

Effective Mediation of Global Disputes

Cristina B. Rodriguez

cristina.rodriguez@wolfepincavage.com

786.409.0059



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WHAT IS A GLOBAL DISPUTE?



- Parties of different nationalities
- Cross-border contracts
- Legal systems or laws from different countries
- Foreign venue



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RISE IN MEDIATION OF GLOBAL DISPUTES

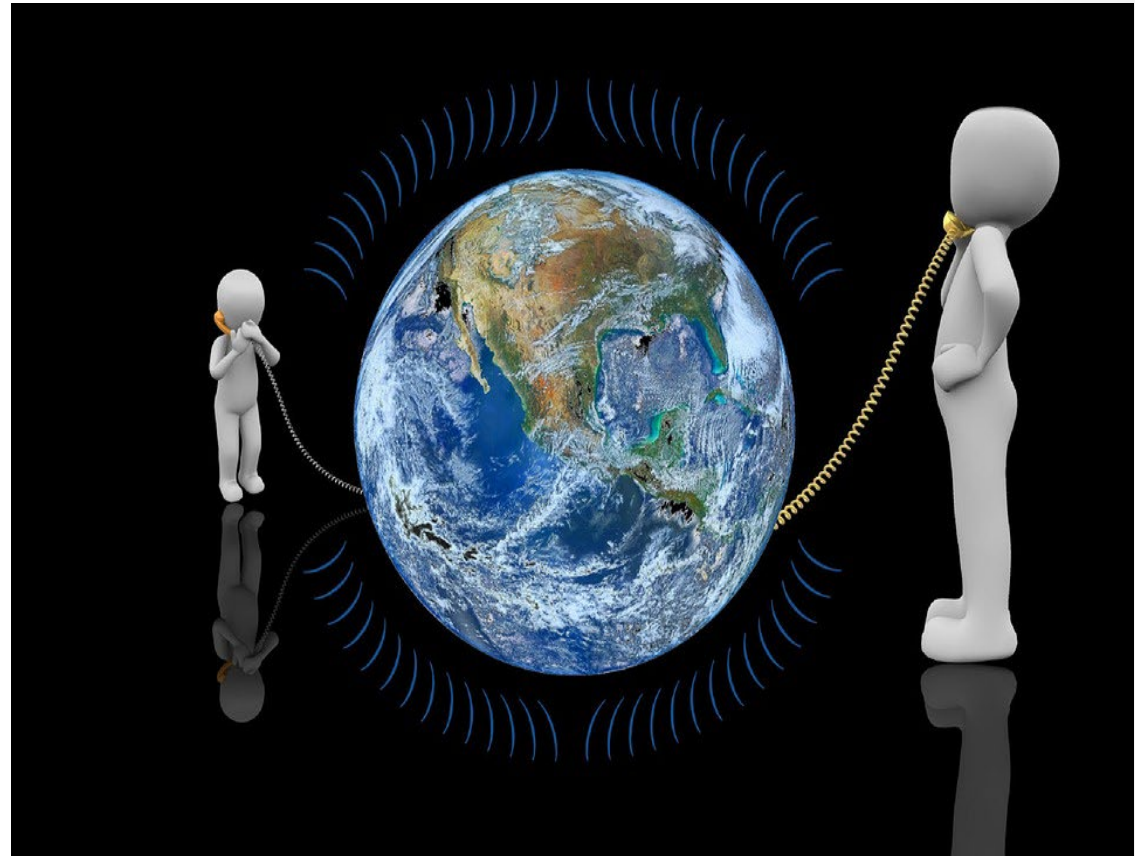
- Increased popularity of remote mediations
- Globalization trends
- Rise in international supply-chain disputes
- Post-COVID migrations, increased actions involving foreign nationals



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UNIQUE CONSIDERATIONS

- How will you and the parties communicate effectively?
 - Languages
 - Cultural norms and traditions
 - Body language
 - Decision making
 - Negotiation



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UNIQUE CONSIDERATIONS (Cont.)

- How will the parties view the mediation process?

*A good settlement is better than a good lawsuit.
-Abraham Lincoln*

- Laws and legal norms
- Legal systems
- Expectations about mediation
- Role of mediator



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UNIQUE CONSIDERATIONS (Cont.)



- Time zones
- Currencies
- Mode of payment



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UNIQUE CONSIDERATIONS (Cont.)



Do any ethical standards apply in addition to the Florida standards?



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CORE VALUES / ETHICS

- Impartiality
- Neutrality
- Confidentiality
- Self-determination of the parties
- Competence



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ADDITIONAL ETHICAL STANDARDS

- European Code of Conduct for Mediators / EU Mediation Directive
- International Mediation Institute
- UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements
- Country-specific laws



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ENFORCING SETTLEMENT AGREEMENTS



United Nations Convention on International Settlement Agreements Resulting from Mediation (New York, 2018) (“The Singapore Convention on Mediation”)

- Approved by UN Commission on International Trade Law on June 25, 2018
- Adopted on December 20, 2018 by UN General Assembly
- 55 signatory countries, including the United States
- 10 countries have ratified (excluding United States)



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SINGAPORE CONVENTION – Purpose

- Establish harmonized legal framework for the invocation and enforcement of settlement agreements
- Promote mediation as an alternative and effective method of resolving disputes
- Bring certainty and stability to the international framework on mediation

SINGAPORE CONVENTION – Scope

- Agreement resulting from mediation and concluding in writing by parties to resolve a commercial dispute, which at the time of its conclusion , is international.
- EXCLUSIONS:
 - Settlement agreements concluded by a consumer for personal, family, or household purposes
 - Family, inheritance or employment settlement agreements
 - Settlement Agreements enforceable as a or arbitral award



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SINGAPORE CONVENTION – Key Provisions

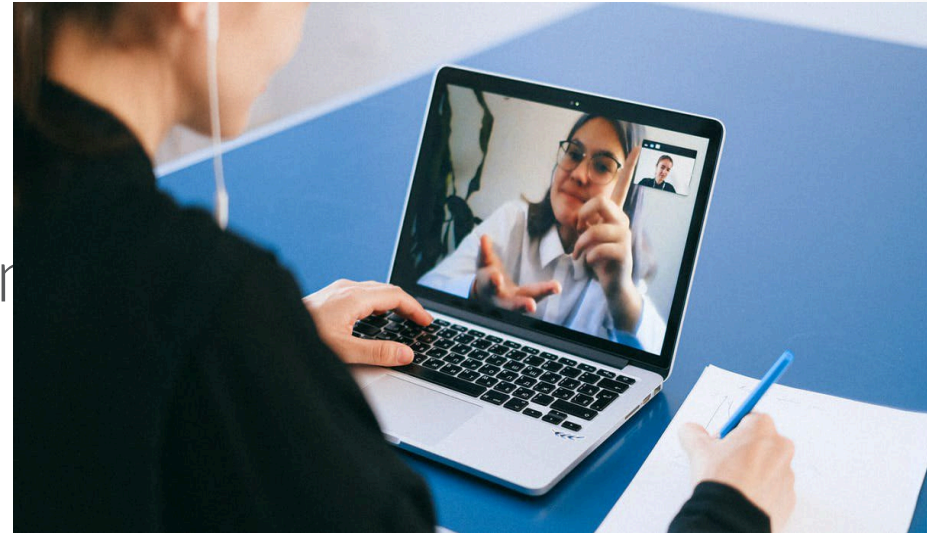
- Article 3: Right of a disputing party to invoke a settlement agreement
- Article 4: Formalities for relying on a settlement agreement
 - Signed by the parties
 - Evidence that it resulted from mediation
 - Translation and any other proof required by court
 - Requirement that court act expeditiously
- Article 5: Grounds upon which a court may refuse to enforce / invoke settlement agreement



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PRE-MEDIATION CONFERENCE

- Experiences and expectations for mediation
- Confidentiality, neutrality, and enforceability of settlement agreements
- Attendees and settlement authority
- Logistics & technology
- Key issues and law



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MEDIATION AGREEMENT

- Confirm authority and status of participants
- Confirm limitation of liability of mediator
- Set out settlement agreement formalities and requirements
- Explain confidentiality and other applicable rules
- Determine legal seat of mediation and governing law
- Clarify fees and costs
- Language and interpreters

CO-MEDIATORS

- Subject-matter expertise
- Language
- Cultural knowledge
- Different styles
- Check and balance
- Culturally-balanced



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JOINT SESSIONS



For or Against?



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TECHNOLOGY



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Thank
you !



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