

# United Nations Convention on International Settlement Agreements Resulting from Mediation (“Singapore Convention on Mediation”)



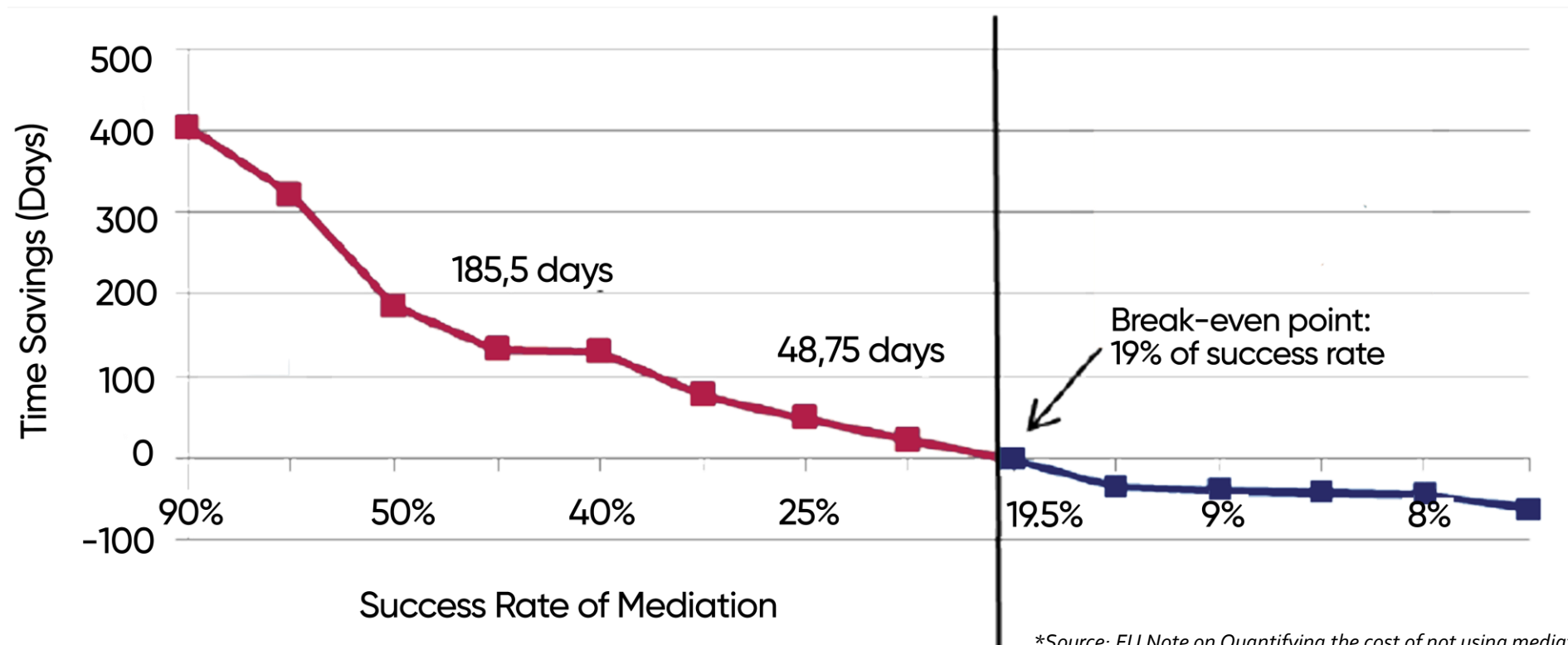
Sharon S M Ong ©  
Director, Policy Advisory Division  
Ministry of Law, Singapore

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# Time Savings in the EU

## Break-even point for mediation

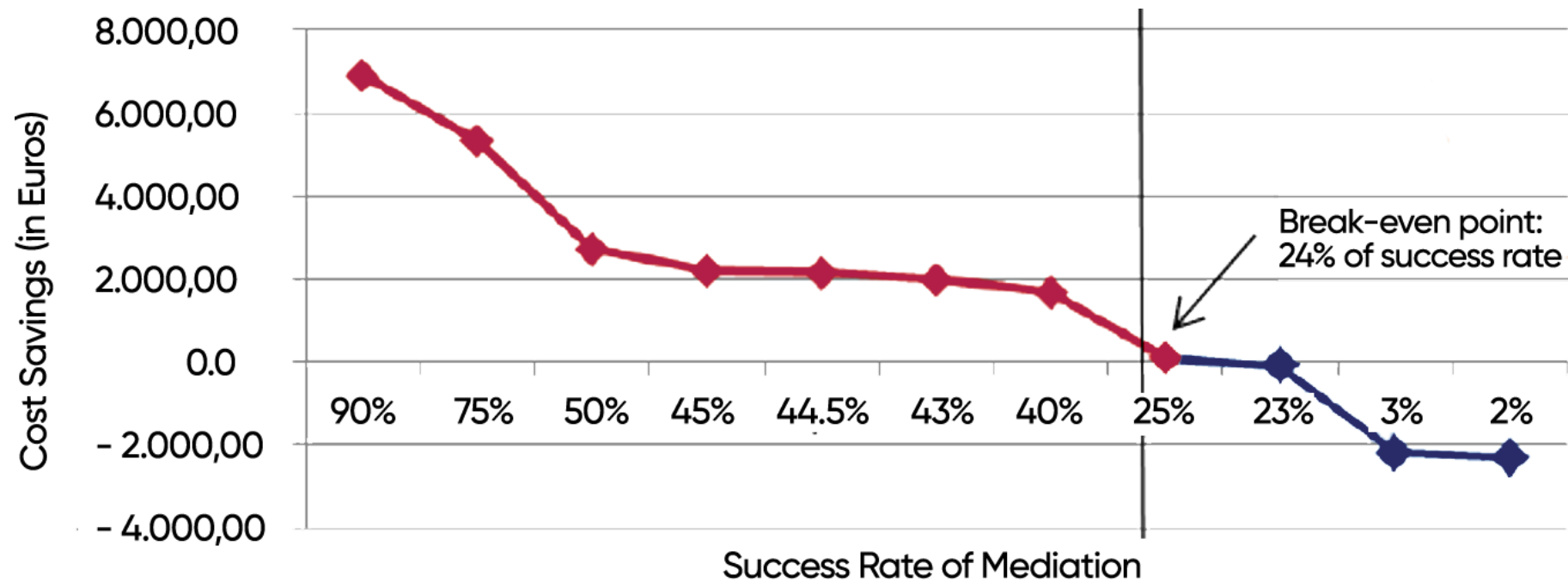


\*Source: EU Note on Quantifying the cost of not using mediation - A data analysis (2011)



# Costs Savings in the EU

Break-even point for mediation



\*Source: EU Note on Quantifying the cost of not using mediation - A data analysis (2011)



# The Benefits\* of Mediation

**> 80%**

Highly effective in  
resolving disputes

Saves time and money

**1** month from filing  
1-day mediation

Parties retain control over  
outcome

Mediated settlement  
agreements are  
enforceable

*\*Based on SIMC case statistics*



# Background to the Convention

- **Benefits of mediation in resolving commercial disputes:**
  - Flexible, saves time and cost, preserve relationships: Promotes investor and business confidence.
  - Facilitates trade, commerce and investments.
- **But key obstacle – enforceability:**
  - Court orders/judgments and arbitral awards vs mediated settlement agreements.
- **30 May 2014:** Proposal by the US Government to develop a multilateral convention on the enforceability of international commercial settlement agreements reached through conciliation, with the goal of encouraging conciliation in the same way that the New York Convention facilitated the growth of arbitration.



# Background to the Convention

- **3 years** (2015-2018); **6 sessions** (62<sup>nd</sup> – 68<sup>th</sup> sessions); **85 member states & 35 non-Governmental organisations**: UNCITRAL Working Group II (Dispute Resolution).
- **20 Dec 2018**: UN General Assembly
  - adopted the Convention;
  - authorised the signing ceremony to be held in Singapore on 7 Aug 2019;
  - authorised that the Convention will be known as the “Singapore Convention on Mediation”.





# Singapore Convention Signing Ceremony: List of 46 Signatories Countries



Afghanistan | Belarus | Benin | Brunei Darussalam | Chile | China | Colombia | Congo | Democratic Republic of the Congo | Eswatini | Fiji | Georgia | Grenada | Haiti | Honduras | India | Iran (Islamic Republic of) | Israel | Jamaica | Jordan | Kazakhstan | Lao People's Democratic Republic | Malaysia | Maldives | Mauritius | Montenegro | Nigeria | North Macedonia | Palau | Paraguay | Philippines | Qatar | Republic of Korea | Samoa | Saudi Arabia | Serbia | Sierra Leone | Singapore | Sri Lanka | Timor-Leste | Turkey | Uganda | **Ukraine** | United States of America | Uruguay | Venezuela (Bolivarian Republic of)



# Preamble of the Convention

Recognises the value for international trade of mediation for settling commercial disputes

Growth of mediation in commercial practice as an alternative to litigation

Significant benefits of mediation

Framework for international mediation will contribute to development of harmonious international economic relationship

*The Parties to this Convention,*

*Recognizing* the value for international trade of mediation as a method for settling commercial disputes in which the parties in dispute request a third person or persons to assist them in their attempt to settle the dispute amicably,

*Noting* that mediation is increasingly used in international and domestic commercial practice as an alternative to litigation,

*Considering* that the use of mediation results in significant benefits, such as reducing the instances where a dispute leads to the termination of a commercial relationship, facilitating the administration of international transactions by commercial parties and producing savings in the administration of justice by States,

*Convinced* that the establishment of a framework for international settlement agreements resulting from mediation that is acceptable to States with different legal, social and economic systems would contribute to the development of harmonious international economic relations,

*Have agreed* as follows:





# Key Features of the Convention

- **International settlement agreements resulting from mediation:**
  - By becoming a Party to the Convention, a State or regional economic integration organisation consents to apply the Convention to international settlement agreements resulting from mediation (**Article 1**).
- **General principles (Article 3):**
  - The Convention provides for Parties' obligations regarding both enforcement of settlement agreements covered by the Convention and the right for a disputing party to invoke a settlement agreement.
  - Each Party may determine the procedural mechanisms that may be followed where the Convention does not prescribe any requirement.



## Key Features of the Convention

- **Exclusions from the scope (Article 1):** Does not apply to settlement agreements
  - concluded to resolve a dispute arising from transactions engaged in by a consumer for personal, family or household purposes, or relating to family, inheritance or employment law (**Article 1(2)**).
  - that are enforceable as a judgment or as an arbitral award (**Article 1(3)**).
- **Formalities for relying on a settlement agreement (Article 4):**
  - The disputing party shall supply to the competent authority the settlement agreement concluded in writing, signed by the parties, and evidence that the settlement agreement results from mediation.
  - The competent authority may require any necessary document in order to verify that the requirements of the Convention are complied with (**Article 4(4)**).



## Key Features of the Convention

- **Exhaustive list of grounds under which a Court may refuse to grant relief (Article 5)**
  - In relation to the parties, their incapacity.
  - In relation to the settlement agreement, its invalidity, or the fact that the settlement agreement is not final, not binding or has been subsequently modified, the fact that the obligations in the settlement agreement have been performed or are not clear and comprehensible, or that granting relief would be contrary to the terms of the settlement agreement.
  - In relation to the mediation procedure, due process issues regarding the procedure or the independence and impartiality of the mediator.
  - Two additional grounds upon which a Court may, on its own motion, refuse to grant relief. Those grounds relate to the fact that a dispute would not be capable of settlement by mediation under the law of that Party, or would be contrary to public policy.



# Key Features of the Convention

- **Parallel applications or claims (Article 6):**
  - Decision may be adjourned.
  - A party may be ordered to give security.
- **Other laws or treaties (Article 7):**
  - Permits the application of more favourable national legislation or treaties to matters covered by the Convention.
- **Reservations (Article 8):**
  - Exclusion of Convention to settlement agreements where State/governmental agencies/person acting on behalf of a governmental agency is a party.
  - Allow opt-in option by parties to the mediated settlement agreement.
  - No other reservations.



# Singapore: Suite of Mediation Options

- **SIAC-SIMC Arb-Med-Arb Protocol**

- Parties are time and cost conscious: One-stop process. If mediation is unsuccessful, proceed with arbitration without delay. If mediation is successful, mediated settlement registered as a consent arbitral award – enforceable under the New York Convention in 160 countries.
- Combines the advantages of confidentiality and neutrality with enforceability and finality.



# The Singapore Arb-Med-Arb Clause

*Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration administered by the Singapore International Arbitration Centre ("SIAC") in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC Rules") for the time being in force, which rules are deemed to be incorporated by reference in this clause.*

*The seat of the arbitration shall be [Singapore].\**

*The Tribunal shall consist of \_\_\_\_\_\*\* arbitrator(s).*

*The language of the arbitration shall be \_\_\_\_\_.*

*The parties further agree that following the commencement of arbitration, they will attempt in good faith to resolve the Dispute through mediation at the Singapore International Mediation Centre ("SIMC"), in accordance with the SIAC-SIMC Arb-Med-Arb Protocol for the time being in force. Any settlement reached in the course of the mediation shall be referred to the arbitral tribunal appointed by SIAC and may be made a consent award on agreed terms.*





# Singapore: Suite of Mediation Options

- **Mediation Act 2017**
  - Recording of mediated settlement agreement as an order of court (with the consent of all the parties to the agreement) (**Section 12**).
- **Singapore Convention on Mediation Bill**
  - Work-in-progress.
  - An act to give effect to the Convention, so that Singapore can take the next step towards ratification.



*Thank You*

