

- [Law360 400](#)
- [Diversity Snapshot](#)
- [Practice Groups of the Year](#)
- [Rising Stars](#)
- [Titans of the Plaintiffs Bar](#)

- [Sections](#)
- [Adv. Search & Platform Tools](#)
- **[Browse all sections](#)**
- [Banking](#)
- [Bankruptcy](#)
- [Class Action](#)
- [Competition](#)
- [Employment](#)
- [Energy](#)
- [Expert Analysis](#)
- [Insurance](#)
- [Intellectual Property](#)
- [Product Liability](#)
- [Securities](#)

- [Beta Tools](#)
- [Track docs](#)
- [Track attorneys](#)
- [Track judges](#)

- [Site Menu](#)
- [Join the Law360 team](#)
- [Search legal jobs](#)
- [Learn more about Law360](#)
- [Read testimonials](#)
- [Contact Law360](#)
- [Sign up for our newsletters](#)
- [Site Map](#)
- [Help](#)

[International Arbitration](#) [Legal Industry](#) [Access To Justice](#) [Law360 UK](#) [Pulse](#) || [See all sections](#)

Analysis

Ga. Hopes To Ride Int'l Mediation Popularity Wave

By [Caroline Simson](#)

Share us on: By [Caroline Simson](#)

Law360 (October 8, 2021, 7:58 PM EDT) -- Georgia has become the first U.S. state to adopt legislation incorporating a United Nations model law on mediation, a measure that advocates say puts the Peach State in a good position to capitalize on a much-hoped-for increase in popularity for the dispute resolution mechanism.

The Georgia Uniform Mediation Act, which went into effect on July 1, standardizes the mediation process and clarifies that the parties to a mediation are obligated to keep the proceedings confidential. It also strengthens requirements that mediators disclose possible conflicts of interest.

Although other states have also adopted mediation acts, Georgia's legislation is unique because it incorporates the United Nations Commission on International Trade Law's Model Law on Mediation. As a result, proponents say, not only parties conducting domestic proceedings will benefit: The act also modernizes the legal regime governing international mediations conducted in Georgia.

Among those proponents is the Atlanta International Arbitration Society, or AtlAS, which encouraged Georgia lawmakers to adopt the legislation as part of an effort that started several years ago to promote the Peach State as a welcoming jurisdiction for international dispute resolution.

After successfully advocating for the adoption of a series of measures relating to international arbitration, the society began to realize there was an opening for both domestic and international mediation as well, AtlAS Vice President Shelby Guilbert of McGuireWoods LLP told Law360.

The timing of that realization was fortuitous, he said. In late 2018, the U.N. General Assembly adopted the Singapore Convention on Mediation, an international treaty that enables the cross-border enforcement of mediated settlement agreements. The treaty, which opened for signatures the following year, is aimed at providing "a much-needed boost to international trade and commerce," according to Singapore's Law Ministry, which has been involved with promoting the treaty.

The fact that Georgia was able to incorporate the convention into its law by way of the UNCITRAL Model Law on Mediation "sets Georgia apart from what other states have done," Guilbert said. "We're really excited about that."

He said Georgia's law will help to clarify for international parties that want to mediate in Georgia that the proceeding will be run a certain way. Among the most important considerations are confidentiality and privilege.

Until now, there had been no law in Georgia stating that there is mediation privilege, and that had proven problematic, he said.

Previously, international parties expressing interest in mediating a dispute in Georgia — perhaps because of its widely accessible airport and availability of numerous mediators — would often become concerned about whether comments made in the mediation would stay there.

Guilbert said he would tell those parties they could sign a mediation agreement saying as much, but that often provided little comfort to those who said sensitive discussions during the proceeding, perhaps admitting the weaknesses in the parties' cases, could be used in collateral proceedings.

"I've had conversations where I've told parties that's the way it works, but there was no law on the books in Georgia that says there is a mediation privilege, and that was particularly challenging," he said.

Still, whether the state will see an increase in the number of international disputes being mediated and how much Georgia will benefit from adopting the U.N. model law remains an open question. The adoption of the Singapore Convention several years ago came as many international bodies began expressing an interest in promoting the use of mediation to resolve international disputes, an area where its usage has been somewhat uneven.

The convention was opened for signatures more than two years ago, and it currently has some 55 signatory

nations. But it has only been ratified and entered into force in seven of those, a problem that was acknowledged last month by Singapore's Minister for Law, K. Shanmugam SC.

"We need many more countries to sign and ratify soon, because the effectiveness of the convention depends obviously on how many parties ratify it," he said while delivering the keynote address at UNCITRAL Academy 2021.

Although the disruption caused by the COVID-19 pandemic may be one reason more countries have not yet ratified the convention, another reason could be the somewhat more limited extent to which mediation is accepted abroad.

Mediation has long been a popular method to resolve disputes in the U.S. as a way to mitigate high costs. Farther afield, however, the phrase "alternative dispute resolution" has historically been met with skepticism or even disdain.

"It's been suggested that mediation is the dispute resolution mechanism of the future and it always will be," said Shelby R. Grubbs, a mediator and arbitrator who is affiliated with the ADR provider JAMS.

Arnall Golden Gregory LLP Chairman Glenn P. Hendrix, the founding president of AtIAS, said that about a decade ago he was sent to Pakistan for a World Bank project to try to help sell mediation to the local bar. The country has long had a large backlog of cases in the courts, and the World Bank had funded a mediation center in the hopes that it would help improve the investment climate there.

"The old joke is that ADR means 'alarming decrease in revenue' for lawyers, and they honestly believed that," he recalled. "That's an extreme example ... but there's a spectrum. A lot of the Asian countries like resolving disputes through negotiation, so it's widely accepted."

Still, both Grubbs and Hendrix said that in recent years, there are signs that international acceptance of mediation may be on the rise.

For example, many institutions have begun adding mediation rules or hosting events to encourage its usage, such as the International Chamber of Commerce's Mediation Week, which features a competition gathering some 250 students and coaches and 150 mediators and academics.

The ICC also has a Commission on Arbitration and ADR, which functions as the institution's "unique think tank and rulemaking body." That commission drafts and revises the ICC rules, including its mediation rules.

The International Centre for Settlement of Investment Disputes, meanwhile, began working on a new set of mediation rules in 2018 and the project remains ongoing.

"The U.S. got a head start [on mediation] partly because our litigation system is so expensive and has been for some time," Grubbs said. "Back in the '80s and '90s, I chaired one of many state-level commissions on alternative dispute resolution that institutionalized mediation in state courts ... and now I think we're seeing a similar move internationally."

--Editing by Jill Coffey and Marygrace Murphy.

For a reprint of this article, please contact reprints@law360.com

0 Comments

Add Comment