The future of international mediation in Thailand – is Singapore Convention the way forward?

Mediation is not new to Thailand. Many Thais are familiar with mediation, both in the formal and informal mediation, as it is a key mechanism for resolving disputes – whether in the courts or in personal matters among family, friends and acquaintances.

However, international mediation is a different matter. It would be fair to say that Thai parties are generally less familiar with international mediation, and it is not widely used for dispute resolution in Thailand. Moreover, the Singapore Convention remains relatively unknown in Thailand.

This article is divided into three parts; Part 1 aims to demystify the Singapore Convention by outlining its key provisions and demonstrating its practical applications, drawing on examples from countries that have ratified it. Part 2 will explore the history of mediation in Thailand and examine the current legal framework for mediation in the country. The final Part 3 will discuss the potential implications for businesses in Thailand if Thailand ratifies the Singapore Convention and how business users might leverage it to its advantage.

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PART 1: INTRODUCTION TO THE SINGAPORE CONVENTION

Today's trade environment is volatile. The global exchange of goods and services has been severely disrupted by natural disasters, pandemics, armed conflict, and, most recently, the unpredictable imposition of tariffs.[1] In such stressful times, that disagreements occur between businesses is not surprising. Anticipating this, the UN Working Group III formally put forward the United Nations Convention on International Settlement Agreements Resulting from Mediation otherwise known as the "Singapore Convention on Mediation" (**SCM**) in 2019. The SCM came into force on 20 September 2020.

In the same way that the New York Convention gave credence to the use of arbitration by making arbitral awards enforceable, the SCM offered a uniform framework for the enforcement of international settlement agreements resulting from mediation. Applied solely to international

[1] See https://www.imf.org/en/Publications/fandd/issues/2023/06/growing-threats-to-global-trade-goldberg-reed

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commercial disputes, promulgators of the SCM envisioned it to be a facilitator of international trade and commerce.[2]

For businesses, conflict inevitably leads to a costly diversion of precious resources.[3] Mediation offered a pathway to lower such cost by providing a quick and effective way of resolving the dispute.[4] And, when done well, parties could also avoid the acrimony of adversarial processes and preserve business relationships.[5]

To support the use of mediation, the SCM proposed an international framework that enabled parties to easily invoke international settlement agreements.[6] As an example, with the SCM, if a dispute arises between a Japanese company and a Sri Lankan company, they can first attempt mediation in Singapore. If this results in a settlement, the mediated settlement agreement can be brought before the courts of Japan or Sri Lanka to be enforced. This framework gives the mediated settlement agreement equivalent strength as an arbitral award and deters any side from walking away from their agreed obligations.

Because of mediation's substantive benefit to global businesses,[7] governments often tout their participation in the SCM as a demonstration of their commitment to trade, commerce and investment. At the time of writing, the SCM has 57 signatories. 18 of these have ratified the SCM.[8] Over 50% of the countries which ratified the Convention are Asian.

Notwithstanding its logical advantages, the SCM has its critics.

A key philosophical criticism is that there should not need to be an enforcement mechanism for settlement agreements since they are already binding and enforceable as contracts. Unlike an arbitral award,[9] the mediated settlement agreement should be mutually beneficial. There is no clear loser who may be motivated to resist the enforcement of the award. If one side later decides to renege on the terms of the settlement, the other side would have a recourse to sue for breach of contract.

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[2] See homepage of https://www.singaporeconvention.org/ put up by the Singapore Ministry of Law.
[3] Using the cost calculator offered by the Singapore International Arbitration Centre, a SGD1.5m dispute can cost up to SGD 230,000 in arbitration fees. This does not include the cost of venue rental, the tribunal secretary, and the disbursements of the tribunal. It also excludes the cost of hiring lawyers.
[4] According to the Sage Mediation Fee Schedule, the cost of mediating a SGD1m dispute is SGD6,000 including venue rental, administration and the mediator's fee.
[5] Singapore International Dispute Resolution Academy (SIDRA) Survey Report 2020, 73, Exhibits 9.2.1 and 9.2.3.
[6] Section 4, Singapore Convention on Mediation Act, 2020
[7] Thomas Stipanowich and J. Ryan Lamare, 'Living with 'ADR': Evolving Perceptions and Use of Mediation, Arbitration and Conflict Management in Fortune 1,000 Corporations' (2014) 19(1) Harvard Negotiation Law Review 1, 1.
[8] Updated as at 28 April 2025.
[9] https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/new-york-convention-e.pdf

This criticism grossly underestimates the value of certainty for businesses. In global commerce, clients appreciate certainty about the enforceability of their contracts in a different jurisdiction. By making it significantly easier for parties to enforce the mediated settlement, the SCM provides this certainty.[10]

For many governments, the primary reason for holding back from signing or ratifying the SCM is the sense that the local infrastructure is not ready for international mediation. One oft-cited hurdle is the need to articulate the professional standards of mediators because Article 5(1)(e) states that a mediated settlement may be unenforceable if a party proves that he would not have signed the settlement if not for a mediator's breach of the applicable professional standards.

Many governments, including Thailand, have not codified the professional mediator standards applicable to mediators within their jurisdictions. Without a robust framework for the training and accreditation of mediators, courts are unable to confirm if a settlement resulted from a proper mediation. They are thus understandably unwilling to recognize and enforce mediated settlement agreements as required under the SCM.

Enacting standards applicable to mediators within the country is not a straightforward task because mediation is approached differently depending on one's context. What is done by family mediators can be different from those specializing in maritime and shipping disputes. The challenge is immeasurably amplified when these standards have to be accepted by both domestic mediators *and* be aligned with international best practices. For example, in some jurisdictions, it remains unethical for a mediator to have a private conversation with one of the parties. However, in other jurisdictions these private caucuses are a critical part of the mediation process.

However, there are jurisdictions like Singapore which have done substantive work in mapping these standards. The Singapore International Mediation Institute (SIMI) was established in 2014 specifically to define and promote best practices in professional mediation.[11] Many jurisdictions now reference the SIMI standards[12] as a starting point for putting in place their own.

The real impact of SCM is arguably in generating interest and belief in mediation. Many businesses today are aware of mediation's advantages because of the SCM. They expect law firms to be able to achieve good outcomes in mediation, litigation and arbitration. Consequently, in

[10] See https://www.mlaw.gov.sg/news/press-releases/2020-09-12-singapore-convention-on-mediation-enters-into-force/ issued by Ministry of Law, Singapore.

[11] Simi.org.sg

[12] Joel Lee, "Singapore Developments – the Singapore International Mediation Institute and the Singapore International Mediation Centre" Kluwer Mediation Blog (14 November 2014).

Singapore, several major law firms have moved quickly to set up specialized mediation advocacy departments, in addition to their litigation teams.

If a government is uncertain about the readiness of its mediation infrastructure for international mediation, the SCM allows for them to ratify the SCM while making a reservation that the SCM would only apply where parties expressly provide for this beforehand.[13] In this way, the country gains the benefits of being a ratifier of the SCM, and it can ease mediation's application into its local legal system. This is the path taken by Japan.[14] It may be followed by other civil law jurisdictions including Thailand and many EU nations.

By ratifying the SCM, governments can create the impetus for local law schools and bar associations to include mediation skills into the lawyers' training. This helps to broaden the lawyers' definition of success and prepares them to meet the expectations of increasingly sophisticated clients. In creating another more accessible pathway to justice and stronger relations in the international business community, the benefits to society are great.

PART 2: MEDIATION IN THAILAND

Mediation compared with conciliation under the Thai legal context

Mediation as compared with conciliation are procedures indifferent from one another under the Thai legal framework. The starting point is that the Thai language has two words each defining either mediation or conciliation. However, the terms in Thai for mediation and conciliation have been loosely applied and translated into English, thereby vitiating a distinction between these procedures. For instance, the procedure followed may be referred to as conciliation, but the third-party neutral known as the mediator.[15] The legal framework for mediation in Thailand should therefore be understood as synonymous with conciliation.

Modern Framework for Mediation

The current legal framework for mediation can be divided into court-annexed or out-of-court mediation.

Court-annexed mediation includes pre-litigation and post-litigation mediation proceedings as well as mandatory mediation, such as for consumer protection claims and family disputes which are conducted

[13] Art 8 of the SCM

[14] Japan ratified on October 1, 2023

[15] Supreme Court of Thailand, "Mediation of Supreme Court", "[…] and the issuance of the Regulations of the Judicial Administration Commission on Conciliation B.E. 2544 which allows the court to appoint other individuals as mediators to assist in resolving disputes, in addition to conciliation by judges or a panel of judges."

under the court's supervision.[16] The focus here however is limited to pre-litigation and post-litigation mediation in connection with civil litigation according to Sections 19 to 22 *ter* of the Civil Procedure Code in 1934 (**CPC**).

On the other hand, out-of-court mediation includes mediation under the Dispute Mediation Act 2019 (**Mediation Act**) and private mediation proceedings by specialized public agencies or institutions. Within this latter category is the Thailand Arbitration Center (**THAC**) as well as other institutions with the authority to mediate disputes on the basis of their legal mandate, such as in relation to insurance and intellectual property.[17]

Pre-litigation Mediation

Pre-litigation or (pre-action) mediation under Section 20 *ter* of the CPC came into effect on 8 November 2020.[18] This provision provides parties with the option to settle cases early as a means of dispute prevention and efficiency. Importantly, this provision applies to mediations pursuant to the civil litigation track.[19] The court is empowered to extend the prescription period of the original claim for mediation[20] and such mediations are also not subject to any court fees.[21]

The procedure to commence pre-action mediation requires filing of a motion with the court having jurisdiction over the matter. If the parties agree to mediate, the court may appoint the mediator and the procedure to be followed is provided for under the Supreme Court President's Regulations on Mediation 2011 (as amended) (**SC Regulations**).[22] The SC Regulations also make it clear that the mediation is without prejudice to the litigation or arbitration proceedings that may follow.[23]

The mediator under this pre-litigation mediation may propose to the court the settlement agreement reached by the parties.[24] If the settlement agreement complies with the intention of the parties, principle of good faith and fair dealing, and does not contravene Thai law, the parties can execute that agreement before the court.[25] The court may, if deemed necessary, enter a final judgment on the basis of the agreed settlement of

[16] See Sections 19-20 ter of the CPC; Section 25, Consumer Case Procedure Act B.E. 2551 (2008); Section 148, Juvenile and Family Court Act and the Procedure for Juvenile and Family Cases B.E. 2553 (2010).
[17] *See e.g.*, Office of Insurance Commission, "Insurance Mediation Center" (https://www.oic.or.th/th/dispute-mediation); Department of Intellectual Property, "Dispute Conciliation Procedure".
[18] Act Amending the Civil Procedure Code (No. 32) B.E. 2563 (2020) (8 September 2020).
[19] *See e.g.*, News of the Southern Bangkok Civil Court, "The Southern Bangkok Civil Court successfully mediated a dispute before the lawsuit, with the contested assets amounting to 946,384,687.78 Baht." (30 January 2024) (https://civilbsc.coj.go.th/th/content/category/detail/id/10/cid/21/iid/397466).
[20] Section 20 *ter*, CPC.
[21] *See e.g.*, COJ Podcast Special, "Mediation Before Filing EP.1 End Simple No Cost Mediation Before Filing in the Court of Justice" (https://youtu.be/yPgzMFjkBME?si=wkjdqm6K9oycMnKM).
[22] Section 20 *bis,* CPC.
[23] Article 38, SC Regulations.
[24] Section *20 ter,* CPC.
[25] Ibid.

the parties in accordance with Section 138 of the CPC.[26] Accordingly, such a judgment may only be appealed on the basis of an allegation of fraud, violation of public order, or if the judgment does not comport with the settlement terms agreed by the parties.[27]

Post-litigation Mediation

Alternatively, the parties may request mediation after the litigation has commenced, or the court may *sua sponte* order the parties to mediate the dispute.[28] Mediation may take place at any stage of the litigation, but before the final judgment has been rendered at all levels of court and appeals.[29] The practice of the courts is to ask the parties at the case management hearing if they wish to mediate the dispute and schedule the procedure taking into account the parties intention to mediate the dispute.[30] As with pre-litigation mediation, the SC Regulations apply to these proceedings.

OUT-OF-COURT MEDIATION

A. Statutory Mediation

The Mediation Act which came into force on 23 May 2019 has added to the options available to parties in mediating disputes outside of the court system. The legislative intent has been to enable state agencies with the power to mediate low value disputes and certain criminal disputes – where a compromise can be accepted and for misdemeanor offenses.[31] However, court-annexed mediations are carved-out under the Mediation Act pursuant to the definition of dispute mediation in Section 3 and from the application of Section 4.

Aside from court-annexed mediations, the Mediation Act is also limited in its scope of application. For civil claims under Section 20, the value of the claim that may be brought to mediation cannot exceed THB 5 million, unless this concerns ownership of land, a dispute between heirs relating to inheritance of property or any other dispute falling under a Royal Decree. Further, disputes relating to a question of legal personality, family rights or ownership of real estate are excluded from the scope of the legislation.[32] Alongside the foregoing subject matter scope, any mediation pursuant to the Mediation Act must fall under the duty of one of the public agencies as defined under the statute.[33]

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[26] Ibid.
[27] Section 138, CPC.
[28] Section 19, CPC.
[29] Section 20, CPC; Chapter 5, SC Regulations.
[30] Article 6, SC Regulations.
[31] *See*, Preamble and Sections 20 and 39 of the Mediation Act.
[32] Section 20, Mediation Act.
[33] Section 5, Mediation Act.

The main strength of the Mediation Act is the enforcement mechanism provided therein. Subject to a limitation period of three years, Thai courts will enforce a settlement agreement resulting from a mediation under the Mediation Act.[34] The court may decide against enforcement of the settlement agreement if it appears to the court that there is an issue of capacity, the dispute or settlement agreement is prohibited by law or contrary to public order or good morals, the settlement agreement has been procured by fraud, coercion, threat or an unlawful act, or that the mediator appointed has materially affected the preparation of the memorandum of agreement.[35]

B. Alternative Dispute Resolution Centers

The availability of alternative dispute resolution centers provide parties with the option to mediate absent the involvement of the court or public organization. Taking the example of the THAC, Section 7 of the Arbitration Center Act 2007 requires the THAC to develop procedures for and administer cases referred to mediation. To this end, the 2014 THAC Mediation Rules offer parties with the necessary flexibility in mediating disputes in a private setting following internationally accepted procedures.

PART 3: POTENTIAL IMPLICATIONS FOR THAI BUSINESSES

Potential benefits of the SCM in Thailand

As discussed in Part 2 above, Thailand is already well acquainted with mediation, both in the form of court-annexed mediation and private, out-of-court mediation. Mediation is frequently used to resolve disputes efficiently and amicably, particularly in civil and commercial matters, and is actively encouraged by the Thai judiciary.

But what of the SCM? Should Thailand sign or ratify the SCM, and what practical benefits would it bring? There are three compelling reasons why Thailand should give serious consideration to becoming a signatory.

First, ratifying the SCM would allow Thai businesses to directly enforce mediated settlement agreements in other Convention member states without needing to initiate fresh legal proceedings for breach of contract in foreign courts. This ability to bypass fresh litigation significantly reduces legal costs and time, while ensuring that negotiated settlements are respected across borders. Given the commercial emphasis on certainty and efficiency in cross-border deals, this is a critical advantage.

Importantly, this could help promote mediation as a truly international and viable method of dispute resolution among Thai parties who may

[34] Section 32, Mediation Act.
[35] Section 33, Mediation Act.

otherwise be reluctant to engage in cross-border mediation due to enforcement concerns.

As highlighted in Part 1, businesses involved in international trade value clarity about the enforceability of their agreements in foreign jurisdictions. The SCM provides this by giving legal force to international settlement agreements, thereby enhancing certainty and predictability for Thai parties entering into mediation with overseas counterparts.

Second, adopting the SCM enhances flexibility in structuring dispute resolution mechanisms. As cross-border transactions become more complex and intertwined, the ability to resolve disputes swiftly and discreetly is increasingly important. While arbitration continues to be the dominant choice for cross-border dispute resolution, mediation is emerging as a more cost-effective, quick, confidential, and relationship-preserving alternative. Ratification of the SCM would allow Thai parties to confidently consider mediation not just as an alternative to litigation or arbitration, but as a valuable complement to them in multi-tiered dispute resolution clauses.

Third, mediation promotes the preservation of business relationships. Unlike litigation or arbitration, which are adversarial by nature, mediation encourages collaboration and compromise. This aligns well with Thai cultural values such as kreng jai (เกรงใจ)—the inclination to show deference, avoid confrontation, and maintain harmony. Mediation is well-suited to this mindset and could prove more attractive to Thai parties seeking to resolve disputes in a respectful and relationship/face-saving manner. Ratifying the SCM would strengthen the legal foundation for this approach in international settings.

Practical implications of signing and ratifying the SCM in Thailand

If Thailand were to adopt the SCM, there would be practical consequences for how Thai businesses draft and negotiate contracts. Companies should begin incorporating express mediation clauses into their agreements, particularly in cross-border commercial contracts. While many existing contracts include boilerplate language encouraging parties to resolve disputes "amicably," these clauses are often vague and unenforceable. Instead, clear and well-drafted mediation clauses—ideally as part of a clearly drafted multi-tiered dispute resolution process—will ensure parties can benefit from the Convention's protections.

Various institutions have "model clauses" that could be considered for inclusion in the contract. A typical mediation clause states that all disputes should be referred to mediation in a particular place, administered by a specified institution (e.g., THAC, SIAC, ICC) under their rules. For example, the Singapore International Mediation Centre (SIMC)'s Model Meditation Clause states as follows:

"All disputes, controversies or differences arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall before or after the commencement of any other proceedings, be first referred to mediation in Singapore at the Singapore International Mediation Centre in accordance with its Mediation Rules for the time being in force, without prejudice to any recourse to apply to any tribunal or court of law of competent jurisdiction for any form of interim relief."

If the clause is a "multi-tiered" clause, the parties will need to carefully consider (with legal advice) whether mediation is a mandatory step (a pre-condition to the arbitration or litigation), define when it is deemed to have failed (e.g., after a certain number of days or weeks) and use clear and unambiguous language — failure to do so may create a dispute and affect enforceability of the clause and subsequent arbitration.

Drafters should avoid vague language (such as the oft-used "amicable settlement") and instead include details, timelines, and institutional rules to reduce ambiguity and disputes about procedural compliance.

To fall within the scope of the SCM, a mediated settlement agreement must meet several formal requirements:
- The agreement must be in writing.
- It must result from a mediation process (as defined by the SCM).
- It must relate to a commercial dispute.
- It must be "international" (as defined).
- It must not concern family, inheritance, or employment matters.[36]

Furthermore, legal teams must verify whether the other party's jurisdiction is a signatory and has ratified the SCM, as enforceability depends on reciprocal recognition. Businesses should also be aware that parties may opt out of the SCM by agreement,[37] and this may be relevant when drafting agreements and reviewing dispute resolution clauses.

As suggested in Part 1, Thailand could consider easing into SCM by ratifying it but making a reservation that it would only apply if parties to expressly provide for it (as in the case in Japan). This reservation-based approach would allow Thai parties and the judiciary to gradually build familiarity with the SCM's operation without unintended legal risks.

In conclusion, ratifying the SCM would enhance Thailand's international credibility as a jurisdiction that supports efficient, enforceable, and culturally appropriate dispute resolution. It would give Thai businesses greater confidence when entering into cross-border mediation and unlock

[36] Art. 1 of the SCM
[37] Art. 5(1)(d) of the SCM

opportunities for more amicable and cost-effective settlement of international disputes. Embracing the SCM would not only align with Thailand's dispute resolution culture but also strengthen its standing in the global commercial community.

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