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Study on the Improvement of China's Commercial Mediation System in the Context of the Singapore Convention on Mediation

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Abstract

China has established a diversified dispute resolution mechanism for the settlement of commercial disputes in trade transactions with The birth of the Singapore Convention on Conciliation (hereinafter referred to as "the Convention") is a milestone in the field of international commercial dispute settlement, which is integrated with China's development philosophy of win-win situation. The birth of the Singapore Convention on Conciliation (hereinafter referred to as "the Convention") is a milestone in the field of international commercial dispute settlement, which is integrated with China's development philosophy of win-win cooperation. The Convention strengthens the enforce ability of settlement agreements and brings cross-border enforcement of commercial mediation to a new stage of development. The Convention strengthens the enforce ability of settlement agreements and brings cross-border enforcement of commercial mediation to a new stage of development. From Confucianism, which upholds the concept of "no litigation", to the current innovation of the people's mediation system, China has always attached importance to the harmony of the international community. From Confucianism, which upholds the concept of "no litigation", to the current innovation of the people's mediation system, China has always attached importance to the harmony and stability of social relations at the legal level, and has continuously optimized the dispute However, the convergence between China and the rest of the world has been a major factor in the development of the mediation system, as well as in the current innovation of the people's mediation system. However, the convergence between China's commercial mediation system and the Convention has revealed the existence of legal gaps in the commercial mediation system, uneven professional quality of the mediation system, and the lack of a legal framework for the mediation of disputes. However, the convergence between China's commercial mediation system and the Convention has revealed the existence of legal gaps in the commercial mediation system, uneven professional quality of mediators, and obstacles to the cross-border implementation of settlement agreements. suggested that by improving legislation, formulating the qualification standards for mediators, and cracking down on the degree of false mediation and other corresponding methods, the two should be made more effective. It is suggested that by improving legislation, formulating the qualification standards for mediators, and cracking down on the degree of false mediation and other corresponding methods, the two should be well converged, landed, and compatible, so as to improve the legislation on commercial mediation and the The two should be well converged, landed, and compatible, so as to improve the legislation on commercial mediation and the judicial system in China, and provide more efficient, flexible, convenient, and effective ways of settlement for the vast number of commercial subjects It will improve China's commercial mediation legislation and judicial system, provide a more efficient, flexible, convenient and cost-effective way It will improve China's commercial mediation legislation and judicial system, provide a more efficient, flexible, convenient and cost-effective way of dispute resolution for the majority of commercial subjects, respect the autonomy of commercial subjects, reduce the cost of resolving transnational commercial disputes, maintain a harmonious relationship between commercial subjects, and bring it in line with international standards to create a more favourable, open and rule-of-law system. more favourable, open and rule-of-law business environment.

Keywords

"Singapore Convention on Mediation", international commercial mediation, settlement agreement

1. Key elements and highlights of the Singapore Convention on Mediation

1.1 Clarifying the Scope of International Commercial Conciliation Agreements

Article 1 of the Singapore Convention on Conciliation (hereinafter referred to as "the Convention" for ease of exposition) provides that the Convention applies to international settlement agreements resulting from conciliation concluded in writing between the parties for the purpose of resolving a commercial dispute. Thus, a settlement agreement is first and foremost international in nature, i.e. the parties have their principal places of business in different States or the place of performance of the principal obligation in the matter in dispute is not the same State as their principal place of business.

Secondly, the agreement is directed to commercial activities, and the Convention lists, mainly in the form of a negative list, cases outside this scope, i.e., settlement agreements where the consumer is an individual, family or household for personal, family or household purposes, or in relation to family, inheritance or employment law; settlement agreements enforceable as a judgement or arbitrary award are also excluded from the scope of the Convention, in order to avoid any conflict with the existing and future Conventions, i.e., the New York Convention (1958), the Convention on Choice of Court by Agreement (2005) and the Convention on the Recognition and Enforcement of Foreign Court Judgments (2019).

Finally, regarding the form of the settlement agreement, the Convention specifies the requirements for the form of the settlement agreement in the provisions of the scope of application. Compared with litigation and arbitration, the settlement itself is more flexible, and the form of the settlement agreement is also more flexible; with the advancement of science and technology, commercial behaviors become more diversified, and the mediation of transnational commercial disputes frequently emerges in a more convenient and cost-effective online way, therefore, in addition to the written form, the Convention also Therefore, in addition to the written form, the Convention also recognizes the electronic form of information supported by information technology, i.e., the agreement needs to be recorded in some form and can be viewed later, so as to promote the enforcement procedure more accurately and efficiently, and the scope also reflects the foresight of the Convention, which has made provisions for the uncertainty of mediation brought about by the development of science and technology in the future.

1.2 Giving commercial settlement agreements transnational enforce ability

After the adoption of the International Commercial Conciliation Act in 1980, conciliation as a means of dispute resolution began to gain popularity in international commercial disputes, but the validity of settlement agreements arising from conciliation is recognized differently from country to country, which undoubtedly creates difficulties in enforcing settlement agreements. Therefore, the 2018 Convention focuses on resolving this issue by strengthening the enforce-ability of settlement agreements, which has enabled the cross-border enforcement of commercial conciliation to enter a new stage of development.

Previously, a survey by the International Mediation Organization (IMO) found that up to 93 per cent of executives and persons in charge of commercial entities believe that it is more likely to be possible to assist in the enforcement of mediation agreements by signing a convention. 90 per cent of respondents believe that the obstacle to the development of mediation as a means of resolving transnational commercial disputes is the lack of a uniform and effective enforcement mechanism, and 87 per cent believe that the main reason for making mediation the first option for the resolution of transnational commercial disputes is that an effective enforcement convention has been widely ratified at international level. 87 per cent of the respondents believe that the main reason why mediation is currently the first option for resolving transnational commercial disputes is that an effective enforcement convention has been widely ratified at the international level. It is clear that the biggest concern of the parties in transnational commercial disputes is whether the validity of the settlement result can be recognized and effectively enforced by other countries.

Article 3 of the Convention clearly stipulates that the parties to a dispute are obliged to respect the implementation of a settlement agreement reached through conciliation, and that the settlement agreement will be enforceable among the member States of the Convention. Enhancing the effectiveness and efficiency of the enforcement of settlement agreements safeguards the rights and autonomy of the parties, and promotes

the use of conciliation as a less costly and more efficient means of settling disputes in the field of international commercial affairs between disputing parties.

1.3 Highlighting the ease and efficiency of mediation methods

Conciliation is cheaper and less time-consuming than other forms of alternative dispute resolution. The Convention highlights this advantage, for example, Article 4 of the Convention provides that the competent authorities of member states shall act expeditiously in relation to requests for relief, whereas the Convention on the Recognition and Enforcement of Foreign Court Judgments relating to litigation and the New York Convention relating to arbitration do not contain any similar expression or requirement such as "expeditiously"; for example, the Convention fully respects the wishes of the parties to a dispute, and the examination of a settlement agreement by each country is limited to a formal examination of the signatures of the parties in the settlement agreement and the certification of the conciliation authority. For another example, the Convention fully respects the will of the parties to the dispute, and the review of the settlement agreement by various countries is limited to a formal review of the signatures of the parties in the settlement agreement and the certification of the conciliation agency, while the substantive review is subject to the needs of the parties. It can be seen that the Convention expands and deepens the advantages of conciliation as a means of dispute settlement, highlights the efficient features of conciliation, and further reduces the time and economic costs of parties to international commercial disputes in resolving their disputes.

2. Significance of China's ratification of the Singapore Convention on Mediation

2.1 Promoting the Improvement of China's Commercial Mediation System

At the Political and Legal Work Conference of the Central Committee of the Communist Party of China (CPC), General Secretary Xi proposed that one of the priorities of the reform of political and legal work in the new era is to build a diversified dispute resolution mechanism. According to the 2024 Work Report of the Supreme People's Court. The International Commercial Experts Committee of the Supreme People's Court has played the role of 61 members from 24 countries and regions, presiding over the mediation of international commercial disputes and providing advice on the identification and application of extraterritorial laws. Among them, the Second International Commercial Court of the Supreme People's Court successfully mediated a dispute between a Chinese and a foreign enterprise with a subject matter of 1 billion yuan, prompting the two parties to withdraw a number of related lawsuits both at home and abroad, and repairing their cooperative relationship. The "Eastern experience" of mediation has travelled across the seas, demonstrating China's wisdom in the rule of law. According to the 2024 Report on the Work of the Supreme People's Court, the number of mediators and mediation organizations has increased rapidly since China signed the Convention in 2019, with the Supreme People's Court organizing the training of 472,000 mediators, and the number of people's mediation committees has grown to 693,000, which is nearly four times the number of mediators and mediation organizations in China in 2019, which demonstrates the progress of China's mediation and shows the wisdom of the rule of law in China. progress, indicating that commercial mediation in China has entered a new stage of development. At the same time, as the world's second largest economy, China's international economic and trade exchanges are frequent, and there are naturally more international commercial disputes. Although the Standing Committee of the National People's Congress has already taken the construction and improvement of the legal system and regulations on foreign-related laws and regulations as a legislative work plan, and emphasized the need to further regulate the work of commercial mediation, China has not yet introduced any special laws on international commercial mediation, and the inte[1]rnational commercial mediation mechanism that is connected with the Convention The implementation of the Convention in China can not be fully guaranteed by domestic law, and China has signed the Convention in 19 years, in order to better docking of the Convention in China's entry into force and implementation, will inevitably lead to the academic community's relevant discussions and research, analysis of the current situation of China's commercial mediation, to improve China's commercial mediation system, the development of special laws, and to establish a more solid theoretical basis for the international standards.

2.2 Responding to the Development Needs of the Belt and Road Initiative

This year marks the 10th anniversary of China's Belt and Road Initiative, and President Xi pointed out in his keynote speech at the opening ceremony of the Third Belt and Road Summit Forum for International Cooperation that Over the past 10 years, we have adhered to our original intention, walked hand in hand, and promoted the development of international cooperation on the Belt and Road from scratch to flourish, achieving fruitful results. Over the past 10 years, we have adhered to our original intention, walked hand in hand, and promoted international cooperation on the "Belt and Road" from scratch, which has flourished and achieved fruitful results. During the past 10 years, projects under the Belt and Road framework have increased trade by 4.1 percent and foreign investment by 5 percent among the participating parties, and increased the GDP of low-income countries by 3.4 percent, accounting for 1.3 percent of global GDP. Globally, it has boosted the scale of investment by nearly a trillion US dollars, formed more than 3,000 cooperation projects, and created 420,000 jobs in the co-built countries.

In addition to economic and cultural cooperation and exchanges, China, as an initiator, still needs to take up the heavy responsibility of responding to the settlement of commercial disputes among participating countries along the route. China's Belt and Road International Commercial Mediation Centre has set up 101 mediation rooms at home and abroad, and is still expanding, which also shows the great demand for commercial mediation in the countries along the route. This also shows that there is a great demand for commercial mediation in countries along the routes. Countries along the "Belt and Road" have different cultural backgrounds and religious customs, and their levels of economic development and rule of law construction are very different, belonging to different legal systems such as the civil law system, the law of the sea system, the Islamic law system and the Indian law system, etc. Therefore, it is more difficult for foreign commercial subjects to engage in litigation or arbitration in accordance with the substantive law and procedural law of each country, and mediation has a more important role to play in the commercial dispute resolution mechanism. The comparative advantage of mediation in commercial dispute resolution mechanism is obvious, in addition to the low cost, it respects the party's autonomy, the status of both parties is equal, the process is flexible, the atmosphere is harmonious, and it can avoid the uncertainty caused by the differences in law, politics, economy, culture and religion of each country, and play an important role in the future of the "One Belt, One Road" commercial disputes. It will play a greater role in the future "Belt and Road" commercial disputes. Incorporating the latest provisions of the Convention into the "Belt and Road" trade mediation mechanism opens up a new path for the enforcement of settlement agreements in international commercial mediation, provides new judicial safeguards for the transnational trade activities of the countries along the route, and is important for the establishment of a multi-party "Belt and Road" trade dispute resolution mechanism and the establishment of the "Belt and Road" trade dispute settlement mechanism. It is of great significance to the establishment of a multi-party "Belt and Road" trade dispute settlement mechanism, the improvement of the "Belt and Road" rule of law system and the promotion of the construction of the "Belt and Road" and international economic exchanges.

2.3 Improving the business environment in the country

A good business environment is not only a necessary factor in promoting the rapid growth of domestic enterprises, but also plays an irreplaceable role in attracting foreign investment and strengthening international trade. The work report of the Supreme Court of China in 2024 explicitly proposes to promote the rule of law at home and the rule of law in relation to foreign countries, and to promote the creation of a first-class business environment that is market-oriented, rule of law-oriented and internationalized. In addition to low cost and short time-consumption, mediation as a means of dispute resolution is more moderate and non-direct confrontation is conducive to the maintenance of long-term friendly and co-operative business relationships between commercial subjects in dispute, and its non-public nature is conducive to maintaining the good business reputation of both parties and broadening the channels of co-operation with other commercial subjects. The purpose of the Convention, which encourages disputing parties to resolve their disputes in a "non-adversarial" manner, is highly consistent with the goals pursued by China's current dispute resolution framework. The signing of the Convention can guarantee the effective implementation of cross-border enforcement of settlement agreements, increase the willingness of commercial entities with their principal place of business or principal place of performance of their obligations in China to choose such a softer mode of dispute resolution, and is conducive to stimulating the vitality of the development and cooperation of commercial entities. Against the background of deepening

judicial international cooperation and exchanges in China, the signing of the Convention also reflects China's determination to continuously improve the effectiveness of foreign-related judicial affairs, perfect the development of foreign-related laws, provide judicial guarantee for the expansion of high-level opening up to the outside world, a good and high-quality business environment and strengthen international commercial cooperation, as well as provide solutions with Chinese characteristics for international commercial disputes and important commercial legal issues in the field of foreign-related affairs. Solutions to international commercial disputes and important commercial legal issues in the foreign-related field with Chinese characteristics.

3. Dilemmas in the interface between China's commercial conciliation system and the Convention

3.1 Current Development of China's Commercial Mediation System

A. Lack of special laws for the commercial conciliation system

At present, China's system and rules on commercial mediation are scattered in different laws, regulations and normative documents, and there is a lack of unified special laws, and commercial mediation activities lack unified and clear normative guidance, which brings instability to mediation activities. For example, there is no clear definition of commercial mediation in China, In practice, commercial mediation needs to be based on the People's Mediation Law of the People's Republic of China and other legal documents to a certain extent, which leads to confusion between people's mediation and commercial mediation, but there is a big difference between the two, as people's mediation mainly solves civil disputes at the grass-roots level, whereas commercial mediation deals with complex commercial legal relations and the quality of mediators in commercial mediation. Commercial mediation requires more stringent requirements on the quality of mediators. Relying on the People's Mediation Law and the people's mediation system makes it difficult for commercial mediation to give full play to its advantages of high efficiency, undermines the confidence and willingness of the parties to choose commercial mediation, and hinders the development of commercial mediation in China.

In order to make up for the lack and conflict of laws on the scope, procedure and effectiveness of commercial mediation, some commercial mediation organizations have formulated their own mediation rules within the legal framework to facilitate their own mediation business, but these mediation rules are only internal rules of the organizations and do not have the force of law to resolve disputes over mediation itself. In addition, there are great limitations on the rationality of the rules themselves and the wide application of the rules. Firstly, it is too much work to review the rationality of the mediation rules of all mediation organizations and it is difficult to supervise everything; secondly, it is difficult to unify the standards of different commercial mediation organizations because their specific rules are different, which not only increases inconvenience to the parties in the process of mediation, but also increases difficulties to the supervision and administration of the mediation organizations and their mediators by the supervising authorities. This not only increases the inconvenience for the parties in the mediation process, but also makes it more difficult for the supervisory authorities to supervise and manage commercial mediation organisations and their mediators.

China has already acceded to the Convention, but has not yet issued relevant legal documents for the convergence and implementation of the Convention. However, according to the current situation of commercial mediation in China, there is still a big lack of laws on the recognition of settlement agreements in international commerce, the implementation of the implementation of the implementation and the matching mechanism, which undoubtedly increases the difficulty of the application of the Convention in commercial mediation and transnational implementation in China. Therefore, the ratification and entry into force of the Convention can be used as an opportunity to improve the relevant systems and laws on commercial mediation to remove the obstacles to its application.

B. Lack of regulation of the qualifications of commercial mediators

Article 5 of the Convention deals with the disclosure obligations of mediators and includes the mediator's own violations of mediation norms as grounds for refusing to implement a settlement agreement. This also reflects the importance of the mediator's personal qualities and behaviour on the mediation and the outcome

of the mediation activity. However, at present, there are no specific requirements on the code of conduct for commercial mediators in China's relevant mediation system, so it is not possible to make a scientific and complete connection with the Convention.

Because of the influence of the legislative system of "civil-commercial integration", the requirements for commercial mediators in China are largely based on the general provisions of the People's Mediation Law and the Opinions on Strengthening the Construction of the People's Mediator Team, i.e., "adult citizens", The requirements for mediators in commercial mediation are largely based on the general provisions of the People's Mediation Law and the Opinions on Strengthening the Building of the People's Mediator Team, , namely, "adult citizens", "fair and upright", "clean and self-disciplined", "with a certain degree of knowledge of policies and laws" and other highly subjective criteria. These requirements can hardly meet the objective requirements of commercial mediation to assist in resolving commercial disputes on the basis of commercial customs, commercial logic and commercial knowledge. Therefore, if the qualifications of people's mediators are applied to commercial mediators, it will lead to a big difference in the level of commercial mediators among mediation organizations, which is difficult to satisfy the special nature of commercial mediation, and will make the main parties of international commercial disputes mistrustful of China's commercial mediation, and hinder high-calibre commercial mediators. It will also hinder the construction of a high-quality commercial mediation talent team.

In addition, according to statistics in People's Daily, as of October 2023, the country has a total of more than 3,176,000 people mediators, full-time mediators only 412,000 people, At present, China's international commercial mediators are mainly part-time, from mediators and lawyers in various mediation organizations, in 2017 the introduction of the "Opinions on the Pilot Work on Lawyer Mediation", the qualification of mediators will be linked to the qualifications of lawyers. Most mediation institutions have each also formulated their own standards for mediators to serve, for example, the Shanghai Economic and Trade Commercial Mediation Centre requires mediators of this institution to master more than one foreign language, and the Zhongguancun Commercial Mediation Centre in Beijing invites well-known entrepreneurs to serve as part-time mediators. However, the regional development of commercial mediation institutions is extremely unbalanced, with varying qualifications and standards, which do not fully represent a definition of the qualifications of the mediators themselves, and these part-time mediators have limited energy and cannot meet the demand for mediation talents in China.

3.2 Conflicting effects of settlement agreements

The effectiveness of the settlement agreement in China's commercial conciliation is very different from that of the Convention. In China's commercial conciliation activities, the settlement agreement is equivalent to a civil contract, which is the product of the establishment, modification or cancellation of corresponding rights and obligations by equal civil subjects through negotiation, and therefore the settlement agreement can only produce legal effects between the two parties, and it has no enforceable power. If the settlement agreement is to be enforceable, under the current framework of commercial conciliation in China, according to the Civil Procedure Law, both parties shall jointly apply to the relevant people's court for confirmation of the validity of the settlement agreement within 30 days from the date of the entry into force of the conciliation agreement. Or apply to the court for a payment order to realise their rights, whereas in the context of the Convention, the settlement agreement is given the effect of direct enforcement, i.e., the Contracting States are obliged to directly enforce a valid settlement agreement between themselves within the framework of their own enforcement procedures upon application by the parties, without the need for the parties to apply for confirmation of the validity of the settlement agreement again.

On the other hand, in terms of the finality of the settlement agreement, China's commercial mediation system and the provisions of the Convention are also different, in China's commercial mediation framework, the settlement agreement does not have the final effect, is only equivalent to a civil contract, if a party does not perform, incomplete fulfillment of the obligations of the settlement agreement, or the settlement agreement is invalid or withdrawn due to certain reasons, the parties can also go to court to seek remedies through a final litigation mode. If a party does not fulfil its obligations under the settlement agreement, or if the settlement agreement is invalid or revoked for certain reasons, the party may also resort to the court to seek remedies through a final litigation, but the time-consuming and high-cost litigation outside the conciliation itself puts more pressure on the efficiency-conscious parties, which not only fails to give full play to the advantages of conciliation, but also makes the commercial conciliation unstable and risky in

terms of not being able to be fulfilled ultimately, thus weakening the trust of the parties to the commercial conciliation and decreasing the parties' willingness to choose the conciliation. On the contrary, article 3, paragraph 2, of the Convention affirms the finality of a settlement agreement, so that if both parties reach an agreement on the matter in dispute, but later on, any of the parties backtracks and goes to court in respect of the commercial dispute, the other party can directly use the defence of the settlement agreement previously reached to show that the dispute has been resolved and can be directly enforced within the legal framework of the country concerned.

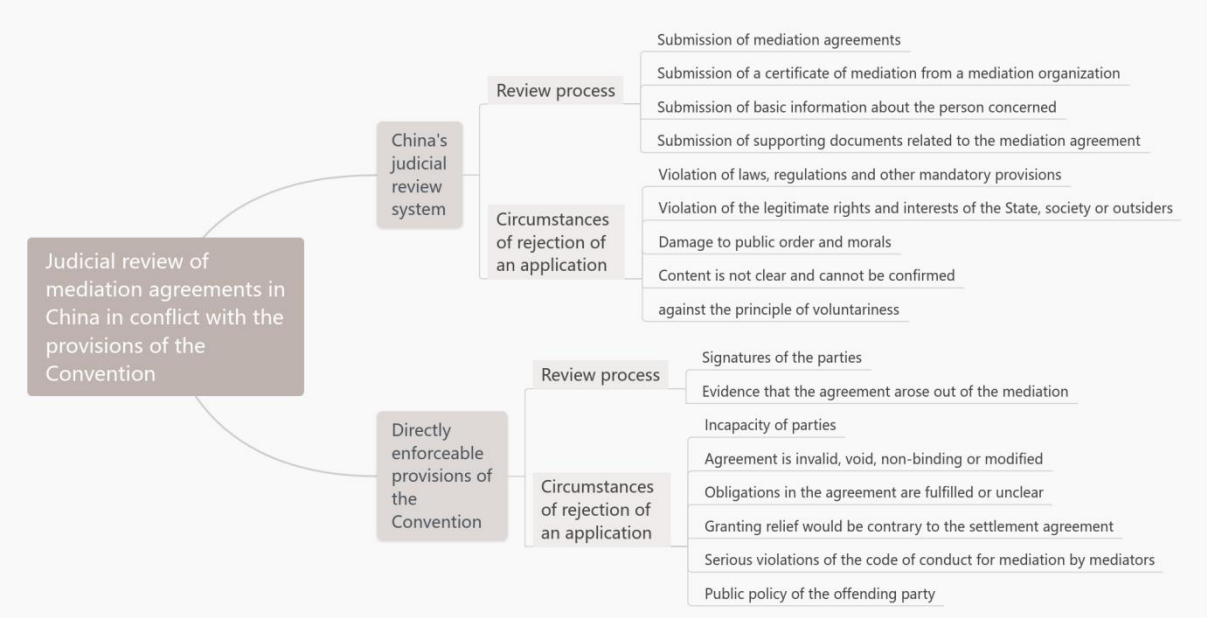
3.3 Conflict over judicial review of settlement agreements

As the Convention recognizes the high legal effect of settlement agreements and fully respects the autonomy of the parties, the review provided for under the Convention is mainly a formal review, which is provided for in Articles 4 and 5 of the Convention. When the parties apply for the enforcement of an international commercial settlement agreement by the competent authority of a State, the competent authority is required to carry out a formal review of the agreement, such as examining the signatures of the parties to ensure that the agreement is not a forgery, and is also required to examine whether the matters at issue in the settlement agreement are subject to conciliation proceedings under domestic law. It is also necessary to examine whether the matters at issue in the settlement agreement are amenable to conciliation proceedings under domestic law.

According to the relevant provisions issued by the supreme people's court and the civil procedure law, at present, our country adopts the review mode both substantive review and formal review, that is, the people's court needs to review the content and form of the settlement agreement of the legitimacy of the full range of issues, for example, in the form of review, the people's court for the implementation of the application for the applicant can be required to provide additional relevant documents and materials to review the For example, in the formal review, the people's court may request the applicant to provide additional relevant supporting documents and materials in order to review the authenticity of the settlement agreement; in the substantive review, the people's court needs to review the content of the settlement agreement as well as the process of formation to see whether it violates China's laws, regulations and public order and morals.

In general, the review model adopted in China covers some of the review elements required by the Convention but is stricter than the requirements of the Convention (see figure 1), but the Convention covers the situation where a mediator confirms that a settlement agreement is null and void because of his or her behaviour in violation of the code of conduct, which is not stipulated in our judicial review procedures. Therefore, both the conflict of review modes and the lack of refusal of enforcement will lead to confusion in the application of the law and discourage the promotion and application of commercial mediation if clear provisions are not made in a timely manner to link up with the Convention.

Figure 1: Conflict between our judicial review of mediation agreements and the provisions of the Convention



3.4 Lack of regulation of sham mediation

Sham conciliation is a process whereby some parties, in order to seek illegal benefits to the detriment of others, take advantage of the fact that conciliation focuses on the will of the parties to reach a settlement agreement based on a false statement of intent, which is found to be invalid due to the violation of the principle of honesty and good faith. False conciliation is similar to false litigation in terms of purpose, but the determination of "false" is far different. In litigation, the judge is neutral and independent, and can independently identify and make a judgement based on the facts of the case and the criteria, characteristics and circumstances of false litigation without the influence of any party. However, in commercial conciliation, the parties' autonomy is fully respected, and the status of the conciliator is different from that of the judge, who only has the responsibility of guiding and assisting, with the parties occupying a dominant position in the conciliation, so the false conciliation is more covert, and the competent authorities are far more difficult to determine the "false" than the false litigation. In addition, the Convention only requires the competent authorities to conduct a formal review of the application for enforcement of the settlement agreement, which makes it more difficult to identify false conciliation; for the sake of the commercial reputation of the commercial subject and the future cross-border commercial co-operation, the Convention also requires that the conciliator and the parties to the confidentiality of the obligation, but if the parties to the conciliation privately collude with a false expression of meaning, which also makes it difficult for the real injured third party to know that their legitimate rights and interests have been affected by the conciliation. However, if the parties colluded in the conciliation by making false representations, this also made it difficult for the genuinely injured third party to know that his or her legitimate rights and interests had been harmed.

China's judicial system gives outsiders the right to object to enforcement, while the Convention on the enforcement of the settlement agreement is only granted and denied two kinds of cases, and only gives the parties the right to apply for relief, but there is no provision on the rights of outsiders to relief, and the third party outside the case of the enforcement of the objections are based on the basis of the valid legal instruments such as court judgments, arbitration awards, conciliation, etc., but in the context of the Convention the settlement agreement itself has the enforcement effect and can be directly enforced without other procedures to confirm its enforce ability. However, in the Convention, the settlement agreement itself has the effect of enforcement and can be directly enforced without other procedures to confirm its enforce ability, therefore, in the context of the Convention, there is a lack of basis for outsiders to object to the enforcement.

4. Proposals for improving China's commercial mediation system in the context of the Convention

4.1 Development and introduction of a specialized law on commercial mediation

The core provisions of the Convention are still relatively new in the field of international trade disputes, so in promoting the application of the Convention in China, it is crucial to the implementation of transnational trade and dispute settlement agreements to improve the articulation of the relevant systems and ensure the consistent application of international trade dispute settlement mechanisms. In addition, with the emergence of new types of disputes and the increased need for diversified and specialised development of dispute settlement mechanisms, there is an urgent need for specific systematic legislation to fill the current institutional gaps, taking into account the fragmentation of China's legal framework for trade-related dispute settlement.

A. China has a historical and practical basis for commercial mediation

China has a profound mediation culture and a solid historical foundation. From the elimination of disputes and maintenance of social order in ancient times, to the protection of merchants' interests and promotion of commercial trade in modern times, to the construction of a diversified dispute resolution mechanism in the current modernization of national governance, the role of mediation in the development of society and even in national governance has been increasingly valued. At the same time, national policies also support the establishment of a diversified dispute resolution mechanism for international commercial disputes on a horizontal level, such as the Opinions on the Establishment of a Belt and Road Commercial

Dispute Resolution Mechanism issued in 2018, and the Opinions issued by the Supreme Court for the construction of the Pilot Free Trade Zone in 2021, which put forward a clear requirement for the construction of a one-stop multidisciplinary dispute resolution centre for international commercial disputes, and the "legislative Priority" is one of the principles of China's Constitution and Legislative Law. At present, the relevant laws on litigation and commercial arbitration have formed a system and are relatively complete, while the legal framework for commercial mediation has not yet been established, and according to Article 11 of China's Legislative Law, the litigation and arbitration systems can only be formulated by law, so the promotion of special legislation on commercial mediation has both a historical and a practical basis. Therefore, the promotion of special legislation on commercial mediation has both a historical and a practical basis.

B. Exploring the establishment of pilot zones for the special law on commercial mediation

The signing of the Convention has laid the foundation for the construction of a special law on commercial mediation in China, but the formulation and promulgation of a special law cannot be achieved overnight. For example, the Arbitration Law was formally introduced only in the eighth year after China's accession to the New York Convention on International Commercial Arbitration, and, according to the "Plan for the Construction of a Rule-of-Law China (2020-2025)", it has been pointed out that in areas where the conditions for the enactment of legislation are not yet ripe, pilot projects can be carried out and authorizing provisions or reform decisions made in a timely manner. Pilot projects and timely authorization or reform decisions will be made in accordance with the law. After the pilot projects have been tested in practice, the relevant laws will be amended in accordance with the relevant procedures.

In the choice of pilot legislation, free trade zones are very suitable areas, free trade zones open international trade and investment environment, attracting a large number of foreign enterprises, and the frequent commercial co-operation and economic exchanges between them will inevitably lead to a relatively large number of international commercial disputes, Hainan Free Trade Harbour as an example, according to the "Law of the People's Republic of China on the Hainan Free Trade Harbour", the state supports the exploration of the judicial system reforms that are in line with the Hainan Free Trade Harbour. According to the Law of Hainan Free Trade Port of the People's Republic of China, the State supports the exploration of judicial system reforms compatible with Hainan Free Trade Port, and supports the settlement of disputes through arbitration, mediation and other non-litigation methods, and the establishment of a diversified commercial dispute resolution mechanism. Therefore, free trade zones can be used as a legislative pilot to transfer trial procedures to the enforcement stage by formulating provisions for the direct enforcement of international commercial mediation agreements reached in the free trade pilot zones, making use of the pilot free trade zones to combine the application of the Convention with the exploration of the free trade pilot zones, and then promoting it throughout the country.

4.2 Establishment and Improvement of the Articulation Mechanism for the Enforcement of International Commercial Settlement Agreements

A. Clarifying the scope of enforceable settlement agreements

In determining the scope of application of a settlement agreement, we can start from internationalization and commercialization. With regard to the determination of internationalization, apart from the fact that the principal places of business of the parties to a settlement agreement as defined in the Convention are in different countries or that the place of performance of the main obligation in dispute does not belong to the same country as their principal place of business, in practice, we can refer to the judicial practice of China's Arbitration Law and make judgement on the basis of the place where the settlement agreement was made. As for the determination of commercialization, based on the list of settlement agreements excluded in the Convention where the consumer is an individual, family or household, or where the agreement relates to family, inheritance or employment law, and in conjunction with the practice, we can enumerate the specific elements that are not commercial, such as personal marriage and adoption relationships, and the involvement of special procedures, and so on.

B. Progressive harmonization of enforcement procedures for domestic and cross-border commercial settlement agreements

The highlight of the Convention is the cross-border enforcement effect given to settlement agreements in the commercial field. The key to resolving enforcement conflicts is to resolve the conflict between the direct enforcement mechanism in the Convention and the conversion enforcement mechanism in China. It is

recommended that the enforcement mechanism of commercial settlement agreements be unified and direct enforcement be applied. Although China's judicial confirmation procedure is already relatively perfect, if the previous judicial confirmation method of enforcing settlement agreements is continued after ratification of the Convention, then ratification of the Convention will become somewhat redundant. As for the distinction between the enforcement of domestic and foreign settlement agreements, although the problem of non-adaptation issues in the transplantation of laws can be avoided, there may be cases in which the parties, who could have gone through the procedure of judicial confirmation, seek to convert domestic settlement agreements into international ones in order to obtain a higher degree of enforce ability. Therefore, I believe that the best option is to unify domestic and foreign commercial settlement agreements by adopting the direct enforcement mechanism, which was clarified after the accession to the Convention that international commercial conciliation agreements can also be enforced in the form of court orders. According to the development of the practice of commercial mediation in China, the uniform enforcement mechanism of direct one-step enforcement may not be well adapted to the current situation of commercial mediation in China, as the judicial confirmation system was initially set up in China for the purpose of enhancing the enforce ability of settlement agreements. Therefore, when docking with the Singapore Convention on Mediation, the current law can be adopted first, and then reformed when the time is ripe, by transforming the pr-execution judicial confirmation system into a judicial review at the execution stage, and by gradually simplifying the standards of the execution review.

4.3 Improving and regulating the qualifications and code of conduct of commercial mediators

A. Reference to relevant rules

In view of the complexity of commercial mediation and its requirements for the professionalism and interdisciplinary knowledge of mediators, article 5 of the Convention stipulates that the behaviour of mediators is one of the elements to be examined in a settlement agreement, and therefore the impact of mediators should draw extensive attention to mediation activities, and many countries have set up a system of mediators. Greece, for example, is very strict in the selection of mediators; first of all, applicants must be qualified as lawyers, and on that basis, they must also undergo professional training and pass a professional examination in order to qualify as mediators. Although the Convention does not specify the qualifications and code of conduct of mediators, it serves as a guide for signatories.

According to the Liaison Office of the Central Government in the HKSAR, the Best Practice Guidelines on Professional Conduct for Mediators in the Guangdong-Hong Kong-Macao Greater Bay Area, which was adopted in December 2021, harmonizes the three different legal systems, mediation models and mediation regimes, and serves as a reference and basis for the mediation bodies in the three places in formulating their detailed standards of professional conduct in accordance with the actual circumstances and implementation needs of the mediation bodies in the respective places. The Code is divided into three parts. The first part specifies the principles of independence, impartiality and confidentiality, which imply that mediators remain neutral and impartial, respect the wishes of the parties, do not impose solutions, and maintain strict confidentiality of the information of the disputing parties during and after the mediation process. The second part sets out the competence requirements of the mediator, starting with adherence to socialism with Chinese characteristics, followed by financial stability of the mediator's family, a good social credit score, certain communication and clerical skills, appropriate academic qualifications and familiarity with the mediation process. Part III sets out the duties of the mediator, who should help the parties to negotiate and transform their needs into options that will lead to a settlement, and who should also be held accountable for improper mediation behaviour.

B. Regulation of the conduct and duties of mediators

The Convention emphasizes the duty of mediators to disclose injustices in a timely manner, but in the actual mediation process, the mediator inevitably gains access to the respective information and interests of the parties, which provides the mediator with an opportunity to use it to gain illegal benefits. In the mediation process, in addition to disclosure, the mediator's behaviour should also comply with the following basic requirements: the first is integrity, that is, the mediator has justice in the mediation process and seek truth from facts. The second is that the mediator must uphold impartiality, ensure that both parties communicate and speak on an equal footing, and reach a mutually satisfactory outcome. Therefore, China's commercial mediation law should set out the provisions of the guidelines for mediators through the

requirements of impartiality, independence and professionalism of mediators, and require all mediators to carry out mediation work in good faith.

C. Prevention of abuse of article 5 of the Convention

In order to avoid any abuse of article 5 of the Convention, which regulates the behaviour of mediators, the scope of "seriousness" of the article should be clarified and explained in detail, so as to prevent any unlimited expansion of the definition of "serious" behaviour, which may damage the legitimate rights and interests of mediators, as well as their professional reputations and careers. In order to protect the legitimate interests of mediators, a list of common instances of "serious" misconduct could be drawn up in an enumeration, and clear and specific criteria could be formulated in as much detail as possible. As the independence and impartiality of mediators have a significant impact on mediation activities and the implementation of settlement agreements, attention should be paid to the establishment of a system of qualifications and conduct for mediators.

4.4 Preventing and combating fraudulent mediation

In the context of the Convention, the direct enforce ability of the settlement agreement is affirmed and confirmed, and the settlement agreement can be applied to the competent authority for enforcement to enforce the other party or third party, and the probability of enforcing the settlement agreement reached through false conciliation increases due to the confidentiality of the conciliation itself, thus making it more difficult to detect and adjust the wrong conciliation, which has resulted in the damage of interests and even the damage to the order of judicial justice. Therefore, the prevention of false conciliation can be explored at the legislative, institutional and systemic levels in the Code of Civil Procedure.

A. Combination of domestic legislation and international cooperation

At the level of domestic legislation, improve the system of convergence between false mediation and criminal penalties, in order to increase the illegal costs of false litigation, the people's court may, when reviewing and settlement agreement, inform the parties that they should sign a written commitment that the settlement agreement is a true expression of the true meaning of the two parties, and, at the same time, the court also needs to inform them of the legal consequences of false mediation, and may attach the relevant legal provisions to the certificate of commitment in order to increase the cautionary effect of the certificate of commitment. The court should also inform the parties of the legal consequences of false mediation. If the false conciliation itself is of a bad nature or has caused serious consequences, the people's court may rule that the Criminal Law of the People's Republic of China applies to the parties' false conciliation behaviour and punish them accordingly. In practice, fictitious business relationship is a common means of false conciliation, therefore, it is recommended to increase the cooperation of other countries to assist in reviewing the information on business cooperation of transnational commercial subjects to find out whether there is really an actual business relationship between the two parties. In addition, integrity files and blacklists can be formulated, so that if the parties or conciliators in international commercial conciliation are involved in the act of engaging in false conciliation, it can be recorded in this file and the The countries concerned should disclose the information to each other in order to increase the cost of implementing fraudulent conciliation.

B. Exploring significant accountability for mediators

As respect for the will of the parties is paramount in international commercial conciliation, the competent authorities should not overly interfere with the conciliation system, but they can explore the establishment of a liability mechanism for intentional and gross negligence on the part of the conciliator, so as to urge the conciliator to treat the conciliation seriously on a sustained basis, and to avoid providing assistance to sham conciliation. On the other hand, experienced commercial mediators play an important role in identifying sham mediation, as they can identify whether the settlement agreement is a settlement agreement of substantive significance reached by both parties with true intent based on details of the business cooperation between the parties, the dispute resolution process, and trading habits. Therefore, consideration could be given to the establishment of professional training courses for commercial mediators, the content of which must take into full consideration commercial mediation practices and techniques, so that mediators can more accurately identify sham mediation, and at the same time, it is also necessary to improve the material treatment of commercial mediators, as sufficient material incentives are conducive to attracting more outstanding talents to join the mediation team.

C. Emphasis on remedies for the rights and interests of outsiders

Reference can be made to international arbitration with regard to the third party's interests in the case and our country's outsider's enforcement objection, that is, the third party knows or should know that within a certain period of time to provide the court with jurisdiction to provide prima facie evidence evidence capable of proving that its rights and interests have been harmed, including evidence that the settlement agreement has arisen from the false conciliation, evidence of the damage to the legitimate rights and interests as well as the evidence of the causal relationship between the two, in order to avoid abuse of rights. In order to avoid abuse of rights, the court may also require the outsider to provide security in order to suspend the enforcement of the settlement agreement after it has been accepted by the court. The court should summarize the circumstances of sham conciliation, such as the content of a settlement agreement that violates common sense and business practices, and when the case is heard, the judge should focus on similar circumstances in order to enhance the efficiency and accuracy of the review.

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