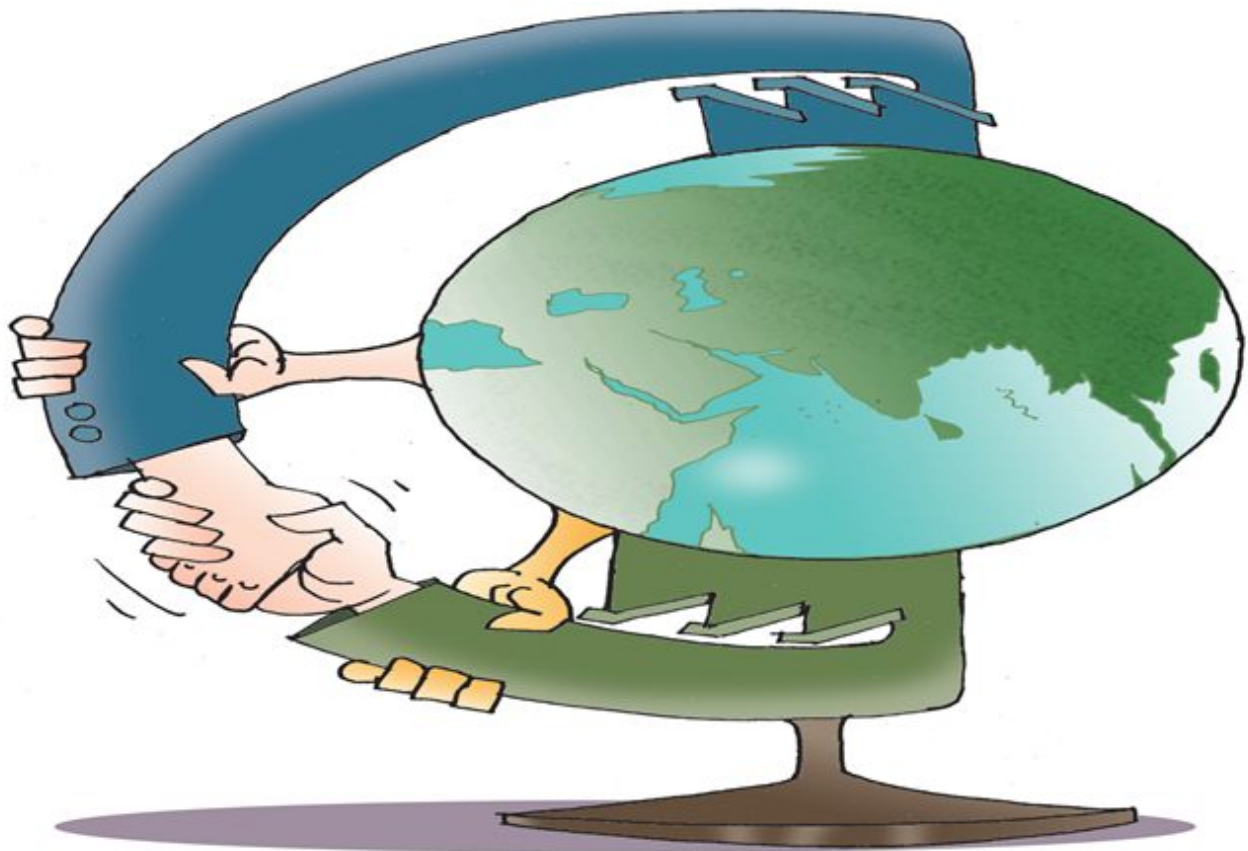


# Singapore Convention: Mediation is the way forward

Published: August 9, 2019 12:50:54 AM

In commercial disputes, mediation often proves to be the cheapest, quickest and the most confidential mode for dispute resolution.



Mediated settlements typically take shape in the form of a settlement agreement.

**By Ashish Kabra & Alipak Banerjee**

In Ramayana, Lord Rama had sent Angada to mediate with Ravana. In Mahabharata, Lord Krishna had attempted to mediate between the Kauravas and the Pandavas. Mediation was attempted as it could have avoided much bloodshed, which, in case of its failure, followed. We have also heard of mediation in recent times, be it American President Donald Trump's assertion of an offer to mediate on the Kashmir issue between India and Pakistan, or the Supreme Court's

attempt to resolve the Ayodhya dispute through mediation. Similar examples can be found across different scriptures, cultures, regions and timelines. Mediation has always been recognised as a tool for dispute resolution. It is a less antagonistic way to resolve disagreements as it encourages the two parties to reach an agreement by finding common ground.

In commercial disputes, mediation often proves to be the cheapest, quickest and the most confidential mode for dispute resolution. Often, corporates find themselves in a situation where they have multiple dealings with one another, and do not wish to spoil the relationship due to a disagreement in a particular transaction. Mediation is the answer as it helps to preserve business relationships. It also affords the parties greater control over the outcome, leading to a more commercially-sound resolution as opposed to a determination through an adjudicatory mechanism.

However, mediation, unlike arbitration or court litigation, suffers from a drawback. Mediated settlements typically take shape in the form of a settlement agreement. This is unlike a court judgment or arbitral award, where a party could directly file for execution and/or initiate contempt proceedings. Therefore, mediated settlements would generally be recorded in the form of court orders or consent awards. This leads to unnecessary costs, delays and, in certain cases, to loss of confidentiality. Therefore, there is a need for an international framework to enforce such settlement agreements.

#### Singapore convention

This need has now been fulfilled by the United Nations Convention on International Settlement Agreements Resulting from Mediation (also referred to as the 'Singapore Convention'), which was passed by the United Nations General Assembly on December 20, 2018. The Singapore Convention essentially allows direct enforcement of mediated settlement agreements and places such agreements on a par with judgments and awards. In effect, it promotes the credibility of mediation for resolving cross-border commercial disputes.

The Singapore Convention was opened for signature on August 7, 2019, and will come into force after six months from the date the sovereign state confirms their ratification. As more countries ratify the Singapore Convention, it will surely improve cross-border trade by making it easier to enforce the outcomes of mediated settlement agreements, and save both cost and time for the parties. The Singapore Convention can be resorted to only in case of an international commercial dispute, and specifically excludes disputes arising from personal, family, inheritance or employment matters. The convention also does not apply to settlement agreements that have been approved by a court or concluded in the course of court proceedings, and which are

otherwise enforceable as a judgment. In addition, it does not include settlement agreements that have been recorded and are enforceable as an arbitral award.

## Mediation and India

India has had a long history of mediation. The Code of Civil Procedure, 1908, has long recognised the concept of mediation as an effective alternative dispute resolution. Mediation centres have been established in many districts and High Courts in India. The Mediation and Conciliation Project Committee—consisting of Supreme Court and High Court judges, and senior advocates—has taken the lead in evolving policy matters relating to mediation. The recently introduced Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018, prescribe the mechanism for convening a mediation before the institution of a commercial dispute. The rules advocate settling the dispute within a period of three months (can be further extended by two months). The Arbitration and Conciliation Act, 1996, provides a conciliation mechanism whereby the resultant settlement agreement has the status or effect of an award. However, in context of cross-border disputes, such a settlement agreement may not be necessarily enforceable outside India as an arbitral award.

Now that India has signed the Singapore Convention—along with at least 40 other nations, including the US, France and China—this will further strengthen the ease of doing business in India by providing the trading partners the ability to enforce a mediated settlement agreement.

## The way forward

Along with the Singapore Convention, the UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation, 2018, had been released in December 2018. As soon as India ratifies the Singapore Convention, in view of the international and constitutional obligations under Article 253 of the Constitution, India may have to enact a new law on mediation, setting out the process for enforcement. This may include things such as requirement for enforcement of settlement agreements, the scope of public policy, the subject matters that are not applicable for being submitted to mediation, etc. It remains to be seen whether a new legislation is passed in terms of the Model Law or there will be amendments in Section 89 of the Code of Civil Procedure, 1908, or if there will be a new chapter introduced in the Arbitration and Conciliation Act, 1996.

The decision to ratify the Singapore Convention is likely to promote the adoption of mediation by the parties in relation to international commercial disputes, as it will make 'settlement agreements' independently enforceable. This will promote mediation and could consequently reduce the burden on other forms of dispute resolution procedures.

*(Kabra is leader, Nishith Desai Associates, Singapore; Banerjee is leader, Nishith Desai Associates, New Delhi. Views are personal.)*