

# Study on the Interface between China and the Enforcement Mechanism of Commercial Mediation Agreements under the Singapore Convention on Mediation

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## Abstract

The entry into force of the Singapore Convention on Mediation has opened a new chapter in the development of the international commercial mediation system. As we all know, the efficiency of the enforcement system determines the probability of commercial mediation being chosen by commercial parties in dispute resolution. The Convention establishes for the first time a clear unified framework for the direct enforcement of international commercial mediation agreements, which promotes the change and development of mediation. As a signatory to the Convention, China is faced with the challenge of aligning its domestic mediation rules with the Convention. At present, the enforcement system of commercial mediation agreements in China is at a nascent stage, and there is a long way to go to promote the internationalization of the enforcement system of commercial mediation in China. Firstly, we need to analyze the problems of the existing mediation agreement enforcement mechanism in China, point out the problems of the existing mediation mechanism in China and the necessity of establishing a mediation agreement enforcement mechanism, secondly, we analyze the problems of the interface between China and the Singapore Convention on Mediation, mainly the problems of the substantive and procedural norms, and finally, we put forward relevant suggestions for the problems of the substantive and procedural norms. Finally, the recommendations are made to address the problems of substantive and procedural regulations.

## Keywords

Singapore Convention on Conciliation, Commercial Conciliation Agreements, Direct Enforcement Mechanism.

## 1. Introduction

The 2018 United Nations Convention on International Conciliation Agreements Arising out of Mediation (hereinafter: Singapore Convention on Conciliation or the Convention) was voted by the United Nations General Assembly, and the full 16 articles took four years to study and conclude, and its terminology is modeled on that of the New York Convention. Article 3 of the Singapore Convention on Conciliation provides two remedies for international commercial conciliation agreements: an offensive sword, where the parties apply to the contracting parties for direct enforcement of the conciliation agreement; and a defensive shield, where the parties use the conciliation agreement as a defense to the same dispute resolution claim. The issue of cross-border enforcement of mediation agreements has been criticized by the parties and constrains their choice of mediation as a method of international commercial dispute resolution. The aforementioned provision fills the institutional gap of the enforcement mechanism of international commercial conciliation agreements and is a major innovation of the Convention. It has facilitated the global circulation of international commercial mediation agreements and promoted the popularization and institutionalization of international commercial mediation.

As the Singapore Convention on Mediation is signed and adopted by more and more countries, it is foreseeable that mediation will become an alternative dispute resolution method on an equal footing with litigation and arbitration.

China's domestic mediation system has been out of line with the existing international rules for a long time. At present, China's pluralistic mediation system is in a "chaotic" state, and the generalization of people's mediation has led to commercial mediation being labeled as "people's mediation", and the legal positioning of official and unofficial mediation is blurred. At the same time, the legislation on mediation is fragmented and there is no specific legislation on commercial mediation, and mediation agreements are often regarded as contracts that need to be transformed before they can be given enforcement power. As one of the first signatories to the Convention, is it necessary for China to develop a system of direct enforcement of international mediation agreements? If so, how to implement the domestic rules with the Singapore Convention on Mediation in order to better fulfill the obligations of the Convention? The key lies in how to build an enforcement mechanism for commercial mediation agreements in China.

## **2. Status quo and drawbacks of the existing enforcement mechanism of international commercial mediation agreements in China**

### **2.1. Deemed general contracts are governed by the rules of private international law**

In most cases, whether a mediation agreement can be enforced varies according to the legal provisions of each country. In many countries, if a mediation agreement involves the formation of legal rights and obligations and complies with the relevant contract law in all respects, it can be enforced like any other contract. Generally speaking, a mediation agreement is essentially a civil contract and is contractual in nature. Mediation agreement can be either to identify the original rights and obligations, or to establish a new relationship, but all parties follow the original intention to reach a consensus, binding on the parties, the parties may not refuse to perform without defenses. The validity of the contract is justified by the free will of the parties. Once the agreement has been made, it is valid if nothing else. If a party does not comply with its agreement, then in such a case the other party may sue for breach of contract. However, from a practical point of view, the prosecution of an international commercial mediation agreement, as a foreign contract, is also very complicated. First of all, according to the nature of the contract to determine the dispute subject to the jurisdiction of the courts of which country, generally speaking, each country has its own provisions of applicable law relating to foreign law. In China, for example, the parties can choose the law applicable to the contract, or if they do not make a choice about it, the principle of closest connection is adopted. In such a case, the determination will probably involve issues of renvoi, contra renvoi, etc., and, if other countries provide otherwise, problems of conflict of jurisdiction. Assuming that the dispute ends in a court decision by way of litigation, there will be no way for the court decision to be enforced by the courts of foreign countries. Even if the current situation of enforcement of foreign judgments by the international community has improved, the actual results are not promising.

### **2.2. Invoking the New York Convention by means of arbitral awards**

With the Convention on the Recognition and Enforcement of Foreign Arbitral Awards being gradually adopted by various countries internationally, it has led some countries to consider it feasible to convert mediation agreements reached between parties into enforcement of arbitral awards by way of arbitration, and the relevant provisions have increased the enforcement of mediation agreements extraterritorially and provided a basis for the enforcement of commercial mediation agreements.

Despite the important role played by the New York Convention in international commercial dealings, the results of its operation have not reached the expected state. Some countries consider that only an arbitral conciliation agreement reached through mediation after the initiation of arbitration can be enforced. Thus, if the parties' practice of reaching a conciliation agreement occurs before the arbitration proceedings, the arbitral conciliation will lack a legal basis and then it will not be recognized for enforcement. For example, there is case law in countries such as the United Kingdom that if a mediation is reached before arbitration is initiated, it means that the dispute no longer exists and there is no basis for arbitration, and in this state it will not be recognized and enforced. In addition, an arbitral award will not be enforced if it is set aside by a court.

### **2.3. Application to the court for its validity**

Mediation agreements reached on the basis of the parties' free will are considered in some regions to be equivalent to court judgments or orders, and therefore, they can be recognized and enforced locally. In the bilateral agreements signed between our country and Poland, for example, the parties recognize and ensure the enforcement of judgments and conciliation agreements within their jurisdiction based on the principle of mutual benefit. In the case of Germany, for example, the recognition and enforcement of a mediation agreement between the parties is subject to the existence of a bilateral agreement; according to the relevant provisions of the Canadian Commercial Mediation Act, the parties shall register their written agreement after reaching the result of the mediation. Pursuant to an order authorizing the registration of a mediation agreement, an official copy of the mediation agreement is filed with the registrar and becomes effective upon its registration<sup>8</sup>. According to the draft adopted by the Hague Conference on Private International Law, if the parties' conciliation agreement is reached under the organization of the People's Court, the agreement has the same effect as the judgment.

For cases where judicial confirmation is used to make a mediation agreement enforceable, a judgment issued by a court agreeing to enforce it is generally difficult to obtain recognition and enforcement by a foreign court. Conditional recognition and enforcement may be obtained only in exceptional cases, and such conditional recognition and enforcement must be subject to bilateral agreements between countries and conventions to which both parties are parties. But as of now, even if the parties have signed or participated in agreements and treaties, the scope and field of their role is still very limited. Unless there is a prior agreement between countries on the enforcement of mediation agreements, no foreign national court, regardless of whether there is a bilateral treaty or a multilateral treaty, will want to enforce the decision of a domestic court.

### **2.4. Application for Notarial Enforcement**

At common law, a mediated settlement agreement can also be a contract. However, this is different from the civil law system of notarization. For a contract, it is not in itself unenforceable. The main reason for embodying a mediated agreement in the form of a deed is that a deed does not require consideration, whereas an ordinary contract does. The statement at the beginning of the deed, which sets out a brief history of the dispute between the parties and the agreed settlement, may also help to provide the background to the agreement.

Because notarization is purely a matter of domestic law, the requirements for notarization vary from country to country, and are largely applicable only in civil law jurisdictions, this method of enforcement is also of limited use internationally, especially when there are multiple parties from different jurisdictions who are a mixture of common law and civil law traditions. It is also uncertain whether the benefits of notarization will extend to mediation that does not take place within the country in question. Therefore, this option of enforcement may not be a very useful one for transnational disputes. In terms of the concrete operation of the practice, if two different institutions are involved in the middle by means of notarization, its inevitable to go through

two stages and the procedure is bound to be cumbersome. In terms of the specific operation of the payment order in practice, although the payment order involves only one link, it is only an idealized state of affairs, and once the respondent objects to it since the specified time, then it will again enter into a complicated and lengthy litigation procedure, which is contrary to the initial goal of the parties.

In summary, due to the shortcomings of the traditional enforcement mechanism of dependent mediation agreements, such dependent enforcement mechanism does not meet the requirements of cross-border enforcement of international commercial mediation agreements, which hinders the development of the mediation system, and the international community expects the emergence of a more direct, powerful and convenient cross-border enforcement mechanism.

### **3. Necessity of docking the Chinese commercial mediation mechanism with the mechanism of the Singapore Mediation Convention**

The settlement agreements reached through mediation can be categorized into three types according to their effects: first, newly concluded contracts; second, convertible into civil and commercial judgments; and third, convertible into arbitral awards. While international civil and commercial judgments and international commercial arbitrations can be enforced across borders under the Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention), respectively, the judicial dilemma that settlement agreements cannot be enforced directly across borders has never been effectively resolved and has become a major obstacle to the development of mediation mechanisms. The Singapore Convention on Mediation has filled the "missing piece" in the enforcement of international commercial dispute resolution and responded to the painful point in practice. It is a milestone in the history of international commercial dispute resolution. With the steady progress of reform and opening up and the construction of "One Belt, One Road", China's foreign trade and investment activities have become more and more frequent, and it has become the second largest FDI inflow country and the largest investment country in the world. It is also an important step for China to promote the change of global economic governance.

#### **3.1. Forcing the establishment and improvement of China's commercial mediation system**

The Singapore Convention on Mediation has pioneered the construction of an all-round cross-border enforcement mechanism for international commercial mediation, making international commercial mediation formal, stable and predictable, eliminating to the maximum extent possible the concerns of the parties in considering the choice of mediation as a means of dispute resolution, and helping to promote the rapid development of the mediation mechanism. The most direct impact of joining the Singapore Mediation Convention on China is that it will force the establishment and improvement of China's commercial mediation system. Although there are many types of mediation mechanisms in China, they are all policy-driven mediation with deep involvement and extensive intervention of public power, and the development of commercial mediation is slow, which is not in line with the international development trend of modern mediation and seriously restricts the international exchange and cooperation of dispute resolution in China. In order to effectively dovetail with the Singapore Convention on Mediation, China must further establish and improve the basic legal system of commercial mediation, speed up the introduction of legislation on commercial mediation and relevant supporting laws and regulations and judicial interpretations, and promote the development of domestic mediation institutions and mediators in the direction of high level, internationalization and specialization, which is beneficial to China's foreign-related legal

system and the future development of China into an international commercial dispute resolution center. This will be of great benefit to China's foreign-related legal system and the future development of China into an international commercial dispute resolution center.

### **3.2. Promoting the development and improvement of China's diversified commercial dispute resolution mechanism**

The Singapore Convention on Mediation's aim of win-win cooperation is consistent with the spirit of China's advocacy of pluralistic settlement of international civil and commercial disputes, which is expected to promote China's commercial mediation in line with international standards and create a more favorable rule of law atmosphere for the construction of the "One Belt, One Road". The Opinions on the Establishment of International Commercial Dispute Settlement Mechanisms and Institutions of "One Belt, One Road" clearly states that it supports the settlement of international commercial disputes of "One Belt, One Road" through mediation and arbitration, and promotes the establishment of a diversified dispute settlement mechanism that effectively connects litigation with mediation and arbitration. In addition, the government should provide high-quality and efficient legal services to the parties involved in the construction of "One Belt and One Road". The "one-stop" dispute resolution mechanism combining litigation, arbitration and mediation has become a characteristic of China's International Commercial Court, and the Singapore Convention on Mediation will certainly enrich the articulation model and relevant practices of China's pluralistic dispute resolution system, and further improve the International Commercial Court as a "Chinese solution" for international dispute resolution. The Singapore Convention on Mediation will certainly enrich the articulation model and relevant practices of China's pluralistic dispute resolution system and further improve the international commercial court as a "Chinese solution" for international dispute resolution.

### **3.3. Enhancing China's right to participate in and lead international rule-making**

When discussing China's participation in global governance, General Secretary Xi Jinping once pointed out that "the global governance system is in a critical period of adjustment and change, and we should actively participate in international rule-making and be a participant, promoter and leader in the process of global governance change." In terms of international rule-making, General Secretary Xi Jinping has also repeatedly emphasized that "we will make more Chinese voices and inject more Chinese elements in international rule-making to safeguard and expand our development interests." As the world's second largest economy and the five permanent members of the United Nations, China is only in the "recipient" position in the formulation of most of the existing international rules, and generally lacks a strong voice in international rule-making, which is inconsistent with its status as a great power. Mediation is known as the "Eastern experience", and the mediation culture and philosophy originated in China have their own unique logic and value. China has actively participated in the whole process of the Singapore Convention on Mediation from drafting to signing, and has put forward many rationalized proposals which were finally adopted in the text of the Convention, forming "Chinese wisdom", "Chinese solutions" and "Chinese narrative system". This has demonstrated China's positive attitude and professional ability to participate in international rule-making, and has set a successful example for China to participate in and lead international rule-making in the future, which is the latest example of actively implementing the above-mentioned important instruction of General Secretary Xi.

Overall, China should strongly support the entry into force of the Singapore Convention on Mediation in China, both in terms of its value to international commercial dispute resolution and in consideration of China's national interests.

## 4. Problems Facing the Interface between China and the Implementation Mechanism of International Commercial Conciliation Agreements of the Singapore Convention on Conciliation

At present, there are two major problems in the implementation of international commercial settlement agreements in China, namely, substantive regulation and procedural design. If these problems are not properly dealt with, the advantages of the mediation system in international commercial dispute resolution may be hollowed out due to the ineffective implementation.

### 4.1. Lack of substantive norms

China's current domestic norms on mediation are still imperfect, and the operation of the commercial mediation system lacks the necessary guarantee mechanism, "which leads to the problem of institutional mismatch and operational difficulties in the interface between China and the provisions of international treaties. This poses many challenges to the development of the international commercial settlement agreement system in China.

#### 4.1.1. Gaps in commercial mediation legislation

The mediation system has a long history of development in China and is mostly applied in the settlement of family, marriage and civil disputes. "The current legal provisions in China are conservative in nature and have a narrow space of compatibility with the Convention on Mediation. China has not yet formulated a unified legislative document on commercial mediation. The provisions on the enforcement of commercial settlement agreements are scattered in a number of legal norms and policy documents, which are not yet sound. China has acceded to the Mediation Convention and is burdened with the obligation to translate the provisions of international law into domestic law rules.

Currently, China's mediation legislation is based on a "grand mediation" model with people's mediation as the keynote and a variety of other mediation methods complementing each other. This confusing and mixed state of affairs makes the parties lack a proper understanding of the professionalism of mediation. The gap of independent and professional commercial mediation legislation makes the status of commercial mediation in China unclear and unsystematic. Some legal documents, such as the Sino-foreign Joint Venture Law and the Civil Procedure Law, only advocate the principle of commercial mediation in advance to facilitate the settlement of disputes by means of amicable negotiation. The vacancy of specific commercial mediation legislation directly affects the popularity and utilization rate of the mediation model in China, which prevents commercial mediation from manifesting its role of diverting judicial pressure and negotiating dispute resolution in practice.

There are two ways for international treaties to be applied in China: one is to achieve domestic application through domestic laws; the other is to expressly provide for their application through legislation and incorporate them into China's domestic laws. China's Civil Procedure Law establishes that in the event of inconsistency between domestic law and international treaties, the international treaties shall take precedence. However, there is still no specific domestic law to regulate the validity of settlement agreements and the direct enforcement of international commercial settlement agreements in China.

#### 4.1.2. Inconsistent Semantics of Settlement Agreements

There is no consistency in the terminology of settlement agreements reached through mediation in different normative documents, including: mediation agreement, settlement agreement and mediation letter. Among them, a conciliation agreement is formed in a procedure involving a court or an arbitration institution and is enforceable. The semantics of mediation agreement and settlement agreement are often mixed in practice. This band confusion may cause problems in two aspects: First, it is difficult to form the name of the

instrument with homogeneity and normality. This will add difficulty to the parties to write, record, use the instrument and the work of the executive officer to determine the validity of the instrument. Second, it does not match with the provisions of international treaties. The term "settlement agreement" is used in the translation of the Chinese text of the Mediation Convention, and the indiscriminate use of various instrument names in our practice may lead to deviations in the translation of instrument names and inconsistency with the provisions of international treaties. This may affect the development of the subsequent enforcement procedures and the development of the international commercial mediation system in China.

#### **4.1.3. Lack of regulation of the validity of mediation clauses**

A mediation clause is a clause in which the parties agree in the contract to submit the dispute to a mediation institution for settlement. China's ICC Mediation Rules stipulate that a party's application for mediation needs to be accompanied by a mediation clause or the consent of the other party. In the absence of a separate validity regulation, the mediation clause tends to have the same validity as the contract, which can be affected by circumstances such as the invalidity of the contract. Under the existing legal framework, there is no detailed regulation of whether a conciliation clause has a separate effect. In this regard, it is necessary to consider whether it is possible to refer to the provisions on arbitration clauses in arbitration, which is also an alternative dispute resolution mechanism, to grant independence to mediation clauses and whether it is meaningful to avoid abuse of mediation procedures and clarify the scope of matters that can be mediated. Moreover, whether the conciliation clause has the effect of precluding litigation is not addressed. In contrast, a settlement agreement formed through court mediation has the same effect as a judgment and is final. The jurisprudence behind this is that the nature of the third-party intervention subject has the authority backed by public power. According to this theory, the international commercial settlement agreement reached by private mediation does not have the effect of excluding the right to sue due to the lack of credibility. However, mediation relies on public power and obtains the right of enforcement, which involves the question of whether the independence of the mediation process itself will be negated. The supporting mechanism of commercial mediation mainly focuses on two aspects of mediation and mediators. With the development of diversified dispute resolution mechanism in recent years, the number of mediation institutions and mediators in China has increased drastically, but they are also facing the dilemma of "imbalance between quantity and quality". In terms of domestic mediation institutions, there is a shortage of specialization and standardization. As for domestic mediators, there are shortcomings of low entry threshold and unclear code of conduct.

#### **4.2. Deficiencies in enforcement procedures**

There are problems with the enforcement mechanism and non-enforcement remedies in the enforcement process of settlement agreements.

##### **4.2.1. Lack of enforcement safeguard mechanism**

There is no provision in our domestic law and the Convention on Mediation for the suspension or reversal of execution in the case of execution errors. This is a necessary mechanism design to timely intercept wrongful execution that brings significant losses to the parties. Based on the Convention's respect for the priority of judicial review in the State Party, it is clear that the Convention has given the relevant power to the State Party to deal with it in accordance with the provisions of domestic law. China can make more detailed and in-depth provisions on related issues.

##### **4.2.2. Inadequate remedies for non-enforcement**

In the case where the judicial confirmation procedure cannot give the settlement agreement enforceability, the rights of the parties to the mediation should be remedied in due course. The

existing rules in China deal with this situation in the following ways: first, new mediation, arbitration or litigation on the original dispute adopted without judicial confirmation. This model may lead to the invalidation of previous procedures and the duplication of judicial resources. Second, arbitration should be initiated on the content of the settlement agreement rather than the original dispute. This model will reduce the iterative nature of the process and save the parties the cost of resolving their disputes. However, leaving the relevant procedural rules for guaranteeing relief to the arbitral tribunal brings a certain degree of uncertainty for the parties' rights to relief, which still needs to be optimized and improved in the subsequent system design.

## **5. The path to improve the implementation mechanism of commercial conciliation agreements between China and the Singapore Convention on Conciliation**

Combining the provisions of the Convention on Mediation with the analyzed problems, we will construct a path for the enforcement of international commercial settlement agreements in China from two levels: substantive and procedural. This is of great significance for protecting the rights and interests of commercial mediation in China, enhancing the image of China's rule of law and improving the rule of law environment in China.

### **5.1. Substantive path**

The current commercial mediation system in China lacks unified norms to lead the way. In order to avoid the confusion and disorder of commercial mediation and the circumvention of rules, it is necessary to set unified norms in special legislation and other aspects.

#### **5.1.1. Uniform commercial mediation legislation should be formulated.**

To make up for the shortcomings of China's interface with the Convention on Mediation, it is necessary to start from the institutional level and formulate a mediation law with Chinese characteristics based on China's cultural tradition and existing national conditions. The current "grand mediation" system centering on people's mediation has a strong administrative tone, so commercial mediation should be separated from the chaotic "grand mediation" situation and give full play to the superiority of commercial mediation in terms of flexibility and confidentiality. Since commercial mediation is scattered in China's existing legal system, it would be inappropriate to add commercial mediation legislation to the existing regulations. Therefore, it is necessary to promote the specialization and systematization of commercial mediation legislation, and to establish a special chapter and section for commercial mediation. The formulation of China's special commercial mediation legislation should follow the principles of voluntariness, legality, good faith and confidentiality. The scope of regulation of China's Commercial Mediation Law should include domestic and international commercial settlement agreements. In the process of formulating commercial mediation law, attention should be paid to the consistency and uniformity of the legislation, and attention should be paid to the space reservation and power concession for the application of commercial mediation law in the general law. It is important to note that independent legislation on commercial mediation does not mean absolute division and split between it and litigation procedures. The organic linkage with litigation procedures not only provides a judicial stabilizer for the enforcement of international commercial settlement agreements arising from mediation, but also prevents the creation of false settlement agreements without procedural restrictions and the occurrence of acts that harm the legitimate interests of third parties. Improve the organic linkage between mediation, litigation and arbitration systems. Raise the legal status of non-litigation mediation in China's commercial dispute resolution practice, and promote the standardization of mediation procedures and effective results. Transform the people's attitude and habit of



applying mediation, should develop the advantages of commercial mediation to the fullest extent, and release the vitality of commercial mediation in international commercial dispute settlement.

### **5.1.2. The semantics of settlement agreements should be unified.**

The Convention on Mediation uses the term "settlement agreement" in the description of the instrument. In order to ensure consistency with the wording of the Convention and clarity of the textual guidelines, China should unify the semantics of settlement agreements in practice and clear the obstacles to the implementation of the Convention in China. A "settlement agreement" is a product of the conclusion of the mediation process. In China's current legal terminology system, there are still many expressions of "mediation agreement". The unclear and confusing expression of the name of the agreement will bring about difficulties in legislation and recognition. The measures that can be taken in this regard include: first, unifying the name of the instrument. However, it is not practical to amend the official international texts that have been published. Second, for the legal text to be revised. It is more likely that the former approach can be achieved by sorting out and revising the confusing provisions of the legal texts to ensure the certainty of the names of the documents, the consistency of their usage and the integrity of the system. In addition, on the basis of unifying the semantics of settlement agreements, the validity of settlement agreements should be standardized. In practice, settlement agreements that do not depend on other procedures only have general contractual effects. In this regard, a comprehensive and systematic unification of the validity of settlement agreements should be carried out while retaining judicial supervision. The definitive and enforceable power of settlement agreements should be clarified independently in the legislation, and it should be stipulated that the judicial power may intervene for procedural review under special circumstances, and no obstacle should be set for the determination of validity.

### **5.1.3. To formulate the mediation clause effect specification .**

Whether the existence of the mediation clause is necessary is controversial in academic circles. There is a view that mediation is based on the consent of the parties, the voluntary adoption of dispute resolution behavior, so whether the existence of mediation provisions does not affect, there is no need to design. But the existence of pre-litigation mediation, obviously in the case of the parties do not have the intention of mediation in advance, for this situation should also be considered. Mediation as agreed by the parties to the dispute resolution, fully respect and protect the true will of the parties to express, the effectiveness of the terms of mediation should be regulated. The design of the regulation of the effectiveness of the mediation clause involves two aspects: first, the effectiveness of the mediation clause. This part mainly includes two parts: First, whether the mediation clause has the pre-requisite of procedural initiation. The existence of the mediation clause can be used as later into the review stage, to prove that the parties reached the mediation process voluntary evidence, rather than the necessary pre-procedure. For the case of pre-litigation mediation, should be allowed to sign under the conditions of the normative supplement. The second is whether the terms of mediation has mandatory access to mediation. This is for the parties to agree in advance to agree on the terms of mediation, in the case of subsequent reversal of mediation, the terms of whether the dispute will be mandatory for mediation. Since the Convention on Mediation gives the settlement agreement enforceability, it means that the dispute resolution method should be final. In this regard, reference can be made to the institutional design of the arbitration clause in arbitration, and on the premise of excluding the invalid situation, the mediation clause is deemed to have the compulsory power to lead the dispute into the mediation procedure, but it should not be compulsory for the conclusion of the settlement agreement. Second, the issue of internal and external validity of the mediation clause. This part focuses on the content and form of the

mediation clause: in terms of the content of the mediation clause, the content that is related to public interest or mandatory legal provisions should be excluded. As to the form of the mediation clause, in order to facilitate the fixing and preservation of the mediation clause as voluntary evidence, a clear mediation institution should be determined and agreed in writing. The writing here shall be expanded and interpreted in accordance with the needs of the times to include the written determination of electronic communication.

## **5.2. Procedural Path**

The Convention on Conciliation provides for a mechanism for enforcement in accordance with national procedures, and Article 14 of the Model Law on Conciliation leaves the detailed method of enforcing international commercial settlement agreements to the discretion of member states. This requires the construction of procedures for the enforcement of international commercial settlement agreements in China that combine our domestic law with the provisions of international conventions. Among the above-mentioned types of alternative enforcement methods, the conversion of settlement agreements into court judgments for enforcement through judicial review is the most achievable. The judicial process has two major functions: control and remedy of the settlement agreement. Control of the settlement agreement is achieved through review, and relief of the settlement agreement is achieved through enforcement. However, there are still some details of this system that are not compatible with the provisions of the Convention on Mediation. In this regard, the provisions of the review and enforcement system for international commercial settlement agreements should be refined to enhance its adaptability to international commercial settlement agreements. The "review-execution" model is a combination of "defensive and offensive" procedures, in which the rights are determined through review and the implementation of the agreement is carried out through execution.

### **5.2.1. Establishing sound enforcement safeguards.**

There is a gap in the domestic regulations on how to guarantee the smooth implementation and realization of international commercial settlement agreements after they enter the enforcement process. The existing optimal path for the enforcement of international commercial settlement agreements in China is the judicial confirmation system, but it still has certain incompatibilities with the provisions of the Convention on Mediation. Thus, domestic enforcement procedures need to be adjusted and optimized to meet the requirements of the Mediation Convention. China can design the procedure so that after the intermediate people's court has examined the international commercial settlement agreement, it will be transformed into an enforceable legal instrument and submitted to the enforcement agency for execution, with the execution costs borne by the party to be applied for execution, and the execution can be preserved for the disputed subject matter. In addition, an enforcement public notice system can be established. Due to the confidentiality of mediation procedures, it is difficult to make comprehensive and detailed information disclosure, but the enforcement of settlement agreements may involve the infringement of the rights and interests of third parties outside the case, and such interests should also be reasonably protected. In this regard, the subject matter of the enforcement can be publicized, or the outsider can be given the right to object and revoke within the legal period.

### **5.2.2. Improve the system of non-execution relief.**

There are two ways to resolve the situation where a settlement agreement is refused to be enforced in China's current law, as detailed in Article 33 of the People's Mediation Law. One is to follow the mediation in order to change or formulate a new settlement agreement. Since the modified settlement agreement is a statutory ground for refusal of relief under the Convention on Mediation, in order to better connect the design of our system with the provisions of international conventions, it should be concluded that only the international commercial

settlement agreement reached through re-mediation can be granted relief. The second is to file a separate lawsuit regarding the original dispute. Both of these methods will lead to the negation of the previous amicable negotiation process and the result of the settlement agreement reached, which will increase the burden of the parties and bring about duplication of procedures. In this regard, a distinction can be made according to the different characteristics of the settlement agreement. A settlement agreement that is denied relief may be defective or contrary to public order and law. In the case of defects that do not reflect the true will of the parties, the process and results of the settlement agreement should be deemed invalid and the dispute should be reopened. In the case of violation of public order and law, the content of the settlement agreement can be cut by applying the principle of distinction, and only the part that is not in violation of the same order and law can be applied for enforcement. In this way, the realization of the parties' meanings can be guaranteed and the waste of judicial resources can be minimized.

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