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Article Information

Authors: McKenzie Moore, James Poulos
Service: Commercial Disputes, Dispute Resolution & Litigation

A new era of 'Appropriate' Dispute Resolution (ADR)

The United Nations Convention on International Settlement Agreements Resulting from mediation (Singapore Convention) has been characterised by the Chief Justice of Singapore as a catalyst for viewing ADR as "appropriate dispute resolution".[1] This fills a void within the international legal system by simplifying the process of enforcing cross-border mediation settlements. The Singapore Convention operates under a dualist model and is a vehicle that fosters certainty and enables parties to utilise mediation in circumstances where the most desirable outcomes can be achieved.

What is the Singapore Convention?

The primary goals of the Singapore Convention are to facilitate international trade and to promote the use of mediation when parties are confronted with cross-border commercial disputes by allowing settlements between parties to be easily enforced in signatory countries. The Singapore Convention does not apply to settlement agreements concluded for personal, family or household purposes, approved or concluded in the course of proceedings or enforceable as judgments or arbitral awards. It opened for signature on 1 August 2019 and has 46 signatories to date, including the US and China. Australia has yet to sign. The Singapore Convention will enter into force six months after three member states have incorporated it into domestic legislation, which has not yet occurred.

How are international mediation settlements currently dealt with?

Previously, the enforcement of international mediation settlement agreements would see proceedings commence in one jurisdiction, but require the judgment to be enforced in the opposing party's jurisdiction. This creates time and cost delays. Other popular dispute resolution processes used include "med-arb" or "arb-med". For example, section 27D of the *Commercial Arbitration Act 2010* (NSW) maintains that an arbitrator who has acted as a mediator in mediation proceedings may conduct arbitration proceedings with the written consent of all the parties.[2] Although this aims to bolster efficiency, there are potential conflicts of interest that exist when third parties adopt this dual role. Additionally, a degree of ambiguity can arise surrounding the issue of written consent.

How the Convention works

In order to obtain relief under the Singapore Convention, parties relying on settlement agreements must supply the competent authority with the signed settlement agreement and evidence that the settlement resulted from mediation.[3] The competent authority may refuse relief if a party is under incapacity, the obligations have been performed or are unclear, the settlement is incapable of being performed, is non-binding or has been modified.[4] Importantly, the Singapore Convention maintains that relief will not be granted to parties if it would be contrary to the terms of their settlement agreement.[5] This provides parties with the opportunity to opt-out of the Singapore Convention prior to conducting mediation. Finally, signatories may declare their own specific reservations to the Singapore Convention and retain the autonomy to withdraw them at any time.[6]

Key Takeaway:

The Singapore Convention has a strong nexus with the New York Convention on Arbitration, which recognises and enforces foreign arbitral awards[7] and The Hague Convention on Choice of Court Agreements.[8] George Bermann, director of the Centre for International Commercial and Investment Arbitration at Columbia Law School, stated, "There's no reason why it shouldn't be as conducive to mediation as the New York Convention has been for arbitration". Ultimately,

the utility of the Singapore Convention is dependent upon the extent to which it is ratified and utilised by parties in signatory countries.

Australia's current reluctance to ratify the Singapore Convention means parties within Australia bear the risk of cross-border disputes being re-litigated once they are settled. For those parties which have signatory countries, this is an excellent tool in the ADR kit. However, when drafting dispute resolution clauses, explicit reference to the Singapore Convention is required and it should be clearly understood how any reservations a relevant country may have made under the Singapore Convention will impact the enforcement of mediation settlements.

If you would like further updates on the progress of the Singapore Convention or you require assistance with international dispute resolution processes, please do not hesitate to contact Piper Alderman.

[1] The Honourable the Chief Justice Sundaresh Menon, 'Shaping The Future of Dispute Resolution & Improving Access to Justice' (Paper presented at Global Pound Conference Series, Singapore, 17 March 2016) 25.

[2] *Commercial Arbitration Act 2010* (NSW) s 27D(4).

[3] Article 4.

[4] Article 5.

[5] Article 5(1)(d).

[6] Article 8.

[7] *Convention on the Recognition and Enforcement of Foreign Arbitral Awards,* opened for signature 10 June 1958, 330 UNTS 3 (entered into force 7 June 1959).

[8] *Convention on Choice of Court Agreements,* opened for signature 30 June 2005, 44 ILM 1294 (entered into force 1 October 2015).