



The potential of the Singapore Convention on Mediation in Malaysia

Ms. Shanti Abraham

Date: 22 April 2020 **Time:** 1:00pm CEST

Presentation Summary:

Ms. Shanti Abraham (founder of Messrs Shanti Abraham & Associates, SIMI Certified Mediator, and a member of IMI’s Investor State Taskforce) gave a remarkable presentation on ‘The potential of the Singapore Convention on Mediation in Malaysia’. Ms. Abraham began her presentation with an overview of mediation’s landscape in Malaysia. She shared that Malaysia had enacted a [Mediation Act in 2012](#) and is a proud signatory to the Singapore Convention on Mediation¹ (‘SCM’). She also stated that Malaysia has in place robust *ad hoc* mediation and institutional mediation mechanisms. Some of the leading mediation institutions in Malaysia include and are not exhaustive to the [Malaysian Mediation Centre](#) (‘MMC’), the [Asian International Arbitration Centre](#) (‘AIAC’) and the [Securities Industries Dispute Resolution Centre](#) (‘SIDREC’).²

Diving into the history of mediation in Malaysia, Ms. Abraham shared that Malaysia began its mediation journey in the 90s. However, the lack of financial resources and regulatory framework hindered its growth. Mediation was also previously considered within a charitable frame, so it was common for mediators to be senior lawyers seeking to do social work as a way to give back to society. Put simply, one could call them “social mediators”. Moreover, people also expected mediation to be free. This resulted in mediation having a low value proposition.

¹ Officially named United Nations Convention on International Settlement Agreements Resulting from Mediation.

² Links for each of the named organisations are embedded in the article for the reader’s easy reference and convenience.

Ms. Abraham also discussed court-annexed mediation. It was also considered to be a charitable arm of law firms when it was first adopted. Consequently, she believed that it led to a “just mediation” mentality whereby lawyers were expected to reduce or even waive their legal fees as part of their contribution to social work aims. Ms. Abraham opined that all of this made it difficult to develop a viable business model. As such, the Mediation Act 2012 (‘the 2012 Act’) was enacted to tackle these issues. However, the 2012 Act did not include any enforcement provisions.

Ms. Abraham believed that the situation will soon change as the SCM has sparked interest and started new discussions in Malaysia. She emphasized the importance of drafting standards for mediators as more people start to train to be professional mediators. Furthermore, these standards, when in place, would differentiate the professional mediators from social mediators. Ms. Abraham highlighted some initiatives that the MMC have in place to train lawyers (or mediation advocates) and mediators to appreciate the value of their services whilst promoting a good working relationship with each other as they help parties achieve settlement.

Apart from that, Ms. Abraham noticed that an increasing number of international parties are considering mediation as a dispute resolution option, and many have also incorporated mediation clauses in their commercial contracts.

Relating to the current Covid-19 situation, she shared about a potential initiative that could be rolled out by the authorities - the National Covid-19 Mediation Initiative. It is hoped that this initiative would give lawyers another reason to advocate mediation as a swift and cost-effective method of dispute resolution. Such a benefit, as offered by mediation as a dispute resolution, would be very much welcomed by business owners facing financial and economic crunch as a result of the pandemic.

Moving forward, Ms. Abraham stated that the Malaysian government has formed working groups to amend the 2012 Act to align it with the requirements of the SCM so that Malaysia can ratify the SCM soon. She also suggested some actions that should be undertaken to reap the full benefits of the SCM in Malaysia:

1. Mediators should work to enhance their skills to reach international standards in both traditional (face-to-face meetings) and online mediations.

2. Mediation standards for mediators in Malaysia should be similar to the international standards established by the International Mediation Institute (IMI) and the Singapore International Mediation Institute.
3. The rules of etiquette for lawyers and/or mediation advocates should be framed to enhance professionalism and reduce biases they may have towards mediators.
4. Businesses could adopt a ‘mediate-first’ initiative,³ ‘mediate-encouraged’ initiative, and/or even a ‘good case, let’s mediate’ initiative.

Ms. Abraham concluded the presentation by encouraging lawyers to consider their clients’ best interests, and the financial implications of arbitration and litigation for all parties before deciding which dispute resolution mechanism is the best option for their client.

Q&A Discussion

Some questions addressed by Ms. Abraham during the session are as follows:

- How will the SCM impact the attraction of a Med-Arb approach?
- Will there be an uptick in commercial mediation cases in South East Asia due to the rise in debt defaults? And what are States doing to encourage mediation in place of aggressive enforcement?
- Are arbitral institutions such as AIAC needed to support optimization and promotion of mediation in Malaysia?
- Can a certified mediator conduct private mediation sessions in Malaysia? If yes, would any settlement be enforceable?
- How often do courts in Malaysia direct the parties of a dispute to mediation?

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

Links to additional resources on topics that came up during the discussion are listed below:

- Obtaining formal accreditation by a standards body for individual mediators:
 - [International Mediation Institute \(IMI\) Certified Mediator](#)

³ ‘Mediate-First’ is an example drawn from Hong Kong. The country launched a campaign called Mediate First Pledge in 2009 to promote the use of mediation to resolve disputes in Hong Kong. Further information can be found [here](#).

- [Singapore International Mediation Institute \(SIMI\) – Credentialing Scheme](#)
- Training to be a professional mediator:
 - [IMI approved training programs](#)
 - [SIMI Registered Training Program](#)
- [Mediation Act, 2012 \(Act 749\)](#)
- [United Nations Convention on International Settlement Agreements Resulting from Mediation](#) also known as the ‘Singapore Convention on Mediation’

The team at SIMI and IMI would like to express our gratitude to Ms. Abraham for sharing her 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 on ‘*Singapore Convention on Mediation and the recent developments on mediation in Greece*’!