RESOLVED, That the American Bar Association urges all nations, including the United States, to become party to and implement the United Nations Convention on International Settlement Agreements Resulting from Mediation (also known as the Singapore Mediation Convention); and

FURTHER RESOLVED, That the American Bar Association urges the United States executive branch and Senate to regard the Singapore Mediation Convention as self-executing under U.S. law.
I. Introduction

On August 7, 2019, forty-six countries, including the United States, signed the United Nations Convention on International Settlement Agreements Resulting from Mediation, also known as the Singapore Mediation Convention. This is a multilateral treaty negotiated under the auspices of the United Nations Commission on International Trade Law (UNCITRAL).\(^1\) It essentially provides means by which a mediated settlement may be enforced directly in the country where the breaching party is, rather than having to bring an action and then seek recognition and enforcement in the foreign jurisdiction, or commence a new proceeding to enforce the contract. It applies only to settlement agreements concluded after the date that the Convention entered into force for the relevant nations. The primary goals of the Convention are to facilitate international trade and to promote the use of mediation in resolution of cross-border commercial disputes.\(^2\)

This Convention could be an important element in convincing companies and other private parties to attempt to achieve mediated settlements of disputes. A 2014 Survey by the International Mediation Institute\(^3\) asked whether respondents would be more likely to mediate a dispute with a party from another country if they knew that country ratified an UN Convention on the Enforcement of Mediated Settlements and that consequently any settlement could easily be enforced there; 92.9% responded that they would be much more likely or probably more likely to do so.\(^4\) Mediation in certain circumstances can be quicker and less expensive than either arbitration or litigation. However, parties may be reluctant to use mediation because of the current absence of a means to enforce settlement agreements achieved by this process. The Convention would address that issue.

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\(^3\) See [https://www.imimediation.org/2017/01/16/users-view-proposal-un-convention-enforcement-mediated-settlements/](https://www.imimediation.org/2017/01/16/users-view-proposal-un-convention-enforcement-mediated-settlements/). This 2014 survey focused on the private sector (internal counsel, corporate managers and other roles), with over half of the participants working in companies with more than 10,000 employees. Participants indicated that 28% of considered that the main obstacle for the development of mediation is that there is no universal mechanism to enforce a mediated settlement agreement; the same survey also showed that 84% of participants would be more likely to use mediation in a cross-border dispute, if there were a Convention on mediation akin to the NY Convention. Compare a 2015 Queen Mary survey, [http://www.arbitration.qmul.ac.uk/media/arbitration/docs/2015_International_Arbitration_Survey.pdf](http://www.arbitration.qmul.ac.uk/media/arbitration/docs/2015_International_Arbitration_Survey.pdf) (pages 31-32).

II. The Structure of the Convention

The Convention applies to a settlement agreement resulting from mediation of a commercial dispute and confirmed in writing, where at least two parties have their places of business in different countries or if both parties are in one country, the substantial part of the obligations is performed in a different country or a different country is more closely connected with the subject matter. It does not apply to consumer, family, inheritance or employment settlement agreements, nor to court-approved settlement agreements that are enforceable as a judgment in the country’s courts, or those that are recorded and enforceable as arbitration awards. The writing may be an electronic communication. Mediation itself is defined as “a process, irrespective of the expression used or the basis upon which the process is carried out, whereby parties attempt to reach an amicable settlement of their dispute with the assistance of a third person or persons (‘the mediator’) lacking the authority to impose a solution upon the parties to the dispute.”

Each nation that is party to the Convention must enforce a settlement agreement meeting the criteria of the convention, provided the settlement agreement is signed by the parties to the settlement, resulted from mediation, is signed by the mediator who confirms the mediation was carried out, the institute administering it attests to it, or in the absence of any of these criteria, “other evidence acceptable to the competent authority.” Relief may be denied if (1) one of the settling parties is shown to have operated under an incapacity, (2) the settlement agreement is null and void, inoperable or incapable of performance under the applicable law, is not binding or final under its terms, or has been modified, (3) the obligations have been performed or are not clear or comprehensible, (4) granting the relief would be contrary to the settlement agreement, (5) the mediator breached applicable standards, or (6) the mediator’s impartiality was compromised due to a failure to disclose circumstances having a material impact or undue influence. In addition to these factors, a country where enforcement is sought may decline to grant relief on the basis of its public policy or if the dispute could not have been settled by mediation under its laws.

Other provisions relate to parallel applications or claims, the availability of other laws or treaties, certain reservations, participation by regional economic integration organizations, and ability of a nation with a non-unified legal system to apply it to those territorial units.

The Convention permits only two reservations. A party to the Convention may declare that: (a) it shall not apply the Convention to settlement agreements to which it is a party, or to which any governmental agencies or any person acting on behalf of a governmental agency is a party, to the extent specified in the declaration; (b) it shall apply the Convention only to the extent that the parties to the settlement agreement have agreed to the application of the Convention.
The Convention will enter into force six months after the deposit of the third instrument of ratification, acceptance, approval or accession with the Secretary-General of the United Nations.

In sum, for the Convention to apply, the settlement agreement must have been the result of an international commercial mediation, and not otherwise excluded (e.g., consumer or family law disputes). Notably, mediated settlements that are otherwise enforceable as judgments are excluded to avoid interference with the Hague Choice of Court Convention and the recently adopted Hague Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters.

III. U.S. Implementation

Currently, the enforcement of settlement agreements in the U.S. is largely a matter of state law. There is no mechanism for automatic enforcement of such an agreement in a foreign jurisdiction. It does not have the status of a judgment; in fact, its purpose is to provide enforcement of a contract in a legally binding way, similar to that afforded to an arbitration award, within the parameters of the Convention. Unlike the New York Convention that relates to arbitration awards, the settlement agreement that results from mediation is addressed in terms of the result, not the process.

The Singapore Convention was modelled on the New York Convention. There is a strong argument that the New York Convention is self-executing under U.S. law, and thus the Singapore Convention should be considered self-executing. Further, the New York Convention was implemented in the United States by the Federal Arbitration Act (chapters 1 and 2 of title 9 of the U.S. Code). To the extent implementing legislation is considered necessary or appropriate for the Singapore Convention, it would make sense for the United States also to implement it by federal legislation. The Hague Choice of Court Convention, which was signed by the United States on January 1, 2009, has not yet been ratified by the United States, despite support for ratification by the ABA because of disagreements on whether it should be implemented by U.S. state or federal legislation, or a combination. Efforts to achieve a compromise approach have been unavailing. The United States practice is not to deposit an instrument of ratification until it is able to implement the obligations it will become bound to. Following the tested precedent of how the New York Convention would avoid this problem and more quickly allow the United States to ratify the Singapore Convention.

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6 See 2010 MY 108C, in which the ABA urged the Executive Branch and Senate to identify treaties that are self-executing under U.S. law.
Respectfully submitted,

Lisa Ryan
Chair, Section of International Law
February 2020
1. **Summary of Resolution(s).**
   This Resolution supports the prompt ratification and implementation of the Singapore Convention.

2. **Approval by Submitting Entity.**
   The Council of the Section of International Law Council approved the resolution on October 17, 2019.

3. **Has this or a similar resolution been submitted to the House or Board previously?**
   No.

4. **What existing Association policies are relevant to this resolution and how would they be affected by its adoption?**
   This Resolution does not affect any existing policies of the Association. It promotes the proper application of the well-established doctrine of comity and its approach is consistent with the approach of 2006 AM Resolution 123A in support of the Hague Convention on Choice of Court Agreements. This Resolution also is consistent with the policies motivating ABA support for a multilateral judgments convention in 1993 MY Resolution 109A and with 2010 MY 108C, in which the ABA urged the Executive Branch and Senate to identify treaties that are self-executing under U.S. law. Urging other governments to act is also consistent with prior Association policy. For example, the Section’s resolutions adopted in August 2019 (113B on human dignity and 120 on the Rohingya) made comparable calls to other governments.

5. **What urgency exists which requires action at this meeting of the House?**
   The Convention has been signed by the United States and forty-five other countries. It is in the interest of the United States to move expeditiously.

6. **Status of Legislation.** (If applicable)
   N/A

7. **Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.**
   Subject to consultation with the State Department and with their assistance, if the House of Delegates adopts the resolution, we would work with ABA Government Affairs for implementation of the Resolution.

8. **Cost to the Association.** (Both direct and indirect costs)
   None known.
9. Disclosure of Interest. (If applicable)
   N/A

10. Referrals.
    This resolution is being provided to other ABA entities for support.

    Section of Litigation
    Section of Dispute Resolution
    Section of Business Law
    Judicial Division

11. Contact Name and Address Information. (Prior to the meeting)

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12. Contact Name and Address Information. (Who will present the report to the House?)

    Steven Richman, Esq.
    Section Delegate to the HOD
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EXECUTIVE SUMMARY

1. Summary of the Resolution

This Resolution urges governments, including the U.S. government, promptly to adhere to the 2019 United Nations Convention on International Settlement Agreements Resulting from Mediation (also known as the Singapore Mediation Convention). The Convention provides that a mediated settlement may be enforced directly in any other country that is party to the Convention.

2. Summary of the Issue that the Resolution Addresses

Currently, a party to a mediated settlement agreement would need to bring an action to enforce that agreement in the United States and then seek recognition and enforcement in the foreign jurisdiction, or commence a new proceeding to enforce the contract. This convention will provide an expedited and simpler method for enforcement of such agreements.

3. Please Explain How the Proposed Policy Position will address the issue

The resolution will urge governments, including the U.S. government, to adhere to the Singapore Convention and to implement it.

4. Summary of Minority Views

None known at this time.