

Singapore Mediation Convention and its impact on the region

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The United Nations Convention on International Settlement Agreements resulting from Mediation, or the Singapore Convention on Mediation (the “**Convention**”) applies to international settlement agreements which result from mediation.

The Convention was adopted in December 2018 and then subsequently signed by 46 states in August 2019. Notably it has not been signed by the UK and other EU member states.

The Convention will come into force six months after ratification by at least three signatory states (**Article 14**) and it will apply to all mediated settlement agreements, even if that jurisdiction has not signed or ratified the Convention.

Whilst mediation is widely supported as a dispute settlement mechanism, due to its time and cost efficiency and non-contentious character, it has been criticised due to the lack of enforceability of the resulting mediated settlement agreements in cross-border disputes. The Convention aims to establish a mechanism for the recognition of these agreements by setting out how contracting states must either enforce the agreement or allow it to be used as a defence (on the basis that the dispute has already been resolved by way of a settlement agreement).

For the Convention to apply, settlements must therefore result from mediation and have a cross-border element. A cross border element could arise where (i) the agreement is between parties from different countries, or (ii) the parties are from countries that are different from (a) the place of performance or (b) the jurisdiction with which the subject matter of the agreement is most closely connected (**Article 1**).

Outside of the Convention, if parties enter into a mediated settlement agreement and one of the parties fails to comply with its obligations, the settlement agreement has to be enforced through the dispute resolution clause and there is not always a satisfactory clause included, if any. This enforcement process is usually sufficient in domestic disputes but where there is an international element, it can be costly and time consuming and as a result, often discourages parties from using mediation.

Key provisions of the Convention

- *Article 1* – Sets out the scope of the Convention’s application;
- *Article 3* – Sets out the key obligations of the Parties;
- *Article 4* – Sets out the requirements for reliance on settlement agreements. The basic evidence which must be provided to the competent authority is the settlement agreement together with proof that it resulted from mediation (e.g. a mediator’s signature);
- *Article 5* – Sets out the grounds upon which a competent authority can refuse to grant relief. The grounds are purposefully limited in scope, and include party incapacity, validity and scope of agreement, the mediation process and broader policy concerns; and
- *Article 8* – A reservation provision which allows parties to declare that the Convention only applies to the extent that it is agreed.

Issues arising from the Convention

The Convention is still in its infancy and there are some issues which could arise from its application. This article will explore just a few of these key issues.

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The evidential requirement set out in Article 4 may undermine the established position that mediators cannot be asked to give evidence to a court, since they may be called upon to clarify their confirmation. This is likely to cause unease amongst mediators as it represents a departure from the standard procedure. In order to address this issue, practitioners should discuss this requirement before the mediator is appointed and also ensure that the mediator's confirmation is drafted as clearly as possible.

The ability of parties to effectively "contract out" of enforcement under Article 5 by so providing in their settlement agreement could limit the applicability of the Convention.

When exercising their obligations under the Convention, foreign courts will have to consider the mediated settlement agreement itself and not merely an application to enforce a judgement. Practitioners must therefore carefully consider how foreign courts would view the provisions of the agreement. In light of this, it may be necessary to include more detail than is usually required so as to ensure that there is no room for ambiguity when interpreting clauses.

Given the existence of the reservation provision in Article 8, practitioners drafting mediated settlement agreements should consider inserting an express statement confirming that the parties agree to the application of the Convention.

Conclusion

Whilst the success of the Convention will largely depend on the extent to which it is ratified by states, the UN Commission for International Trade Law is hopeful that it

will encourage the use of mediation to resolve international disputes as well as promoting cross-border trade more generally.

In formalising the international framework on mediation, it is hoped that it will also contribute to Sustainable Development Goal 16 ("SDG 16"). The SDG 16 aims to promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.

It is important to note that even though the UK has not signed the Convention, it will still affect the UK as international settlement agreements arising from UK mediation can be enforced in other jurisdictions under the Convention.

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