THE SINGAPORE CONVENTION ON MEDIATION: A PRIMER

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What is the Aim of the Singapore Convention?

The Singapore Convention on Mediation, formally known as the United Nations Convention on International Settlement Agreements Resulting from Mediation, was adopted by the UN General Assembly in December 2018 with the aim of facilitating international trade and commerce by enabling disputing parties to easily enforce and invoke settlement agreements across borders. On 7 August 2019, the Singapore Convention will be open for signature in Singapore.

Similar to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) (the "New York Convention") the Singapore Convention provides a uniform and efficient framework for the enforcement of international settlement agreements resulting from mediation and for allowing parties to invoke such agreements. The framework ensures that a settlement reached by parties becomes binding and enforceable in accordance with a simplified and streamlined procedure.

The Singapore Convention should, in time, become an important plank of the rule of law that underpins the operation of international trade. Following confirmation by Papua New Guinea of its intention to ratify the New York Convention, 60 years after it became effective, the New York Convention now has 160 parties. Similar to the New York Convention and other Conventions comprising the international dispute resolution enforcement framework, the success of the Singapore Convention will be dependent on a critical mass of States electing to sign and ratify it. Hopefully, with the existing framework in place, it will reach that mass in less than half of a century.

Why Mediation?

Mediation has been gaining traction as an alternative form of dispute resolution, given its greater perceived cost and time efficiency as opposed to litigation and arbitration. That is, mediations are often concluded within a single day or over a few days, allowing parties to save on legal costs that would be incurred over a long-drawn litigation or arbitration. The possibility of a quick resolution is also valuable for parties whose businesses are extremely time-sensitive.

Mediation is also known for its flexibility. The mediator's role is not to adjudicate, but to facilitate discussions between disputing parties with the aim of arriving at a mutually acceptable solution. This offers parties the possibility of preserving their business relationships, and parties can agree on both legal and non-legal solutions that are forward-looking and tailored to their interests and needs.

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Previously, an often-cited reservation to the use of mediation was the lack of an efficient and harmonized framework for cross-border enforcement of settlement agreements resulting from mediation. The introduction of the Singapore Convention squarely addresses this issue and should allay the concerns of many who have been hesitant to mediate.

Key Features of the Singapore Convention

The Singapore Convention contributes to the development of a mature, rule-based global commercial system by facilitating international trade and promoting the use of mediation for the resolution of cross-border commercial disputes. The hallmark features of the Singapore Convention are as follows:

The Singapore Convention will apply to international commercial settlement agreements resulting from mediation:

- It will not apply to international settlement agreements that are enforceable as a court judgment or arbitral award; and
- It will not apply to settlement agreements concluded for personal, family or household purposes, or relating to family, inheritance or employment law.

The courts of a party to the Singapore Convention will be expected to handle the following applications:

- To enforce an international settlement agreement in accordance with its rules of procedure and under the conditions laid down in the Singapore Convention; and
- To allow a party to invoke the settlement agreement in accordance with its rules of procedure and under the conditions laid down in the Singapore Convention, in order to prove that the matter was already resolved by the settlement agreement.

The courts of a party to the Singapore Convention may refuse to grant relief on the grounds laid down in the Singapore Convention, itself, including:

- If a party to the settlement agreement was under incapacity;
- If the settlement agreement is not binding, null and void, inoperative or incapable of being performed under the law to which it is subject;
- If there was a serious breach by the conciliator of standards applicable to the conciliator, without which breach that party would not have entered into the settlement agreement; or
- If granting relief would be contrary to the public policy of the party to the Singapore Convention.

Signing Ceremony and Conference

The Singapore Ministry of Law and the United Nations Commission on International Trade Law will be co-hosting a Signing Ceremony and Conference on 7 August 2019 at the Shangri-Law Hotel in Singapore, where you can learn more about the Singapore Convention and how it will work. The conference will include the four following panels and conclude with a Gala dinner.

Panel 1: Multilateralism, International Collaboration and Rule of Law in an Evolving World
Lunch-time Panel: The Negotiation of the Convention on Mediation

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Panel 2: The Future of International Dispute Resolution: Challenges and Opportunities for Access to Justice
Panel 3 : The Rise of Mediation: Bridging Differences for Tomorrow

For more information on the Singapore Convention Signing Ceremony and Conference, please see www.singaporeconvention.org.

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