

SINGAPORE CONVENTION ON MEDIATION SIGNED BY 46 COUNTRIES

INTRODUCTION

On 7 August 2019, the Singapore Convention on Mediation (the "**Convention**"), the world's first ever convention on mediation, was signed in Singapore. In an early sign of strong multilateral support, 46 countries signed the Convention including the USA, China, India and South Korea. The Convention will come into force once three countries have ratified it; the Convention remains open for further signatures.

This briefing answers five key questions about the Convention, and its impact on international dispute resolution.

What is the Convention about?

The Convention seeks to facilitate the cross-border enforcement of settlement agreements obtained following mediation.

With its international reach, the Convention is intended to do for mediation what the New York Convention has achieved in international commercial arbitration: provide a comprehensive international enforcement regime which gives increased legal certainty to commercial parties engaged in international trade. At a broader level, the Convention is intended to boost the profile of mediation as a method for settling commercial disputes as an alternative to the often expensive and protracted methods of litigation and arbitration.

When does the Convention apply?

In practical terms, the Convention will be relevant where a party seeks to enforce the terms of a mediated settlement agreement in a foreign jurisdiction against a party which has breached the terms of that settlement. The Convention provides a relatively simple and mechanistic enforcement process in the courts of other Convention states (comparable to the enforcement of arbitration awards under the New York Convention). This should avoid the need to commence a new action and obtain a judgment or arbitral award on the settlement agreement.

The Convention applies to settlement agreements resulting from mediation proceedings which:

- (a) are concluded after the date when the Convention enters into force for the relevant signatory to the Convention;
- (b) resolve a commercial dispute;
- (c) are concluded in writing; and

Key issues

- 46 countries signed the Singapore Convention on Mediation at a ceremony in Singapore. Initial signatories include the USA, China, India, South Korea and Singapore.
- The Convention reduces the administrative and legal burden of enforcing a mediated settlement agreement against a counterparty which breaches that agreement.
- The Convention applies to mediated settlement agreements concluded after the date the Convention enters into force in the relevant country and provides only narrow grounds for resisting enforcement.
- The Convention looks set to boost the profile of mediation both in the region and globally.

- (d) relate to an underlying dispute which is international at the time of the conclusion of the written agreement (satisfied if at least two parties to the settlement have their places of business in different jurisdictions).

Under the Convention, "mediation" is defined broadly. It means a process, irrespective of the expression used or the basis upon which the process is carried out, whereby parties attempt to reach an amicable settlement of their dispute with the assistance of a third person (the mediator) lacking the authority to impose a solution upon the parties to the dispute. Under this broad definition, "mediation" could potentially include settlement agreements obtained following other processes, such as conciliation, expert determination or even dispute resolution boards.

When does the Convention not apply?

The Convention does not apply to settlement agreements:

- (a) concluded to resolve a dispute arising from transactions engaged in by one of the parties for personal, family or household purposes;
- (b) relating to family, inheritance or employment law;
- (c) that have been approved by a court or concluded in the course of proceedings before a court; or
- (d) that have been recorded and are enforceable as an arbitral award.

There are also a number of potential reservations which signatory states may apply when adopting the Convention. For instance, states may opt in to a reservation that the Convention will not apply to settlement agreements to which its government is party. A signatory state may also declare that it shall apply the Convention only to the extent that the parties to the settlement agreement have agreed to the application of the Convention.

How is a settlement agreement enforced under the Convention?

To enforce a settlement agreement under the Convention, a party must provide the following to the relevant competent authority in the jurisdiction where relief is sought:

- (a) the signed settlement agreement; and
- (b) evidence that the settlement agreement resulted from mediation. This can include the mediator's signature on the settlement agreement, a document signed by the mediator indicating that mediation was carried out, or an attestation by the institution that administered the mediation.

As a practical matter, the Convention expressly provides that settlement agreements made via electronic communication will satisfy the first requirement for a "signed" agreement, as long as the communication identifies the parties and the mediator, and the method of communication used is reliable.

What are the grounds for resisting enforcement?

The grounds for resisting enforcement include where:

- (a) the party to the settlement agreement was under some incapacity;

- (b) the settlement agreement is null and void, is not binding or is not final, or has been subsequently modified;
- (c) the obligations in the settlement agreement are not clear or comprehensible;
- (d) granting relief would be contrary to the terms of the settlement agreement;
- (e) there is proof of a serious breach by the mediator of standards applicable to the mediator or the mediation without which breach that party would not have entered into the settlement agreement;
- (f) there was a failure by the mediator to disclose to the parties circumstances that raise justifiable doubts as to the mediator's impartiality or independence. Such failure to disclose must have had a material impact or undue influence on a party without which that party would not have entered into the settlement agreement;
- (g) the enforcing authority finds that granting relief would be contrary to the public policy of that jurisdiction; and
- (h) the enforcing authority finds that the subject matter of the dispute is not capable of settlement by mediation under the law of that jurisdiction.

CONCLUSION

A primary goal of the Convention is to facilitate international trade and promote the use of mediation for the resolution of cross-border commercial disputes. In that regard, the multilateral endorsement which the Convention has received in Singapore is a strong early show of international support (particularly when one recalls that the New York Convention was only signed by ten countries when it was first signed on 10 June 1958).

The Convention has met with a degree of scepticism in some quarters. For example, some commentators have questioned the practical need to provide an international enforcement regime for mediated settlements which (unlike litigation or arbitration) can, in any event, only be reached with the consent of the parties involved. Others have cautioned that mediation, which is an inherently informal and flexible process, should not become too preoccupied with enforceability concerns imposed via application of the Convention.

Overall, however, the Convention has received an overwhelmingly positive response in both the political and legal arenas, with many commentators noting its sensitivity to legal, social and economic differences across jurisdictions. While its practical effects will take time to play out, the Convention will certainly raise the profile of mediation and cause commercial parties to consider it as a serious alternative to traditional, more contentious forms of dispute resolution. The signing of the Convention is undoubtedly a landmark moment for the dispute resolution landscape in Singapore and globally.

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