



## *Singapore Convention on Mediation: a US Perspective*

**Ms. Ana Sambold**

**Date:** 24 June 2020 **Time:** 5:00pm CEST

### Presentation Summary:

Ms. Ana Sambold (Founder and Principal at Sambold Law & ADR services, IMI Certified Mediator) gave a presentation on the topic ‘Singapore Convention on Mediation: a US Perspective’.

Ms. Sambold began her presentation with an interesting quote – “an ounce of mediation is worth a pound of arbitration and a ton of litigation”. She described the role of mediation in the global system of dispute resolution and shared that mediation had not been a leading dispute resolution mechanism for two reasons:

- Mediated settlement agreements were enforced as contracts between private parties under various domestic legal systems and these settlement agreements tended to lack finality; and
- The lack of international legal regime for the enforcement of settlement agreements unlike the [New York Convention](#).<sup>1</sup>

Ms. Sambold opined that the New York Convention is the most successful treaty under International Trade Law with 164 Signatory States. The New York Convention provided for the recognition and enforcement of international arbitral awards in domestic courts. As a result, arbitration gained traction as a dispute resolution mechanism that is used worldwide.

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<sup>1</sup> Officially named United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958.

Ms. Sambold then introduced the [Global Pound Conference \(GPC\) Series](#). The GPC aim to raise awareness about the various dispute resolution methods with regards to civil and commercial disputes by focusing on the needs of corporate users. In a study conducted by the GPC, they reported the following key findings:

- Efficiency is the key priority for corporate users of dispute resolution mechanisms;
- Parties expect greater collaboration from advisors and dispute resolution experts; and
- There is global interest in the use of pre-dispute protocols and hybrid forms of dispute resolution mechanisms such as ‘mediation-arbitration’.

The study also highlighted that ADR users would adopt mediation if there was a separate framework providing for the enforcement of international settlement agreements resulting from the process. Consequently, the United Nations Commission on International Trade Law (UNCITRAL) drafted an international framework for the enforcement of international mediated settlement agreements – the Singapore Convention of Mediation (SCM).<sup>2</sup>

The scope of the SCM is limited to mediated settlement agreements resulting from international commercial disputes that have been recorded in writing. Definitional terms such as ‘mediation’ and ‘commercial’ amongst others have been broadly defined to accommodate different domestic legal systems.

As mediated settlement agreements could be enforced directly in contracting States, the SCM has been described to be both sword and shield. In addition, other dispute resolution processes could be halted if settled issues are raised again. Settlement agreements enforced as arbitral awards are excluded from the scope of the SCM. For instance, in the USA, international mediated settlement agreements enforced under the [California Code of Civil Procedure, Arbitration and Conciliation of International Commercial Disputes](#) would be excluded from the ambit of the SCM.

Mediated settlement agreements could be directly enforced if the following prerequisites and documents are submitted before the enforcing courts:

- Written settlement agreement (see Article 2); and

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<sup>2</sup> Officially named United Nations Convention on International Settlement Agreements Resulting from Mediation.

- Proof of mediation (see Article 4) .

Ms. Sambold thought that the most controversial portion of the SCM was the grounds for refusing to grant relief where it revolves around the mediator's conduct (see Article 5). She believed that there is a need to create a uniform code of conduct for mediators worldwide.

Ms. Sambold concluded her presentation by sharing that the present crisis around the world has shown that mediation is a very much needed dispute resolution mechanism. She strongly believed that the success of the SCM is dependent on the work of the mediators, mediation advocates, and promoters of mediation to raise awareness to educate the masses on the benefits of mediation. She encouraged everyone in support of mediation to continue promoting mediation and the SCM.

### Q&A Discussion

Some questions addressed by Ms. Sambold during the session:

- What would be the impact of Californian confidentiality laws on the grounds for refusal under Article 5 of the SCM?
- When would the United States of America ratify the SCM?
- Should countries that have ratified the SCM adopt the UNCITRAL Model Law on Mediation?
- How do standards and certification of mediators play a role vis-à-vis the SCM?

We invite you to listen to Ms. Sambold's answers from the video record of the session [here](#), as well as to catch up on her 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 Nations Convention on International Settlement Agreements Resulting from Mediation](#) also known as the 'Singapore Convention on Mediation'
- [Global Pound Conference](#) Series

The team at SIMI and IMI would like to express our gratitude to Ms. Sambold 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 by Mr. Thomas Samsø Bloch on the topic '*Scandinavian Perspective in the Era of the Singapore Convention on Mediation*'!

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About the speaker



Ana Sambold, practicing attorney, mediator, and arbitrator, is one of the United States leading Alternative Dispute Resolution professionals. She has over a decade of experience as a conflict resolution specialist in civil litigation matters involving commercial, insurance, property, employment, cross-cultural, multinational and multilingual parties. Ana is an International Mediation Institute (IMI) Certified Mediator and international Arbitral Women. She also sits on the panels of American Arbitration Association (AAA), ADR Services, Inc., National Conflict Resolution Center (NCRC), and several U.S. courts, federal and state agencies.