

Client Alert

The 'Singapore Convention': Enforcing International Settlement Agreements Arising from Mediation

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On 7 August 2019, the United Nations Convention on International Settlement Agreements Resulting from Mediation (the "**Singapore Convention**") was signed by 46 countries, including the USA and China.¹ The Singapore Convention will enable courts in acceding states to directly enforce international settlement agreements arising out of mediation, in a manner similar to that which the New York Convention provides for arbitration.² It will, therefore, potentially address one of the main concerns that has historically deterred parties to cross-border agreements from engaging in mediation to resolve their disputes.

Mediation in international disputes

While mediation is a well-utilized means of settling domestic disputes, it is less commonly used in the context of international dispute resolution. According to a 2014 survey conducted by the International Mediation Institute, this reluctance is partly due to a perception that, should enforcement proceedings arise from a settlement agreement between entities in two or more countries, the enforcement process will be costly, time-consuming and difficult to navigate.³ This is largely because the parties will first have to obtain a judgment or arbitral award in accordance with the terms of the dispute resolution clause in the settlement agreement, and then seek to enforce that judgment or award in the jurisdiction in which the paying party has assets.

The United Nations has sought to address those concerns by providing a clear-cut, harmonized legal framework through which acceding states may invoke and directly enforce settlement agreements arising from mediation in the event of non-compliance. The expectation is that this will promote both international trade and the use of mediation to resolve international trade disputes.⁴

¹ The full list can be accessed [here](#). It does not currently include the UK or any other EU countries.

² See the full text of the Singapore Convention [here](#).

³ How Users View the Proposal for a UN Convention on the Enforcement of Mediated Settlements (16 January 2017), available [here](#).

⁴ See comments from the UN Commission on International Trade Law [here](#).

Key Provisions of the Singapore Convention

1. *When does it apply?*

The Singapore Convention will apply to written agreements resulting from international commercial disputes that have been settled by mediation. In that regard:

- ‘Mediation’ has been broadly defined to capture any process to resolve a dispute amicably with the assistance of a third party.⁵
- The Singapore Convention will only apply 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.⁶
- The Singapore Convention will not apply to consumer transactions for personal, family or household purposes, or disputes relating to family, inheritance or employment law.⁷

However, the Singapore Convention does not apply to settlement agreements that have been incorporated into a court judgment or an arbitral award (which can then be enforced as, respectively, a court judgment or an arbitral award in the normal way).⁸ It is also notable that the Singapore Convention permits states to declare that it shall not apply to agreements to which the state is a party (including its governmental agencies)⁹ or that it shall only apply in that jurisdiction if the parties to the settlement agreement have agreed that it shall apply (i.e. an ‘opt-in’ requirement).¹⁰

2. *What does the Singapore Convention require acceding states to do?*

The central obligation under the Singapore Convention, at Article 3, is that acceding states “*shall enforce a settlement agreement in accordance with its rules of procedure and under the conditions laid down in the Convention*”. However, it also provides in Article 3 a ‘shield’, insofar as parties may rely on its terms to defend a claim on the basis that the dispute has already been resolved pursuant to a settlement agreement.

The courts are also required to “*act expeditiously*” when considering a request for relief under the Singapore Convention.

3. *How can parties seek relief under the Singapore Convention?*

In a similar manner to enforcing arbitral awards under the New York Convention, the process for enforcing a settlement agreement under the Singapore Convention is intended to be straightforward.

- The party seeking relief must supply the competent authority with the settlement agreement signed by both parties and provide evidence that the agreement results from mediation (Article 4).
- The competent authority shall only refuse to grant relief if that party can demonstrate that one of the grounds in Article 5 applies. Those grounds are deliberately limited in scope and broadly fall

⁵ Mediation is defined in Article 2 as “*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 or persons (“the mediator”) lacking the authority to impose a solution upon the parties to the dispute.*”

⁶ Article 1.

⁷ Article 2.

⁸ Article 3.

⁹ Article 8(1)(a).

¹⁰ Article 8(1)(b).

into issues regarding (i) the parties' capacity to enter into the settlement agreement, (ii) the validity or scope of the agreement, (iii) the mediation process, and (iv) broader policy concerns. They are as follows:

- A party to the settlement agreement was incapacitated (Article 5.1(a));
- The settlement agreement is null and void, inoperative or incapable of being performed under the law to which the parties have validly subjected it (Article 5.1(b)(i)) or is not binding or is not final or has subsequently been modified (Article 5.1(b)(ii) and (iii));
- The obligations in the settlement agreement have been performed or “*are not clear or comprehensible*” (Article 5.1(c)), or granting relief would be contrary to the terms in the settlement agreement (Article 5.1(d));
- There was a serious breach by the mediator of the standards applicable in the mediation without which the party would not have entered the settlement agreement (Article 5.1(e));
- There was a failure by the mediator to disclose circumstances that raise justifiable doubts as to the mediator's impartiality or independence and which had a material impact or undue influence such that the party would have not entered into the settlement agreement (Article 5.1(f));
- Granting relief would be contrary to the public policy of the enforcing state (Article 5.2(a); or
- The subject matter of the dispute is not capable of settlement by mediation under the law of the enforcing state (Article 5.2(b)).

The future for mediation in international disputes

The Singapore Convention will come into force six months after ratification by at least three acceding states, and only in relation to those acceding (or ratifying) states.¹¹ The key to its success shall, therefore, likely depend on how many states accede to and ratify it, and how the enforcement courts subsequently interpret and apply the Convention (particularly the grounds for refusing relief). Nevertheless, it is a welcome development that could, potentially, encourage more parties to resolve their disputes amicably through mediation rather than resorting to the courts or arbitration.

¹¹ Article 14 of the Singapore Convention. Acceding states may also have to implement the Convention through domestic legislation before parties can seek to rely on its terms.

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