
Kluwer Mediation Blog

Singapore Convention Series - Book Review: The Singapore Convention on Mediation: A Commentary by Nadja Alexander & Shouyu Chong

Michael Leathes (Corporate counsel & author) · Tuesday, March 3rd, 2020

Anyone managing international business disputes needs to understand the Singapore Convention on Mediation. Not just its terms and limitations, but the reasons why certain matters are included and why others are omitted, as well as how to interpret and apply it. All mediated business settlements with an international angle that are concluded from now on need to take account of this Convention and assume its widespread ratification. In about 200 pages, this work covers all the principles and details we need to negotiate and draft international mediated settlement agreements, or iMSAs.

Because of their nature iMSAs are consensual, they tend to endure. But there's always the risk that parties in different jurisdictions fail to perform or respect them. Enforcing commercial agreements in a jurisdiction that does not apply the law of the contract, is always challenging. It's a key reason why companies embroiled in international disputes hesitate to mediate, often preferring an arbitral award that can be enforced practically anywhere under the New York Convention. The Singapore Convention on Mediation of 2019 sets out to correct the enforcement dilemma for iMSAs. It will thereby strongly encourage more international mediations and iMSAs.

Authors Nadja Alexander and Shouyu Chong do not make the error of assuming the reader's familiarity with mediation or private international law. The Convention's context and application are clearly and comprehensively explained. The background, including the deliberations of UNCITRAL's Working Party II which negotiated and drafted the Convention, is fully covered. The Convention itself is set out in the first Annex, but the book devotes an entire Chapter to each of the Convention's 16 Articles. Every critical term is forensically analysed and interpreted. The book is replete with enlightening commentary and practical case examples. For example, there is an explanation for why Mediation Agreements (i.e. agreements by which parties undertake to resolve a dispute by mediation) are not covered by the Convention when agreements to refer disputes to arbitration are covered by the NY Convention. Relevant case law is mentioned as a guide, the case studies are relevant and practical and the book effectively steers the reader on what to consider when negotiating a settlement in an international commercial mediation.

A default enforcement Convention is not just about how and when it applies, but also when it doesn't. Article 5 (Grounds for Refusing to Grant Relief) may be only a page long with just eight specified grounds, but the authors have rightly taken 60 pages of commentary, and ten case examples, to explain and illustrate it in detail. There is full treatment of the Convention's direct enforcement mechanism and how it applies by default to any iMSA without requiring the parties to consciously opt into its application. But the authors also explain why and how parties may opt out of the Convention in their settlement agreement.

This book explores the achievements and limitations of this Convention and addresses its scope and interpretation. Litigators, including those familiar with the New York Convention on Arbitration, may be less acquainted with mediation. For them, the book explains the reasons why there is no provision for a "seat" of mediation, and why, to the dismay of many (and unlike the New York Convention), the Convention excludes contractual mediation clauses and Mediation Agreements.

This thorough book is enlightening, practical, clear and readable. It is both a reference work and, in a way, a storybook. As international commercial disputes become more frequently mediated than litigated or arbitrated, The Singapore Convention: A Commentary is essential knowledge for every party, practitioner and dispute resolver. The authors have done an outstanding job.

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