



## *Thailand and the Singapore Convention on Mediation*

**Mr. Pasit Asawawattanaporn**

**Date:** 08 July 2020    **Time:** 1:00pm CEST

Mr. Pasit Asawawattanaporn (Managing Director of the Thailand Arbitration Centre (THAC)) gave an enlightening presentation on the topic ‘Thailand and the Singapore Convention on Mediation’.

Mr. Asawawattanaporn began his presentation by sharing that Thailand is familiar with the perceived benefits of international commercial mediation. Some of these benefits include cost savings, time effectiveness, ability to preserve business relationships, and the capacity to provide amicable solutions for the parties. However, in mediation, parties tend to be wary of enforceability of the settlement agreements.

In this sense, Mr. Asawawattanaporn was highly optimistic that the Singapore Convention on Mediation (“SCM”) would create a positive impact on the mediation scene in Thailand.<sup>1</sup> He believed that the SCM would replicate the success of the New York Convention for mediation like the latter for arbitration.<sup>2</sup> Thus, the SCM would create a coherent, uniform, and universal system for recognizing international mediated settlement agreements.

Despite the reservations of commercial parties to engage in mediation, it is a fallacy to think that mediation is undeveloped in Thailand. In fact, mediation has had a long and receptive

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<sup>1</sup> United Nations Convention on International Settlement Agreements Resulting from Mediation.

<sup>2</sup> United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (“New York Convention”).

history in Thailand. The use of mediation in Thailand could be traced back to the era of the Sukhothai Kingdom (1257). For instance, most of the family disputes then were mediated by the monks and/or kings as they were seen as respectable individuals in the society. After the recognition of the modern state under King Rama V, judicial judges assumed the role of mediator in Thailand.

Mediation was first codified in Thailand's Civil Procedure Code 1934. This empowered judicial judges to encourage parties to a dispute to use mediation at any possible stage of the court proceedings. Following this, several pieces of legislation continued to incorporate mediation in Thai law. First, the [Consumer Protection Act 1979](#) introduced mandatory mediation for all consumer cases. Accordingly, parties must attend mediation before they can initiate court proceedings. Second, the Thai Civil Procedure Code as amended by the [Code of Civil Procedure \(Amendment\) Act, 1999](#) made mediation compulsory for all petty cases. Last, the [Consumer Protection Act 2008](#) (CPA 2008) made provision for court officers to assist the judges in conducting mediation proceedings in court.

Mediation under the CPA 2008 and the Thai Civil Procedure Code were outside the scope of the SCM as the former considered mediation within court proceedings. The [Dispute Mediation Act 2019](#) ("Act") sought to remedy this by establishing an out-of-court mediation process. However, its scope is limited as its provisions only considered disputes where government agencies are a party and where the quantum of the dispute is less than USD160,000. Further, although the Act is already in force, it will only come into full effect later this year. That aside, settlement agreements that are concluded under the Act are enforceable through a certification issued by the Rights and Liberties Protection Department.

Mr. Asawawattanaporn also shared some key statistics. Most mediation cases were conducted via court proceedings (366,758) in comparison to out of court proceedings (48,161). This showed that Thai parties preferred to resolve mediated disputes via the court process as opposed to an out-of-court process.

The Thai government has started making preparations for the accession to the SCM by establishing a government committee solely for this purpose. The committee had opined that

in order to comply with the SCM, a new bill centered around international commercial mediation would be needed. He was enthusiastic about this development and shared that a bill is currently being drafted by the Office of Judiciary. The draft bill would largely seek to replicate the provisions contained in the SCM. Mr. Asawawattanaporn however, did have his reservations regarding the application of the SCM to government agencies. Overall, thanks to the SCM, Mr. Asawawattanaporn holds a positive outlook on the future of mediation in Thailand.

### Q&A Discussion

Some questions addressed by Mr. Asawawattanaporn in the interactive question and answer discussion:

- How does THAC intend to support the Board of Investment Initiative (“BOI”) initiative of targeted industries?
- Are settlement agreements treated as contracts by Thailand’s judicial system?
- In what way can SIMI and or any mediation standards body complement Thailand's current mediation processes?
- How will the opt-out measures as found in the SCM aid Thailand in ratifying the convention?
- How can international mediators mediate in commercial mediations in Thailand?

We invite you to listen to Mr. Asawawattanaporn’s answers from the video record of the session [here](#), as well as to catch up on his response to other questions not listed above.

Links to requested resources that came up during the session are provided below:

- Formal accreditation by a standards body for individual mediators:
  - [International Mediation Institute \(IMI\) Certified Mediator](#)
  - [Singapore International Mediation Institute \(SIMI\) – Credentialing Scheme](#)
- [United Nation Convention on International Settlement Agreements Resulting from Mediation](#) also known as the ‘Singapore Convention on Mediation’
- [Consumer Protection Act, 1979](#)
- [Code of Civil Procedure Amendment, 1999](#)
- [Consumer Protection Act, 2008](#)

The team at SIMI and IMI would like to express our gratitude to Mr. Asawawattanaporn for sharing his time to be a speaker at the Singapore Convention Seminar Series and to participants for joining us live for the session. Do join us for our next seminar by Dr. Bharati Rao on '*Advocating for Mediation Education in India in the Singapore Convention on Mediation's Era*'!

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### About the Speaker



Pasit Asawawattanaporn is the Managing Director of Thailand Arbitration Center (THAC). In 2003, he served as a judge in various courts and a secretary to the Central Bankruptcy court where he presided over one of the biggest reorganization cases in Thailand. Thereafter, Pasit became a government official and managed various offices in MOJ, including Deputy Director-General of the Department of Special Investigation. He later became the Deputy Permanent Secretary to Ministry of Justice in 2014 and served as Director-General to Office of Justice Affairs in 2015.