

# Promoting Intellectual Property Rights in the ASEAN Region

## Introduction to IP Mediation Services in Singapore



Chuan Wee Meng  
CEO, SIMC

12<sup>th</sup> October 2021





# Agenda

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## Establishment and Services

Statistics and Case Management

Structure and Process

Legislation

Case Studies



# Mediation of IP Disputes with IPOS



- Key part in IP management: defend IP and resolve disputes
- IPOS provides resolution of IP disputes through mediation
- Parties can request for IPOS mediation at any time before the outcome of the case
- SIMC is one of the mediation providers for IPOS mediations
- IPOS Enhanced Mediation Promotion Scheme –
  - encourage parties to choose mediation as an alternative to a hearing
  - provides funding to defray mediation related costs, regardless of the outcome



# About SIMC



- Not-for-profit institution specializing in mediation of cross-border commercial disputes
- Launched in November 2014 by Singapore's Chief Justice, Mr. Sundaresh Menon and Minister for Law, Mr. K Shanmugam, SC
- International panel of 69 mediators across 17 jurisdictions and specialist mediator panels from various countries



# SIMC's Services

- Case Management
- Training
- Promoting Mediation
- Thought Leadership





# Capacity Building of Mediation in ASEAN countries



Cambodia – August 2019



Laos – June 2019



Myanmar – July 2019



# Some Events/Webinars in ASEAN countries

withers khattarwong LLP

## Webinar: Mediation and Arbitration in the ASEAN region

With the growing prominence of the ASEAN region as a choice destination for foreign investment and cross border trading, comes an increasing demand for dispute resolution processes that make sense to businesses. The use of mediation and arbitration continues to grow strongly as viable modes of dispute resolution to cater to the needs arising from multi-jurisdictional disputes in the region.

In conjunction with the activities and events taking place around the upcoming Singapore Convention Week, Withers KhattarWong is proud to present a webinar featuring experienced leading practitioners from the ASEAN region.

Our panel will explore aspects around the use of mediation and arbitration to resolve cross border disputes from different perspectives across various jurisdictions, including the diverse cultural nuances, legal norms and traditions around the practice of mediation and arbitration. We will also consider the enforceability of mediation clauses and settlement agreements, and the use of innovative hybrid mechanisms (such as arbitration-mediation-arbitration) in the region.

## Speakers



Mr Shaun Leong,  
FCI Arb

Partner | Withers  
KhattarWong



Mr Teh Joo Lin

Deputy Chief Executive  
Officer | Singapore  
International Mediation  
Centre



Ms Melati Siregar

Senior Partner | UMBRA  
Strategic Legal Solutions



Mr Loc Xuen Le

Partner | Tilleke &  
Gibbins

Supporting  
Organisations:



LEXOLOGY



THAC  
INTERNATIONAL  
ADR Webinar Series 2021

## SESSION 12

### MULTI-TIER DISPUTE RESOLUTION CLAUSES, IS THIS THE KEY TO MEDIATION SUCCESS?

Given the significant levels of growing international support for the Singapore Convention on Mediation and the growing popularity of international commercial mediation, focus has been how more disputes can be channelled appropriately, and at an early point, to mediation.

Multi-tiered dispute resolution clauses (MTDRC) have been around for a long while and has been a mainstay in many domestic and trans-border contracts. MTDRC provides a certainty of both dispute resolution venue and method, which is of significant importance in business efficacy. This is especially important in time-sensitive industries as well as long-term business relationships that require continuing, day-to-day cooperation.

The panel, including SIMI Mediators, will discuss the advantages of MTDRC, effectiveness and enforceability of MTDRC, and whether the increased use of MTDRC will facilitate parties' decision to adopt mediation as their first choice vis-à-vis the traditional arbitration clause.

## SPEAKERS



Professor Ia Ting-ikwok  
Asia Conflict Resolution  
Institute (ACRI)



Amelie Huber-Stadlinger  
tailored.solutions



Teh Joo Lin  
Singapore International  
Mediation Centre (SIMC)



Thaevan Uthavith  
Thai Legal Law Office



Robert Rhodes, QC  
Barrister, mediator and arbitrator

## MODERATOR



Marcus Lim  
Lapt

Platinum Sponsor



22 September 2021  
3:00 - 4:30 PM (UTC+7)



Thailand, 2021

info@thac.or.th

www.thac.or.th

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# Online Mediation During Covid-19

- More than 50% of cases were online/hybrid mediations managed over Zoom since June 2020
- Procedures and processes to promote communication, confidence and confidentiality
- Enabling Parties to preserve relationships despite Covid-19



# Agenda

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Establishment and Services

**Statistics and Case Management**

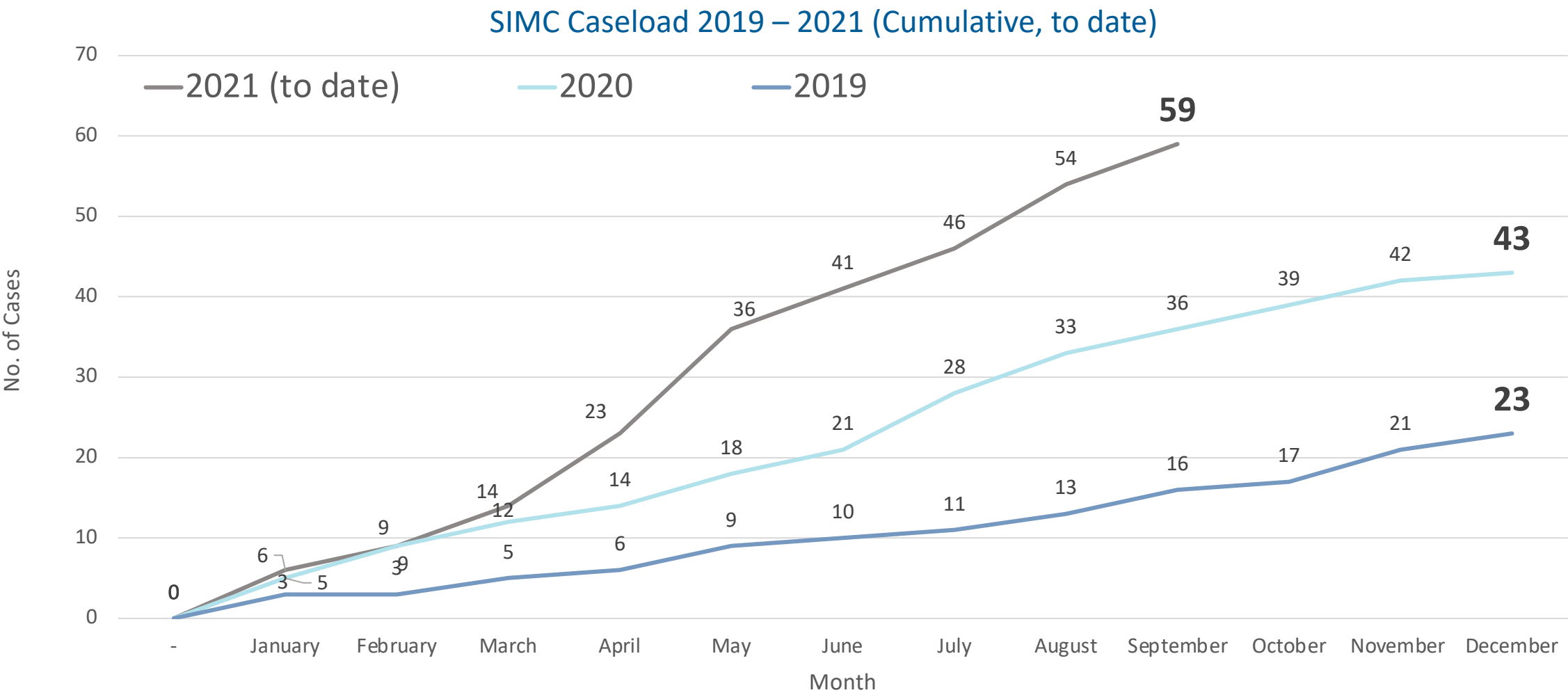
Structure and Process

Legislation

Case Studies



# SIMC Caseload

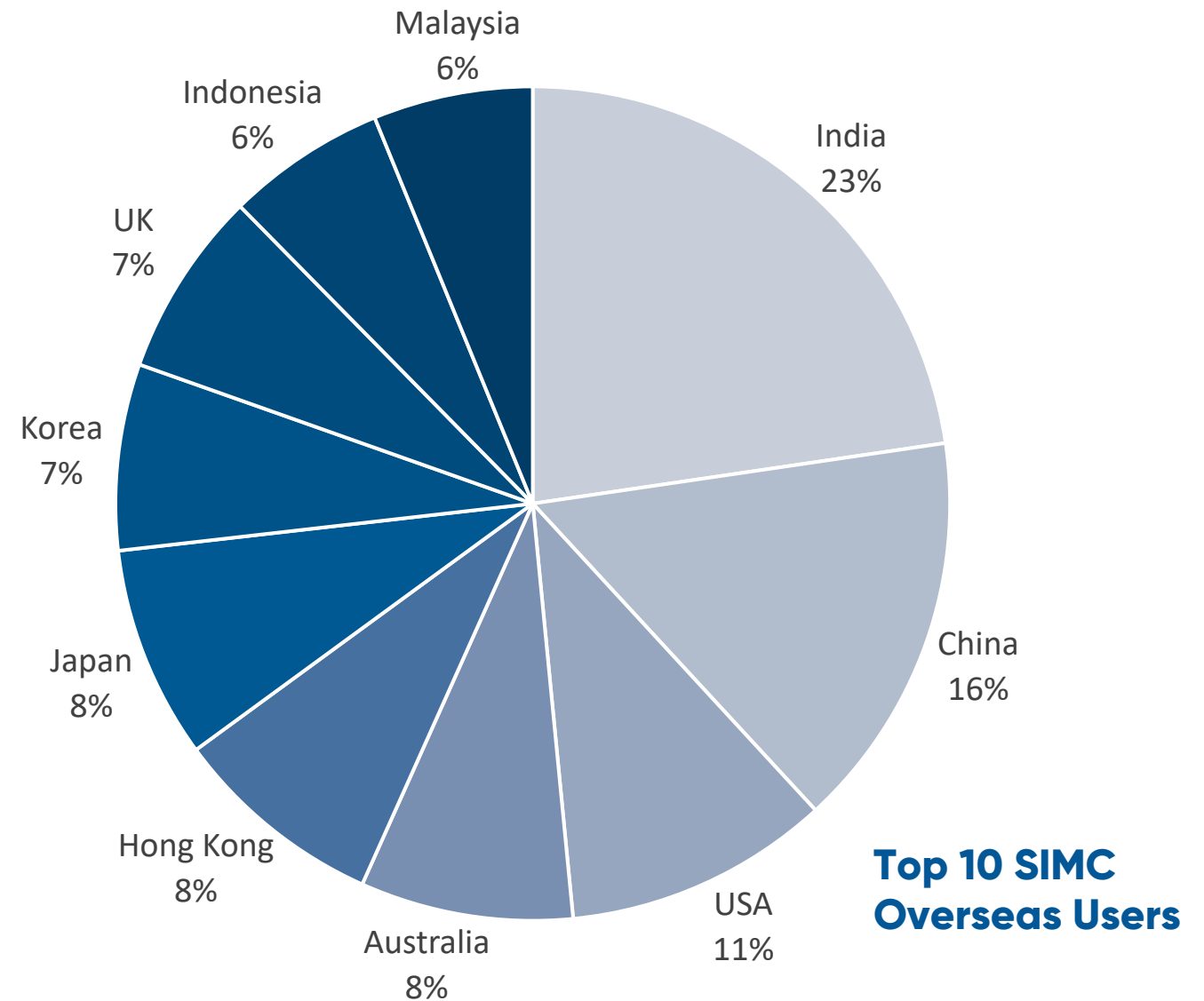




# SIMC Case Management

## SIMC Statistics

- Total cases to date: about 200
- Total dispute value: >USD 5.4B
- Average Dispute Value: USD 28M
- Average settlement rate: 70–80%





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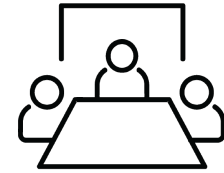


# THE MEDIATION PROCESS

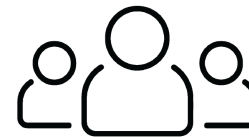
## PRE-MEDIATION



Exchange of  
mediation statements



Exchange of lists  
of attendees



Check right persons (with  
authority) attending



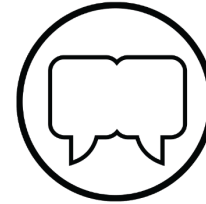
General  
preparation



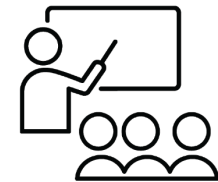
## AT THE MEDIATION

*Welcome!*

Welcome and  
mediator's opening



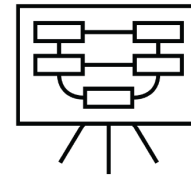
Opening statements  
by parties



Setting out  
the issues



Options  
generation  
- Joint session/s  
- Private session/s



Exploration  
of issues

**CONFIDENTIAL**

## AGREEMENT



- Drafting settlement agreement  
- Signing settlement agreement





## ● POST MEDIATION

● Follow-up



SINGAPORE  
INTERNATIONAL  
MEDIATION CENTRE

For more information:  
[secretariat@simc.com.sg](mailto:secretariat@simc.com.sg)



# SIAC & SIMC

## Arb→Med→Arb (AMA) Protocol

A one-stop process

Arbitration



Mediation



Arbitration

### ADVANTAGES OF ARB-MED-ARB



Multi-jurisdictional  
enforcement



Access to quality  
mediators



Confidentiality and  
neutrality



Time and cost savings

- Enforceable in over 160 countries under the New York Convention.



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# Legislation

- Mediation Act 2017
- Singapore Convention on Mediation 2019
- Singapore Convention on Mediation Act 2020



# Mediation Act 2017

An Act to promote, encourage and facilitate the resolution of disputes by mediation and for connected purposes,  
and to make consequential and related amendments to certain other Acts.

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

## Short title and commencement

1. This Act is the Mediation Act 2017 and comes into operation on a date that the Minister appoints by notification in the *Gazette*.

(2A) Subsection (2)(a) does not preclude —

- (a) an international settlement agreement as defined in section 2(1) of the Singapore Convention on Mediation Act 2020 (called in this subsection an international settlement agreement) from being a mediated settlement agreement to which this Act applies if, apart from subsection (2)(a), the international settlement agreement would qualify as such; or
- (b) an international settlement agreement that is also a mediated settlement agreement to which this Act applies from being recorded as an order of court under this Act if the international settlement agreement has not been recorded as an order of court under section 5 of the Singapore Convention on Mediation Act 2020.

*[Act 4 of 2020 wef 12/09/2020]*



# Mediation Act 2017

- Addressed the issue of **enforceability of mediation settlement agreements directly in the court.**
- Section 12: A party to a settlement agreement may, with the consent of all other contracting parties, apply to record the same as a court order within 8 weeks of contracting.
- The key features of the Act:
  - Stay of court proceedings provisions;
  - Restrictions on disclosure and admissibility provisions;
  - Enforceability of settlement agreements resulting from mediation; and



# Singapore Convention on Mediation (2019)

- Known as the United Nations Convention on International Settlement Agreements Resulting from Mediation, or the Singapore Convention on Mediation.
- Article 3 of the Convention provides that signatories may, in accordance with their respective domestic procedures:
  - Enforce an international settlement agreement; or
  - Where a dispute arises in respect of a matter claimed to have been resolved by an international settlement agreement, invoke such agreement .
- Described by Singapore's Prime Minister Lee Hsien Loong as the **"missing third piece"** in the international dispute resolution framework.



## SINGAPORE CONVENTION SIGNING CEREMONY

7 AUGUST 2019



Singapore Convention on Mediation – Opened for signature on  
7 August 2019 and thereafter at the UN headquarters in New York

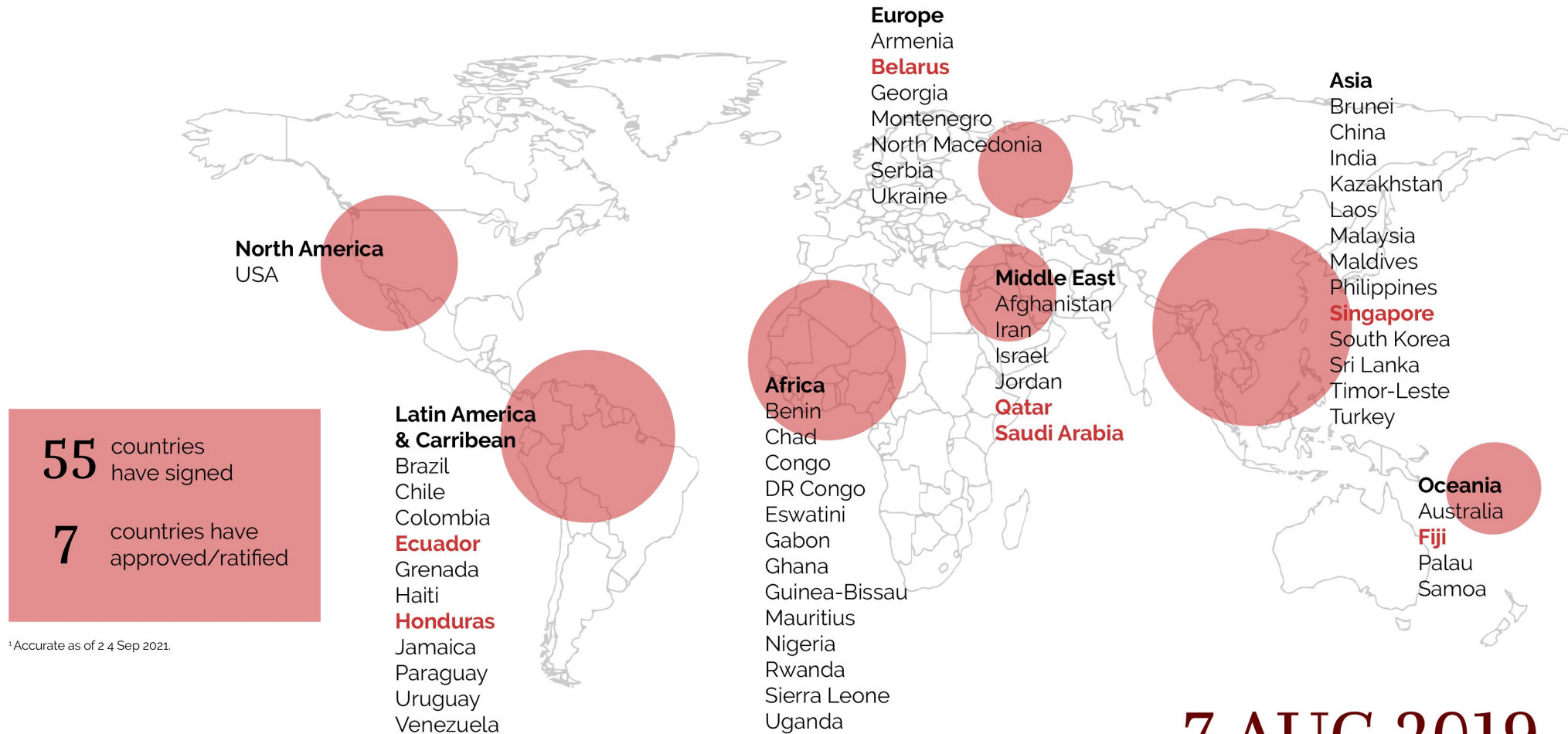


# Primary aims of the Singapore Convention on Mediation

- Recognize the benefits of mediation
- Encourage growth of mediation
- Facilitate international trade
- Contribute to harmonious relations



- COUNTRIES THAT HAVE SIGNED
- COUNTRIES THAT HAVE APPROVED/RATIFIED<sup>1</sup>



**55** countries have signed

**7** countries have approved/ratified

<sup>1</sup> Accurate as of 24 Sep 2021.

**7 AUG 2019**  
Convention open for signature

**12 SEP 2020**  
Convention's entry into force

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# The Singapore Convention on Mediation



# ASEAN Countries that have signed the Singapore Convention

Brunei

Laos

Malaysia

Philippines

Singapore





# Singapore Convention on Mediation Act (2020)

- Commenced on 12<sup>th</sup> September 2020 to give effect to the Singapore Convention on Mediation.
- Addresses implementation of articles of the Singapore Convention.
- The procedure for enforcing or invoking an international settlement agreement in Singapore is set out in Section 4.
- Provides that a party may **apply to record an international settlement as a court order**, subject to the requirements being met and there being no ground for refusal.



# 11 Mar 2020: UN Convention that promotes mediation to resolve trade disputes moves closer to entry into force



## 12 Sep 2020: Singapore Convention on Mediation comes into force

Sunday, September 13, 2020 | The Sunday Times

Top of the News

A7

### Singapore Convention on Mediation comes into force

Jean Iau

An international convention that aims to help businesses resolve cross-border disputes and further facilitate international trade took effect yesterday.

Called the Singapore Convention on Mediation, the United Nations treaty is the first to be named after the country, said the Ministry of Law in a statement.

The convention seeks to provide

businesses around the world with more certainty in resolving cross-border disputes through mediation by making it possible for them to apply directly to the courts of countries that have ratified the treaty.

Minister for Home Affairs and Law K. Shanmugam, who represented Singapore as the first country to sign the treaty, said: "The convention's entry into force is a significant milestone, as it further strengthens the international dispute resolution enforcement framework.

"This benefits businesses by providing greater certainty in resolving cross-border commercial disputes, ultimately facilitating international trade and commerce."

As of Sept 1, 53 countries have signed the convention, also known as the UN Convention on International Settlement Agreements Resulting from Mediation, including the United States, China and India. The list also includes Afghanistan and the Pacific island nation of Palau.

Singapore, Ecuador, Fiji, Qatar, Saudi Arabia and Belarus have ratified the convention.

Through mediation, parties in a cross-border dispute can attempt to negotiate a new deal, facilitated by a neutral third-party mediator, to salvage a commercial relationship that would otherwise disintegrate if the litigation or arbitration routes were taken.

Presently, a settlement agreement made in one country has no legal force in another.

A party seeking to enforce a mediated settlement agreement in another country or multiple countries will have to commence legal proceedings in each country. This can be costly and time-consuming, especially for international settlement agreements.

The treaty also strengthens Singapore's position as an international dispute resolution centre and better serves the needs of international businesses that use Singapore as a base for international commercial

transactions, said the ministry.

Secretary of the UN Commission on International Trade Law Anna Joubin-Bret said: "We look forward to (the convention) bringing certainty and stability to the international framework on mediation and contributing to the sustainable development goals, including the goal of promoting peaceful and inclusive societies for sustainable development."

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## 2 Case Studies

1. Trademark dispute – Owner of international lifestyle technology and Singapore “Reseller”.
2. IP dispute – App Developer, its Sub-Contractor and Owner.





# Case Study 1

- Lifestyle products pilfered from overseas factory premises.
- Unauthorized sale on several e-commerce platforms.
- Losses in USD millions.
- Owner sued “reseller” for breach of trademark.
- Parties attempted settlement without success.





# Case Study 1

- Explored Creative solutions.
- Expeditious, amicable and satisfactory settlement.
- Settlement sum in installments and lawsuit was discontinued.
- Breakthrough: parties collaborate to investigate alleged wrongful actions of other perpetrators.
- Litigation – such collaboration not likely to be ordered by Court.



# Case Study 2

- Contract between App Developer and Owner to develop and run an online learning platform.
- App Developer engaged Sub-Contractor to run project.
- Dispute between App Developer & Sub-Contractor.
- Resulted in failing service support affecting Owner and thousands of its users.
- Court proceedings initiated but all 3 parties agreed to mediate with SIMC.





# Case Study 2

- With thousands of app users at stake, **mediation led** parties to a commercial solution in 1 day.
- Parties canvassed their respective **issues and interests** with mediator's assistance.
- Agreement on payments amongst 3 parties.
- App transferred to a separate 3rd party whose reliability was acceptable to Owner.
- Breakthrough – **parties agreed to put the interests of the affected users FIRST, also considering reputational risks.**
- Court process would be much longer, and may not meet the real underlying interest of all parties.



# Thank You



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