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Singapore Convention Presents an Opportunity for Georgia in Mediation

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Rapid adoption of an international mediation law gives Georgia an opportunity to seize the "pole position" among other states and signal its availability as a reliable mediation forum.

By Peter "Bo" Rutledge and Katherine M. Larsen
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In the world of alternative dispute resolution, mediation, including international mediation, is the proverbial "hot topic" among lawyers and their clients (corporate or otherwise). Recent international developments hold open the possibility of strengthening its appeal in the market of dispute resolution and create another ripe opportunity for the state of Georgia to position itself as a jurisdiction hospitable to resolving complex business disputes.

In transboundary transactions (and their accompanying disputes), enforceability problems historically have loomed large. The United States is not a party to a multilateral or even bilateral treaty governing the enforcement of civil judgments, reducing the appeal of garden variety civil litigation. By contrast, the United States is a party to several multilateral treaties governing the enforceability of international arbitration awards, particularly the New York Convention. This has given arbitration a comparative advantage over other forms of alternative dispute resolution, including mediation. That may soon change.

On Dec. 20, 2018, the United Nations General Assembly adopted the Singapore Convention. The Singapore Convention ensures that a mediation settlement reached by parties will be binding and enforceable in accordance with a streamlined procedure. The convention will compel contracting states to recognize international mediation settlement agreements in commercial disputes. It will come into force upon ratification by at least three contracting states. Put simply, upon coming into force, the Singapore Convention has the potential to eliminate one of the key comparative advantages enjoyed by international arbitration.

In the market for dispute resolution, a key difference between mediation and arbitration is the terms upon which the dispute is finally resolved. Mediated agreements require a two-step consensus among the parties—a process agreement (to mediate) and a substantive agreement (to the terms of the mediated settlement). By contrast, arbitration only entails a one-step consensus—a process agreement to arbitrate—but does not give the parties much opportunity for "exit" if they are dissatisfied with the arbitrator's award. The Singapore Convention will accord a new status to mediated settlements as it converts a private contract into an instrument that can circulate under a legally-binding international framework. Since mediation is considered a faster, less expensive form of dispute

resolution, that is more likely to preserve the commercial relationship, the Singapore Convention has the potential to encourage greater use of mediation, especially where disputing parties seek to preserve their commercial relationship.

The convention will compel contracting states to recognize international settlement agreements resulting from mediation in commercial disputes. To fall within the scope of the convention, a settlement agreement must be mediated, international, and commercial. The convention specifically intended the definition to be broad to encourage the use of mediation, regardless of the level of formality involved with the negotiation.

There are limited formality requirements imposed on mediated settlement agreements. In order to comply with the Singapore Convention, a mediated settlement agreement must be in writing, signed by the parties, and have resulted from mediation. In order to satisfy the writing requirement, the mediated settlement must be recorded in any form that can be used for reference. In addition, a state cannot impose any additional formality requirements beyond those expressly listed in the convention, as additional formalities may restrict parties from obtaining relief.

On Aug. 7, the opening day of the convention, a record 46 nations signed the Singapore Convention on Mediation. This total marks the highest number of first-day signatories of a U.N trade convention. Signatories to date include: Singapore, United States, Afghanistan, Belarus, Benin, Brunei, Chile, China, Colombia, Republic of Congo, Democratic Republic of Congo, Eswartini, Fiji, Georgia, Grenada, Haiti, Honduras, India, Iran, Israel, Jamaica, Jordan, Kazakhstan, Laos, Malaysia, Maldives, Mauritius, Montenegro, Nigeria, North Macedonia, Palau, Paraguay, Philippines, Qatar, Korea, Samoa, Saudi Arabia, Serbia, Sierra Leone, Sri Lanka, Timor Leste, Turkey, Uganda, Ukraine, Uruguay and Venezuela. With strong support, it is expected that the convention will come into force relatively quickly for an international treaty, with some officials hoping the convention will come into force within a year.

The Singapore Convention presents a unique opportunity for Georgia to become a forum for hospitable mediation. Much like it adopted an international arbitration code, the state could consider enacting an international mediation law tied to the provisions of the Singapore Convention. Such legislation could enhance Georgia's appeal as a mediation forum and build upon its reputation as a jurisdiction hospitable to business, including the resolution of business disputes. States have employed such moves in the past, whether with the early adoption of international arbitration laws (as Georgia recently did) or the creation of specialized business courts (as Georgia did as well). Rapid adoption of an international mediation law gives Georgia an opportunity to seize the "pole position" among other states and signal its availability as a reliable mediation forum.

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