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BEYOND BOUNDARIES: THE EVOLUTION OF COMPARATIVE MEDIATION AND THE IMPACT OF SINGAPORE CONVENTION.

AUTHORED BY - SAI UMESH RAUT

ABSTRACT

The expansion of cross border trade has intensified the demand for non-adjudicative dispute resolution mechanism. While there have been years of traditional domination of the international commercial arbitration, there have been a number of institutional and enterprises levels surveys that highlight the increase and rise in the administrative costs, formalization of procedure and it getting extended (Gary B. Born, 2021)¹. The United Nations Convention on International Settlement Agreements Resulting from Mediation (2018) (NATIONS, 2019)² (Singapore Convention on Mediation) addresses this enforcement gap by establishing an international legal framework allowing qualifying international commercial mediated settlement agreements (iMSAs) to be invoked for a relief or as a defence before competent authority of Contracting States (NATIONS, United Nations Convention on International Settlement Agreements Resulting from Mediation (Article 3), 2019)³. By dispensing with a territorial legal anchor (*lex loci mediationis*) or the procedural prerequisite of converting a settlement into a consent arbitral award or judicial decree, the Convention establishes a non-territorial ("seatless") framework functionally analogous to cross-border arbitration enforcement under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958) (NATIONS, Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958)⁴ (New York Convention), though its ultimate operational efficacy remains contingent upon domestic procedural integration and local execution rules (Zhao, 2021)⁵.

¹ Gary B. Born. (2021). International commercial arbitration (3rd ed.) / 2021 International arbitration survey: Adapting arbitration to a changing world. Kluwer Law International.

² NATIONS, U. (2019). United Nations Convention on International Settlement Agreements Resulting from Mediation (Article 3). United Nations Treaty Series.

³ NATIONS, U. (1958). Convention on the Recognition and Enforcement of Foreign Arbitral Awards. United Nations Treaty Series.

⁴ Zhao, Y. (2021). The Singapore Mediation Convention: A version of the New York Convention for mediation? *Journal of Private International Law*, 17(3), 418–448.

⁵ Kötz, K. Z. (1998). An introduction to comparative law (3rd ed.). Oxford University Press.

Employing a functionalist comparative legal methodology, (Kötz, 1998)⁶ this paper analyses the Convention's operational framework across four primary jurisdictional units: the United Kingdom, Germany, Singapore, and India, with supplementary analysis of the United States, European Union, Italy, and China. It evaluates the treaty's scope under Article 1, proof requirements under Article 4, and the complete statutory structure of refusal grounds enumerated in Article 5, specifically examining their interaction with domestic procedural law under Article 3 (Nations, 2019)⁷. The analysis highlights potential evidentiary tensions between Article 5(1)(e) & (f) mediator misconduct defences and domestic statutory mediation privilege laws (Clanchy, 2020)⁸. To illustrate procedural application pathways, the paper examines an illustrative \$50 million hypothetical commercial default scenario under stipulated assumptions and proposes statutory policy options including model draft provisions for a proposed Part IV of India's Mediation Act (2023) (Parliament of India, 2023)⁹ to reconcile domestic procedural frameworks with international treaty standards.

KEY WORDS

Singapore Convention on Mediation; International Mediated Settlement Agreements (iMSAs); Comparative Legal Analysis; Seatless Enforcement; India Mediation Act, 2023; Mediation Confidentiality; Article 5 Defences.

METHODOLOGY

Research Questions and Scope Delimitation:

Central Research Question: Then the question arises on how the Singapore conventions 'seatless' enforcement framework works together with the various domestic legal systems and the grounds of proof requirements and the refusal ground in the Article 5 and the statutes the various countries and how they align with the treaties obligations.

Scope and Delimitations:

This paper is restricted to the international commercial disputes falling under the scope of Article 1 of the United Nations International Settlements Agreements Resulting from

⁶ Nations, U. (2019). United Nations Convention on International Settlement Agreements Resulting from Mediation (Articles 1, 3–5). United Nations Treaty Series.

⁷ Clanchy, J. (2020). The Singapore Convention: Misconduct and confidentiality / Blaming the middleman? Refusal of relief for mediator misconduct under the Singapore Convention. *Arbitration International*, 36(3), 411–419.

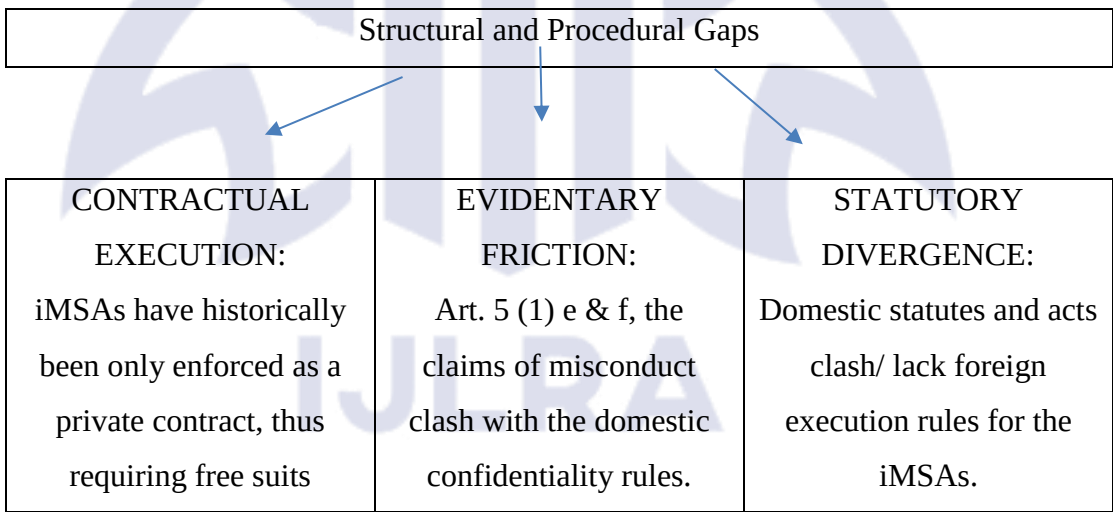
⁸ Parliament of India. (2023). The Mediation Act, 2023 (Act No. 32 of 2023). Gazette of India.

⁹ United Nations Treaty Collection. (2026). Status of Chapter XXII.12: United Nations Convention on International Settlement Agreements Resulting from Mediation. United Nations.

Mediation (2018). It will exclude the scopes such as consumer, inheritance, family and employment dispute, it will not cover settlement agreements recorded as court judgement or an arbitral consent award (Nations, United Nations Convention on International Settlement Agreements Resulting from Mediation (Article 1), 2019)¹⁰. The treaties claim reflects the status of the depository records as late as 2026 (United Nations Treaty Collection, 2026)¹¹ and the applications scenario under the Chapter 5 are used as illustrative hypothetical simulation which is based on defined legal assumptions.

PROBLEM STATEMENT

The method of cross border commercial mediation offers any distinct benefits like it is cost effective, faster than its counterparts and it has a character of preserving the relations of the parties affected (Feehily, 2022)¹². But there are still challenge that are faced by this method as there are differences between the nation’s statutes, supply chains and contractual processes. So here are the three major structural and procedural challenges.



Contractual Execution:

Prior to the Singapore convention the business trying to enforce the international Mediated Settlement (iMSA) had no singular global treaty or a system that works worldwide (Schnabel,

¹⁰ Feehily, R. (2022). International commercial mediation: Law and practice. Cambridge University Press.
¹¹ Schnabel, T. (2019). The Singapore Convention on Mediation: A framework for the cross-border recognition and enforcement of mediated settlements. Pepperdine Dispute Resolution Law Journal, 19(1), 1-60.
¹² Nations, U. (2019). United Nations Convention on International Settlement Agreements Resulting from Mediation (Article 5). United Nations Treaty Series.

2019)¹³, while the various legal systems of the various nations offered various rules which in turn forced the aggrieved party to file an fresh suit to get an court judgement or arbitral award. Evidentiary Friction:

The Art. 5 (1) e & f, of the Singapore convention does allow a court if the mediator committed an conflict or interest or an serious breach that proves that if it was known the party would have not signed the agreement otherwise (Nations, United Nations Convention on International Settlement Agreements Resulting from Mediation (Article 5), 2019)¹⁴. The problem of evidentiary friction arises here as various national mediation laws clearly state that the talks and the notes of mediation are to be confidential and thus it conflicts with the Article 5 claim to show the mediation evidence.

Statutory Divergence:

The problem arises as the national laws do not align with the treaty and thus the problem to enforce the iMSAs arises, as India being an signatory but is yet still not have ratified the treaty, which is why the Mediation Act (2023) passed to govern the domestic mediation and make local settlements under the Article 27 (Parliament of India, 2023)¹⁵ lacks to enforce the iMSAs as it only governs the domestic mediations and falls short when it comes to the international one.

CHAPTER 1: Introduction and Theoretical Foundation

The Pathology of International Arbitration and the Alternate Dispute Resolution Pivot:

International commercial arbitration had been the primary non court method for to solve the interrupting business disputes for over 60 years, it was backed by the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958) (Nations, Convention on the Recognition and Enforcement of Foreign Arbitral Awards (Article I), 1958)¹⁶. But now years in the modern day the international commercial arbitrations have become too slow and facing short comings such as problems in contractual execution, evidentiary friction and statutory divergence making it less economical and costing more time in appeals and the legal seat

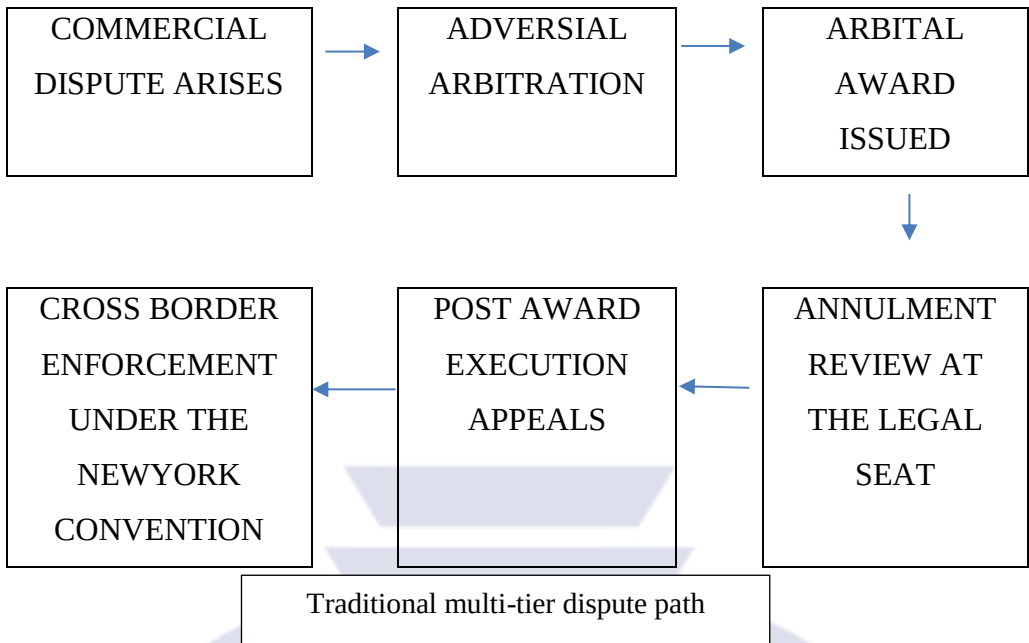
¹³ Nations, U. (1958). Convention on the Recognition and Enforcement of Foreign Arbitral Awards (Article I). United Nations Treaty Series.

¹⁴ Queen Mary University of London & White & Case. (2021). 2021 International arbitration survey: Adapting arbitration to a changing world. Queen Mary University of London & White & Case.

¹⁵ Centre for Effective Dispute Resolution. (2021). The ninth mediation audit: A survey of commercial mediation in the UK. Centre for Effective Dispute Resolution.

¹⁶ United Nations Commission on International Trade Law. (2006). UNCITRAL Model Law on International Commercial Arbitration (1985, with amendments adopted in 2006, Article 30). United Nations.

(Queen Mary University of London & White & Case, 2021)¹⁷.



The businesses being frustrated by these continuous delays and expenses have now turned towards the method of collaborative Alternate Dispute Resolution specially when it comes to commercial mediation (Centre for Effective Dispute Resolution, 2021)¹⁸ it offers certain advantages like:

Relation Preservation: As discussed, prior the businesses instead of wasting time and resources in legal battles they prioritize coming to mediation to protect their relations for an mutual workaround (Feehily, International commercial mediation: Law and practice, 2022)¹⁹.

Procedural Flexibility and Efficiency: Mediation offers procedural flexibility and efficiency they save time and resources, cost lower than an international arbitration (Centre for Effective Dispute Resolution, 2021)²⁰.

Flexible business solutions: Traditional courts and the Arbitral panels work under restrictions and cannot offer the flexibility of an mediator. An mediator can offer renegotiation of contract, changes in existing one, swapping or updating something, etc.

¹⁷ Gevaerd, P. W. (2019). How the Singapore Convention will enforce mediated settlement agreements across borders. *Alternatives to the High Cost of Litigation*, 37(10), 147–154.
¹⁸ United Nations Commission on International Trade Law. (2018). Reports of Working Group II (Dispute Settlement) on the work of its 62nd to 68th sessions. United Nations.
¹⁹ UN General Assembly. (2018). Resolution 73/198: United Nations Convention on International Settlement Agreements Resulting from Mediation. United Nations (U.N. Doc. A/RES/73/198).
²⁰ European Parliament & Council of the European Union. (2008). Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters. Official Journal of the European Union.

Pre-Treaty Execution options and Procedural Requirements:

The Singapore convention came into force on Sept 12, 2020 but prior to this the international Mediation Settlement Agreement had no global enforcement that would automatically enforce (Schnabel, The Singapore Convention on Mediation: A framework for the cross-border recognition and enforcement of mediated settlements, 2019)²¹, if a party aggrieved had an iMSA he still had to rely on national courts and arbitration procedures:

- Breach of Contract: They had to file a fresh suit where the defaulting party is from or where it has assets located, which makes the settlement of the agreement up to the rules of the local contract defences.
- Procedural workarounds: It is the method of 'consent award' where a new arbitration process is started to record a pre-agreed settlement as an 'arbitral award on agreed terms' under the Art. 30 of UNCITRAL Model Law on International Commercial Arbitration (United Nations Commission on International Trade Law, 2006)²²

The consent award under the Art. 30 of the UNCITRAL Model Law can be enforced globally under the New York convention (1958), but this path has its own requirements to be fulfilled for one to be valid, it needs, an existing arbitration agreement agreed by both sides and an active arbitration process where a tribunal that can record the settlement as an award (Gevaerd, 2019)²³.

1. UNCITRAL Legislative History and the Working Group II Negotiations:

After recognizing the lack of a simple enforcement framework, which created the international problems and was limiting the international mediation, UNCITRAL instructed the Working Group II (Dispute Settlement) in the year 2014 the draft on legal instrument to tackle the core issues, the group between 2015 and 2018 worked on it (United Nations Commission on International Trade Law, 2018)²⁴.

- Instrument Format: The members debated whether to create a conventional binding treaty or a Model Law. The records in the drafts suggest that they

²¹ Parliament of Singapore. (2020). Singapore Convention on Mediation Act 2020 (Act No. 4 of 2020). Singapore Statutes Online.

²² Court of Appeal of England and Wales. (2023). Churchill v. Merthyr Tydfil County Borough Council [2023] EWCA Civ 1416. Incorporated Council of Law Reporting.

²³ Federal Republic of Germany. (2020). Zivilprozessordnung [Code of Civil Procedure] (Sec. 794(1) No. 5). Bundesgesetzblatt.

²⁴ Federal Republic of Germany. (2012). Mediationsgesetz [Mediation Act] vom 21. Juli 2012 (Sec. 4). Bundesgesetzblatt (BGBl. I S. 1577).

weighed both the options and the UNICITRAL at last created the both, the binding Singapore Treaty and the UNCITRAL Model Law on International Settlement Agreements Resulting from Mediations (2018) for law updates (Schnabel, The Singapore Convention on Mediation: A framework for the cross-border recognition and enforcement of mediated settlements, 2019)²⁵.

- Rejection of an ‘SEAT’ for mediation: The group discussed if an legal anchor that is an physical seat is to be established in each country but in the end it was rejected as it would create an unnecessary legal confusion and can cause parallel courts to fight, instead decided to use an ‘seatless’ model where the power is placed with the court where the enforcement is sought (Nations, United Nations Convention on International Settlement Agreements Resulting from Mediation (Articles 3–5), 2019)²⁶.

On December 20, 2019 the UN General Assembly passed the Resolution 79/198, which meant officially adopting the convention and on August 7, 2019 it began for signature in Singapore. (UN General Assembly , 2018)²⁷.

CHAPTER 2: Comparative Jurisdictions and Domestic Frameworks

1. Systematic Comparison:

Comparative Variable:	United Kingdom (Common Law)	Germany (Civil Law)	Singapore (Asian-Hybrid)	India (Domestic)
Treaty Status Singapore Convention	Signatory (2023), Ratification pending. (United Nations Treaty Collection, 2026) ²⁸	Subject to EU competence framework. (European Parliament & Council of the European	Ratified 2020 (United Nations Treaty Collection, 2026) ³⁰	Signatory (2019), Ratification pending. (United Nations Treaty Collection,

²⁵ Parliament of Singapore. (2017). Mediation Act 2017 (Act No. 1 of 2017). Singapore Statutes Online.
²⁶ Singapore International Arbitration Centre & Singapore International Mediation Centre. (2014). SIAC-SIMC Arb-Med-Arb Protocol. SIAC/SIMC.
²⁷ Parliament of Singapore. (2020). International Arbitration Act (Cap. 143A, Section 30). Singapore Statutes Online.
²⁸ Parliament of India. (1908). Code of Civil Procedure, 1908. Gazette of India.
³⁰ Ministry of Law and Justice, Government of India. (2023). The Mediation Act, 2023. Gazette of India.

		Union, 2008) ²⁹		2026) ³¹
Domestic Settlement Enforceability	Common Law Contract Action. (Court of Appeal of England and Wales, 2023) ³²	Authentic Act (ZPO, Sec. 794(1) no. 5). (Federal Republic of Germany, 2020) ³³	SIAC Award. (Parliament of Singapore, 2020) ³⁴	Court Decree under Sec. 27(2). (Parliament of India, 2023) ³⁵
Convention Execution Pathway	N/A Pending Ratification.	EU action pending.	High Court Application. (Parliament of Singapore, 2020) ³⁶	N/A
Statutory Proof Threshold	Signed Agreement + Mediator Confirmation.	Notarized Instrument (ZPO Sec. 794).	Signed iMSA + Mediator Attestation. (Nations, United Nations Convention on International Settlement Agreements Resulting from Mediation (Article 4), 2019) ³⁷	Signed and Authenticated MSA. (Parliament of India, 2023) ³⁸

²⁹ Parliament of India. (2015). Commercial Courts Act, 2015. Gazette of India.

³¹ Parliament of India. (2023). The Mediation Act, 2023 (Section 2). Gazette of India.

³² Parliament of India. (2023). The Mediation Act, 2023 (Section 5). Gazette of India.

³³ Parliament of India. (2023). The Mediation Act, 2023 (Section 14). Gazette of India.

³⁴ Parliament of India. (2023). The Mediation Act, 2023 (Section 18). Gazette of India.

³⁵ Parliament of India. (2023). The Mediation Act, 2023 (Section 27). Gazette of India.

³⁶ Parliament of India. (2023). The Mediation Act, 2023 (Section 28). Gazette of India.

³⁷ Court of Appeal of England and Wales. (2004). Halsey v. Milton Keynes General NHS Trust [2004] 1 W.L.R. 3002. Incorporated Council of Law Reporting.

³⁸ Uniform Law Commission. (2003). Uniform Mediation Act (Section 6(c)). National Conference of Commissioners on Uniform State Laws.

Refusal/ Challenge grounds.	CPR Abuses Rules. (Court of Appeal of England and Wales, 2023) ³⁹	Public policy/ Formal Defences (ZPO Sec. 794)	Art. 5 Refusal Grounds. (Nations, United Nations Convention on International Settlement Agreements Resulting from Mediation (Article 5), 2019) ⁴⁰	Sec. 28(2) Statutory Grounds. (Parliament of India, 2023) ⁴¹
Confidentiality Exception	Common Law without Prejudice. (Court of Appeal of England and Wales, 2004) ⁴²	Statutory Secrecy Duty (Mediationgez, Sec. 4). (Federal Republic of Germany, 2012) ⁴³	Statutory/ Institutional waiver. (Parliament of Singapore, 2017) ⁴⁴	Section 22 Privilege Rules. (Parliament of India, 2023) ⁴⁵

³⁹ United Nations. (2018). United Nations Convention on International Settlement Agreements Resulting from Mediation. Singapore Convention on Mediation. United Nations.

⁴⁰ NATIONS, U. (2019). United Nations Convention on International Settlement Agreements Resulting from Mediation. United Nations Treaty Series.

⁴¹ Nations, U. (2019). United Nations Convention on International Settlement Agreements Resulting from Mediation (Article 1). United Nations Treaty Series.

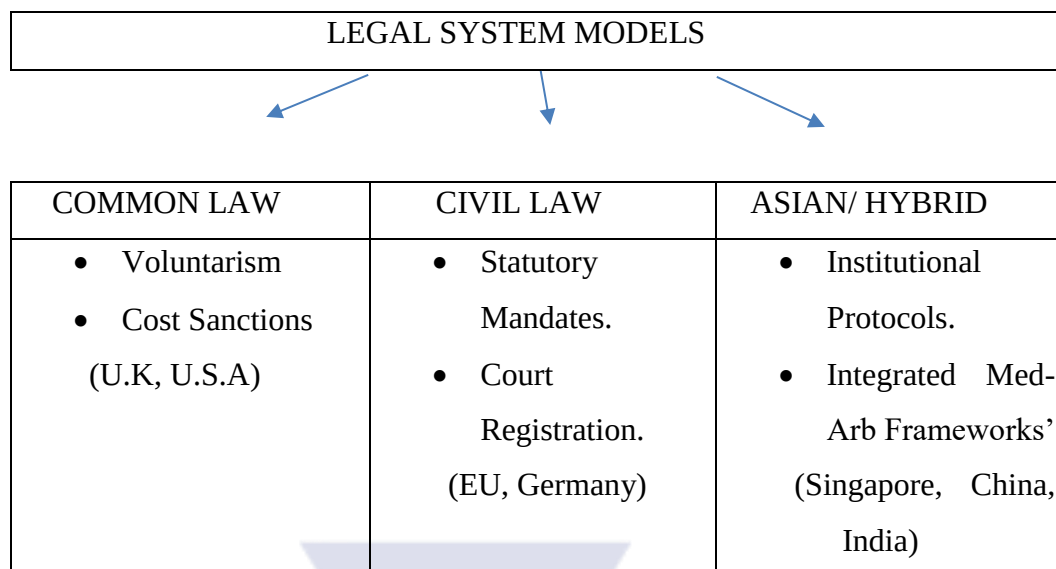
⁴² United Nations. (2018). United Nations Convention on settlement of International Settlement Agreements Resulting from Mediation. Singapore Convention on Mediation. United Nations.

⁴³ United Nations. (2019). United Nations Convention on International Settlement Agreements Resulting from Mediation. United Nations Treaty Series.

⁴⁴ Nations, U. (2019). United Nations Convention on International Settlement Agreements Resulting from Mediation (Articles 3–5). United Nations Treaty Series.

⁴⁵ Nations, U. (2019). United Nations Convention on International Settlement Agreements Resulting from Mediation (Article 4). United Nations Treaty Series.

2. Cross- Judicial Mediation Frameworks:



2.1 Common Law examples: Voluntarism and Cost Incentives,

- United Kingdom: The English Courts tend to encourage ADR through Civil Procedure Rules the scope of judicial authority moved from the landmark ruling in the case *Churchill v. Merthyr Tydfil County Borough Council* (2023). In the case the Court of Appeal confirmed that the courts have the power to pause court cases and order parties to attempt out of court dispute resolution which also include mediation, it can be only done if the move does not violate the claimants basic right to a fair trial under the Art. 6 of European Convention on Human Rights (1950). The CPR Part 44 also states that an individual refusing the mediation without an good reason can still be punished.

2.2 Civil Law Example: Legislative Codification and Authentic Acts,

The system under Civil Law primarily relied on the written codes, notarized acts and court approvals to make the mediated settlement enforceable:

- European Union: The Directive 2008/52/EC blends cross border commercial mediation across the member countries of the European Union. (Uniform Law Commission, 2003)⁴⁶. Article 6 has required the member countries make procedures that allows the parties involved to request an written

⁴⁶ Clanchy, J. (2020). The Singapore Convention: Misconduct and confidentiality. *Arbitration International*.

mediated settlement to be declared as enforceable by an court approved or an notarized act (European Parliament & Council of the European Union, 2008)⁴⁷.

- Germany: An title, that is an recorded mediated settlement is an notarized document, can be enforceable without the need of an trial as long as the debtor has agreed to an immediate enforcement of the deed under the Section 794(1) No. 5 of the Code of Civil Procedure (ZPO) (Federal Republic of Germany, 2020)⁴⁸. The confidentiality of an mediation is governed under the Section 4 of the German Mediation Act (2012) as an professional confidentiality duty for mediators and only to be revealed under explicit situations.

2.3 Asian-Hybrid Framework:

The Asian legal systems have always been complicated due to the cultural and historical roots, as a result the alternate dispute resolution system is an combination of mediation, arbitration and courts.

- Singapore: The host country Singapore had enacted the Singapore convention on Mediation Act, 2020 (Parliament of Singapore, 2020)⁴⁹, as to implement its treaty obligations, making a procedure for direct application before the High Court. For domestic mediations the Mediations Act, 2017 (Parliament of Singapore, 2017)⁵⁰ is used. Singapore has been turning into an Global Hub for International Mediation and Arbitration, under the SIAC (Singapore International Arbitration Centre) – SIMC (Singapore International Mediation Centre) – Arbitration- Mediation- Arbitration (AMA) Protocol (Singapore International Arbitration Centre & Singapore International Mediation Centre, 2014)⁵¹. Under this process an party initiates an arbitral proceeding but then it is referred to the SIMC for Mediation, and if they reach an settlement, the proceedings return to the SIAC Tribunal to record

⁴⁷ European Parliament & Council of the European Union. (2008). Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters (Article 6). Official Journal of the European Union.

⁴⁸ Federal Republic of Germany. (2020). Zivilprozessordnung [Code of Civil Procedure] (Sec. 794(1) No. 5). Bundesgesetzblatt.

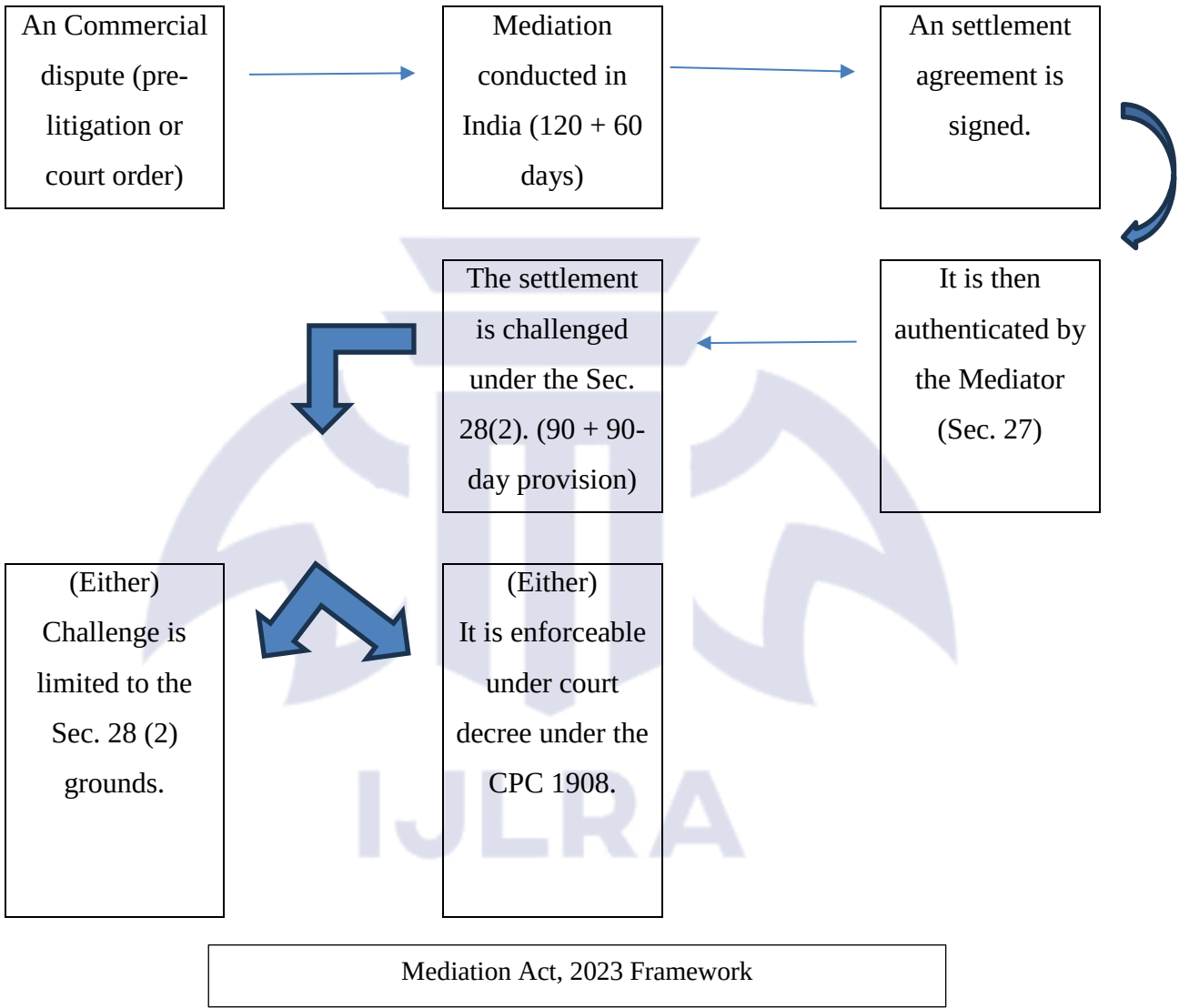
⁴⁹ Feehily, R. (2022). International commercial mediation: Law and practice. Cambridge University Press.

⁵⁰ Nations, U. (2019). United Nations Convention on International Settlement Agreements Resulting from Mediation (Article 5). United Nations Treaty Series.

⁵¹ Code of Civil Procedure, 1908 . (1908). ACT 5 of 1908.

the settlement reached as an binding consent award under the Section 30 of the Singapore International Arbitration Act (Parliament of Singapore, 2020)⁵².

2.4 India:



2.4.1 History:

- Historically the code of civil procedure, 1908, section 89 (Parliament of India, 1908)⁵³ is the one under which the commercial mediation in India had developed.

⁵² Parliament of India. (2023). The Mediation Act, 2023 (Section 22). Gazette of India.

⁵³ Parliament of India. (2023). The Mediation Act, 2023 (Section 27(1)). Gazette of India.

- Section 12A of the Commercial Courts Act, 2015, under it the Pre-Institution Mediation and Settlement (PIMS) made it mandatory for an commercial trait that have no need for an interim relief (Parliament of India, 2015)⁵⁴, it was an rule that was upheld as an mandatory procedural step.

2.4.2 The Mediation Act, 2023

- India passed the Mediation Act in September 2023, though full implementation is still pending and notifications are processing in stages (Ministry of Law and Justice, Government of India, 2023)⁵⁵.
- Section 2: Application (Parliament of India, 2023)⁵⁶

Lays down where the Act shall apply.

- i. Both/ all the parties reside, are incorporated in and/ or have a place of business in India;
 - ii. The mediation agreement gives in it that any dispute arising shall be settled under the provisions of the Act;
 - iii. It is an international mediation;
 - iv. Where one party or side is the central government, state government, agencies, public bodies, corporations, local bodies, or entities owned or controlled by them are included;
 - v. To any kind of dispute where entities under sub-section iv are included and their dispute is deemed appropriate and notified by them from time to time;
- Section 5: Pre- litigation Mediation (Parliament of India, 2023)⁵⁷
It allows the parties to have an pre-litigation mediation to resolve the dispute, if possible, to stop it from reaching an lawsuit.
 - Section 14: Commencement of Mediation (Parliament of India, 2023)⁵⁸
Defines the time when the mediation starts.

⁵⁴ Parliament of India. (2023). The Mediation Act, 2023 (Section 27(2)). Gazette of India.

⁵⁵ Parliament of Singapore. (2017). Mediation Act 2017 (Section 9). Singapore Statutes Online.

⁵⁶ Parliament of Singapore. (2020). International Arbitration Act (Cap. 143A, Section 30). Singapore Statutes Online.

⁵⁷ Parliament of Singapore. (2020). Singapore Convention on Mediation Act 2020 (Section 3). Singapore Statutes Online.

⁵⁸ Schnabel, T. (2019). The Singapore Convention on Mediation: A framework for the cross-border recognition and enforcement of mediated settlements. *Pepperdine Dispute Resolution Law Journal*, 19(1), 1-60.

- Section 18: Time bound enforcement (Parliament of India, 2023)⁵⁹
The mediations to finish within 120 days from the date set, with possible extension up to 60 days if agreed by both the sides.
- Section 27: Enforcement of mediated settlement agreement (Parliament of India, 2023)⁶⁰
An Mediated Settlement Agreement (MSA) signed by both the parties and is authenticated by the mediator is final and binding. It shall be enforced under the Code of Civil Procedure, 1908 (Code of Civil Procedure, 1908 , 1908) and given same weightage as one court judgement or decree.
- Section 28: Challenge to mediated settlement agreement (Parliament of India, 2023)⁶¹
An party dissatisfied and wants to challenge the agreement can under the sub-section 1 and sub-section 2 gives ground for challenge, which include fraud, corruption, impersonation, non-mediable agreement. The said challenges are to be filed within 90 days from receiving an copy of the agreement but sub-section 3 allows for it to be extended by more if applicant provides an valid reason.

2.4.3 India and Singapore Convention:

- India has been an early signatory of the convention being signed it on August 7, 2019, but it is yet to ratify it and thus it is not in implementation (United Nations Treaty Collection, 2026)⁶².
- The Mediation Act only applies to mediations conducted in India, that is even if one party is foreign the mediation shall have been conducted in India, thus having no procedure to implement/ enforce an foreign iMSA.
- Thus, the parties are and have to use the available domestic options;

⁵⁹ United Nations Treaty Collection. (2026). Status of Chapter XXII.12: United Nations Convention on International Settlement Agreements Resulting from Mediation. United Nations.

⁶⁰ United Nations Treaty Collection. (2026). Status of Chapter XXII.12: United Nations Convention on International Settlement Agreements Resulting from Mediation. United Nations.

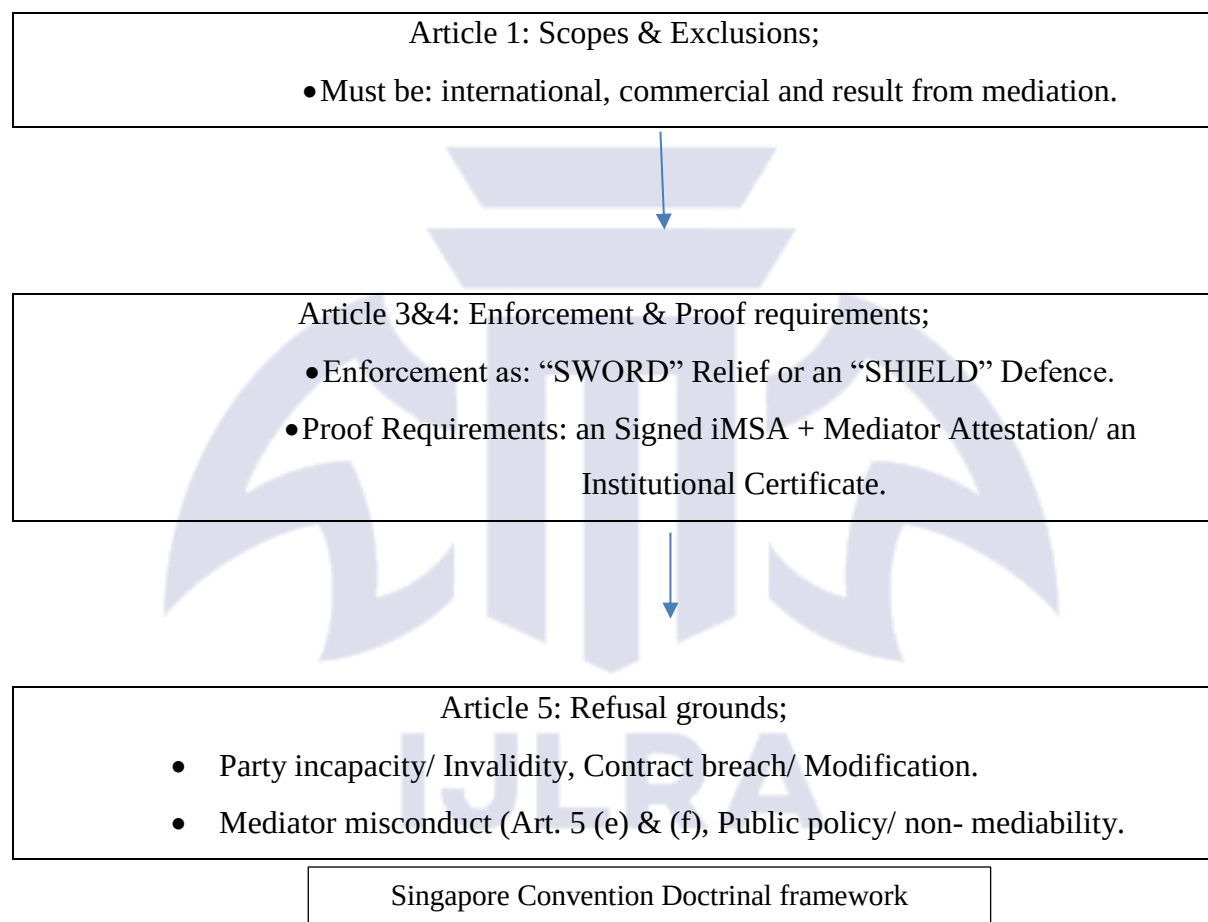
⁶¹ United Nations Treaty Collection. (2026). Status of Chapter XXII.12: United Nations Convention on International Settlement Agreements Resulting from Mediation. United Nations.

⁶² United Nations Treaty Collection. (2026). Status of Chapter XXII.12: United Nations Convention on International Settlement Agreements Resulting from Mediation. United Nations.

- i. Filing an summary contract suit under the Code of Civil Procedure.
- ii. Seek an arbitral consent award.

Thus, India lacks the important procedures, thus the foreign corporations can vary when doing an contract as the available help is complicated in case of an dispute.

CHAPTER 3: Singapore Convention



1.1 Article 1: Scope of Application and Internationality Test (United Nations, 2019)⁶³

1. The convention will apply to where it is agreed upon that any dispute resolution to be settled by an mediation (settlement agreement) at the time of its conclusion and there are at least two parties and they are incorporated/ have place of business in different states, the mediation will be taken up in

⁶³ United Nations Treaty Collection. (2026). tatus of Chapter XXII.12: United Nations Convention on International Settlement Agreements Resulting from Mediation. United Nations.

where the substantial part of business took place or where the subject matter of settlement is connected.

2. It will not apply to settlement agreements where one of the parties is an direct consumer (personal, family, or household purposes); or is related to inheritance or employment law.
3. It will not apply to settlement agreements is concluded and decided by court and is enforceable under the state laws, it shall not apply to agreements that are recorded and are enforceable as an arbitral award.

1.2 Article 3 & 4: Operation;

- Article 3 General Principles (NATIONS, United Nations Convention on International Settlement Agreements Resulting from Mediation, 2019)⁶⁴
 1. Each party is to enforce an settlement agreement and it is to be in accord with its rules of procedure and also combining the conditions laid down in this convention.
 2. If an concern arises even after an settlement agreement and claimed as already resolved but the party to the convention is to allow to invoke the agreement for it to be proved as already been resolved and can be used as an proof in court.
- Article 4 Requirements for Reliance on Settlement Agreement (NATIONS, United Nations Convention on International Settlement Agreements Resulting from Mediation, 2019)⁶⁵
 1. A party relying on this settlement agreement for it implementation has to supply to the state where relief is sought with the settlement agreement signed by all the parties involved, and evidence that the said agreement came to be by an valid mediation (proofs like mediators signature, attestation by the institution where the mediation was carried out, mediator stating in the agreement the mediation has been carried out, or in absence of others evidence by an competent authority.

⁶⁴ Zhao, Y. (2021). The Singapore Mediation Convention: A version of the New York Convention for mediation? *Journal of Private International Law*, 17(3), 418–448.

⁶⁵ Court of Appeal of England and Wales. (2023). *Churchill v. Merthyr Tydfil County Borough Council* [2023] EWCA Civ 1416. Incorporated Council of Law Reporting.

2. The agreement is signed by both the parties and the parties and mediator involved can be recognised and is reliable.
3. If the agreement is not in the official language of the state where the relief is sought, the competent authority can request for an translation.
4. The competent authority may require document to verify that mediation was done in accord with the convention.
5. When considering the relief, the authority to act quick and with great efficiency.

1.3 Seatless vs. Seated Architecture

The main highlight of the Singapore Convention is that it has omitted the requirement of an established seat like the New York Convention of 1958 where an legal seat is required thus the Singapore Convention is an seatless model where instead of an established legal seat thus it being an true international settlement as the settlement agreement does not have an defined nationality instead it seeks relief where needed.

Comparison based on:	New York Convention (Arbitration)	Singapore Convention (Mediation)
Legal Seat	Requires an legal state to be chosen as an legal seat for the dispute if arises in the agreement.	Is seatless, does not need an fixed location.
Cancellation of Decisions	The courts of the seat country have an right to cancel the final decision.	No state has the power to cancel it.
Checking of Rules	The court that has to implement the relief has to check with the seat court.	The court takes decision on its own.
Legal Steps	Becomes two legal battles one in the legal seat state and other where the relief is to be granted to enforce it.	Single track as you can directly take up in state which will also grant and enforce the relief.

Seatless is viewed to be better as it saves time and is more economical as the state where the grant of relief will be enforced is directly taken upon. Thus making it believe that it has the capability of smoothing and streamlining the system.

CHAPTER 4: Article 5 Refusal Grounds

Article 5 (1): Party defence:
a) Party Incapacity b) Agreement null, void, inoperative, incapable of performance, unbinding, non-final, subsequently modified. c) Obligations performed or Obligations not clear or Comprehensible. d) Relief sought contrary to settlement terms. e) Serious breach by mediator of applicable mediation standards. f) Mediator failure to disclose material conflict of interest.

Article 5 (2): Ex-officio defence:
a) Public policy violation of the enforcing state. b) Subject matter not capable of settlement by Mediation (non-mediability).

Framework

4.1 Article 5: Grounds for refusing to grant relief (NATIONS, United Nations Convention on International Settlement Agreements Resulting from Mediation, 2019)⁶⁶

1. The competent authority of the party to the convention where relief is sought under Article 4 may refuse to grant relief of the party against whom the relief is sought only if that party furnishes to the competent authority proof that:
 - (a) A party to the settlement agreement was under some incapacity;
 - (b) The settlement agreement sought to be relied upon:
 - (i) Is null and void, inoperative or incapable of being performed under the law deemed applicable by the competent authority of the Party to the convention where relief is sought under article 4;
 - (ii) Is not binding, or is not final, according to its terms; or
 - (iii) Has been subsequently modified;
 - (c) The obligations in the settlement agreement:
 - (i) Have been performed; or
 - (ii) Are not clear or comprehensible;

⁶⁶ Federal Republic of Germany. (2012). Mediationsgesetz [Mediation Act] vom 21. Juli 2012 (Sec. 4). Bundesgesetzblatt (BGBl. I S. 1577).

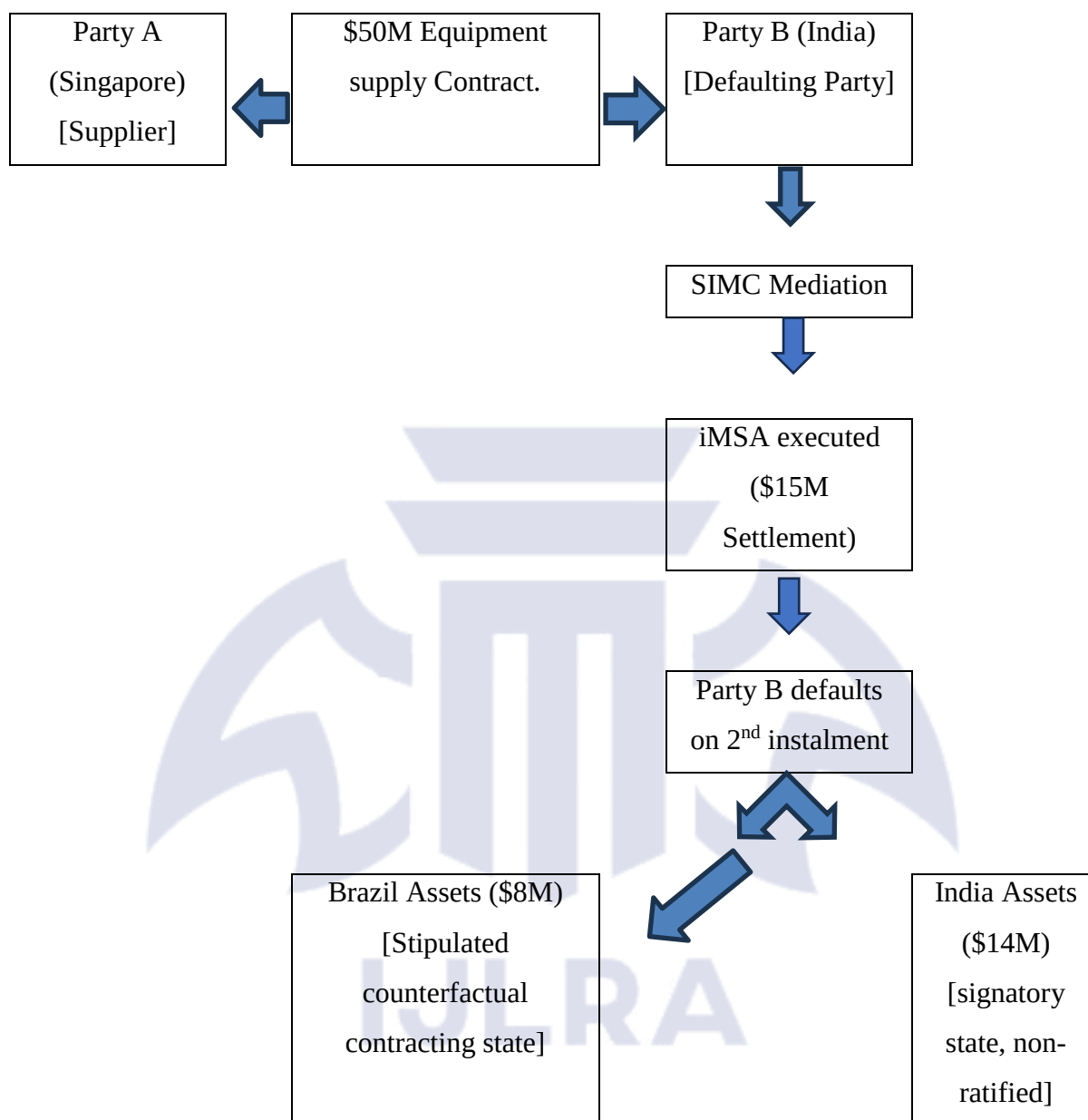
- (d) Granting relief would be contrary to the terms of the settlement agreement;
 - (e) There was a serious breach by the mediator of standards applicable to the mediator or the mediation without which breach that party would not have entered into the settlement agreement; or
 - (f) There was a failure by the mediator to disclose to the parties' circumstances that raise justifiable doubts as to the mediator's impartiality or independence and such failure to disclose had a material impact or undue influence on a party without which failure that party would not have entered into the settlement agreement.
2. The competent authority of the Party to the Convention where relief is sought under article 4 may also refuse to grant relief if it finds that:
- (a) Granting relief would be contrary to the public policy of that Party; or
 - (b) The subject matter of the dispute is not capable of settlement by mediation under the law of that Party.

Though it is provided that the list of refusal grounds to be exhaustive (provided under Article 5 to be it not to add more) but the question arises if court (local court of state where relief is sought) under Article 3 Code of Procedure of it can be used thus can it invent new ways to refuse a grant of relief (Zhao, The Singapore Mediation Convention: A version of the New York Convention for mediation?, 2021)⁶⁷. There is also the question of how will it solve the friction between party to the convention laws and the rules of convention when it comes to confidentiality of the caucus, while the convention states it to be revealed if important but the laws of certain states strictly say them to be confidential (Clanchy, The Singapore Convention: Misconduct and confidentiality, 2020)⁶⁸.

⁶⁷ European Parliament & Council of the European Union. (2008). Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters. Official Journal of the European Union.

⁶⁸ United Nations Commission on International Trade Law. (2006). UNCITRAL Model Law on International Commercial Arbitration (1985, with amendments adopted in 2006). United Nations.

CHAPTER 5: Hypothetical Illustrative Scenario



Scenario:

- Parties: Party A an technology manufacturer based in Singapore vs. Party B an infrastructure conglomerate based of India who has assets in India and Brazil.
- Dispute: An \$50 million cross border was done but it later defaults. Party A claims \$22 million in unpaid invoices, but Party B counterclaims for equipment defects.
- Mediation and Settlement: There was an institutional mediation by the SIMC (Singapore International Mediation Centre) an neutral mediator.

- Party B agrees to pay \$15 million in full and final settlement, in three instalments of \$5 million each.
- Party A grants an extension in its maintenance warranties.
- An acceleration clause provides that default on any instalment renders the remaining unpaid settled balance to be immediately due and payable. (\$10 million here as the second settlement was not paid and thus the remaining amount was \$10 million)
- Party B holds assets worth \$8 million in Brazil and worth \$14 million in India.

5.1 Procedural paths comparison:(Stipulated assumption)

Path A: Enforcement application in Brazil (stipulated counterfactual contracting state):

- Framework: assuming Brazil has submitted its instrument of ratification under the Article 14 of convention.
- Procedure: Party A applies directly to the competent court in the Brazil under Article 3, submitting an signed iMSA and SIMC attestations under Article 4.
- Defence: Party B asserts an defence under the problem that there was an serious breach by the mediator during the private caucus under Article 5(1)(e).
- Analysis: Under the Article 5 (1)(e) the court evaluates whether Party B satisfied the statutory requirements. If Party B fails to produce an satisfactory evidence satisfying the threshold the court enforces the iMSA against Party A's local assets in Brazil worth \$8 million with the in accordance of the domestic rules.

Path B: Proceedings in India (signatory but non-ratified):

- Framework: In India an signatory but yet to ratify the convention the process will go n accordance with its own statute and not directly under convention.
- Procedure: Party A would not be able to apply under the treaty for execution.
- Analysis: In India it will be under India's own Mediation Act, 2023. Section 27 decree execution applies to mediations conducted within India only so because the mediation occurred in Singapore, Party A cannot use Section 27 and must evaluate ordinary domestic options, such as a summary contract suit under Order XXXVII of the Code of Civil Procedure, 1908 (if prerequisites are met) or an arbitral consent award under Section 30 of the Arbitration and Conciliation Act, 1996 (if an arbitration agreement and pending proceedings exists).

CHAPTER 6: Recommendations

1. Recording of Mediation as Evidence:

The states can add an rule under their legislations that the Mediation to be officially recorded and can be used as evidence if an party alleges misconduct under the Article 5 of the Singapore Convention, the court can inspect while maintaining strict confidentiality to safeguard confidential information while also deciding the truth.

2. Singapore Convention:

India is yet to ratify the Singapore Convention, it should ratify and try to implement it by doing certain changes and additions in the Mediation Act itself as it will be faster and India does not fall behind or is held back due to its rules that can make the foreign parties hesitant when it comes to trade with India and not to be considered as an hub or good country for mediation.

3. Mediation Institutions:

The International Mediation Centres like the SIMC, ICDR, CEDR to adopt and implement the process of issuing an standardised certificate that follows the protocols of Article 4 of the Singapore Convention as an satisfying evidence for the courts if an objection is raised by an party.

4. Corporate Contract Drafting:

The Corporate Legal teams around the world involved in drafting of the business agreements shall implement the procedure for resolution of any dispute (prior or arising after the it was signed) to be set in the contract where it states that it shall be first tried to solve by using mediation (in global institutions like SIMC) and if it fails, then only further options laid to be considered.

CHAPTER 7: Conclusion

The Singapore Convention on Mediation provides an international legal framework for cross-border commercial dispute resolution, creating a "seatless" system that lets qualifying mediated settlement agreements be used for relief or as a defence under Article 3. By removing the need for a physical legal seat and skipping the extra step of turning settlements into consent arbitral awards or court decrees, the Convention solves the cross-border enforcement limits that

historically held back international mediation.

However there still are certain problems that shall be solved for it to be globally successful, including the delay in its local adoption in many states and its legalisation is question. There should be clear rules that resolve the conflicts arising out of Article 5 (1) (e) and (f) where the clear outlines for defence in case of misconduct and its evidence requirements shall be cleared and addition of recommendations like an official recording of the mediation, adoption of an standardised certificate can be included. More over the corporate world adopting and implementing it in its contracts and the pending ratification by many states including India hinders its implementation and adoption as an off court faster and effective Global Dispute Resolution Mechanism.

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