pacific Dispute Resolution Center.

Response:

If China becomes one of the first signatories of the Singapore Mediation Convention, this will be a landmark progress for the Convention, and will be conducive to its entering into force. However, it may be far-fetched to equal China's signature with endorsement of Singapore's role in the international legal market or a stepping stone for Singapore to compete with the Asia-Pacific Dispute Resolution Center. The Singapore Mediation Convention will not be put aside because of the absence of China, while China will certainly miss out on a precious opportunity to improve its commercial mediation system. The commercial mediation practices and enforcement practices related to mediation will similarly miss the chance to catch up with international best practices.

As a matter of fact, on the issue of whether China should become a party to the Singapore Mediation Convention, Hong Kong's fundamental interest lies in that China's decision directly determines whether the Convention can be applied in Hong Kong.

In the past few years, the government of Hong Kong has been vigorously promoting the development of its mediation system. Most notable examples include the establishment of the Hong Kong Mediation Accreditation Association Limited in 2012, the coming into effect of the Hong Kong Mediation Ordinance in 2013 and the subsequent promulgation of the Practice Direction on Mediation (Hong Kong's Practice Direction 31). At the same time, the mediation institutions in Hong Kong have accumulated abundant practical experience. On 17 April 2019, the International Dispute Resolution Conference co-organized by UNCITRAL, Hong Kong Mediation Center and the Department of Justice of Hong Kong took place in Hong Kong. One of the two major topics of the conference was the impact of the Singapore Mediation Convention on the international business environment. The conference gathered over 900 government officials, scholars, legal practitioners and entrepreneurs, which testified to the high-level attention paid by the Hong Kong Government and its legal profession to the Singapore Mediation Convention. If China becomes a contracting state of the Singapore Mediation Convention, this will help bring the superiority of Hong Kong's mediation system into full play in the international arena and further enhance its international competitiveness. In contrast, if China does not sign the Singapore Mediation Convention, it would not be possible for Hong Kong to fully enjoy the benefits of the Convention. Worse still, Hong Kong's role in the Asia-Pacific dispute resolution market is likely to be subordinated.

Conclusion:

The Singapore Mediation Convention is a milestone in the development of international mediation and will exert a huge impact on international dispute resolution. Being a contracting state of the Singapore Mediation Convention will help improve the business environment of China and present its opening-up image. Although China is experiencing problems such as a lack of commercial mediation legislation and inadequate commercial mediation practice, those issues should not be grounds for China to hold back from the Convention. Instead, China should seize the opportunity created by the Singapore Mediation Convention to improve its commercial mediation system, and to contribute to the construction of a diversified dispute resolution mechanism in the context of the "Belt and Road".