



COMMENTARY

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Update on the Singapore Mediation Convention

IN SHORT

The Situation: On June 26, 2018, the United Nations ("UN") Commission on International Trade Law approved the final draft of the Singapore Mediation Convention ("Convention"), the significance of which was discussed in a [September 2018 publication](#).

The Result: The UN General Assembly has since adopted the Convention, which member states may then sign to indicate their intention to uphold it. Upon ratification, the Convention will make it easier for businesses to enforce mediated settlement agreements with their cross-border counterparts.

Looking Ahead: A signing ceremony for the Convention is expected in Singapore on August 1, 2019, and the Convention will come into force once it is ratified by at least three member states. It remains to be seen how many member states will sign the Convention. Singapore has already announced its intention to sign.

Recent Developments

On December 20, 2018, the UN General Assembly adopted the Convention, which will become binding on member states pending their acceptance and ratification. The Convention facilitates the enforcement of international settlement agreements resulting from mediation. The Convention allows the parties of a settlement agreement to apply directly to the courts in a state party to the Convention and requires the courts in that state to enforce the settlement agreement in accordance with the conditions laid down in the Convention.

According to the Singapore International Mediation Center, the Convention could be for mediation what the New York Convention currently is for arbitration. By facilitating the enforcement of mediated settlement agreements in cross-border disputes, the Convention promotes the use of mediation and obviates the need for the involvement of courts or arbitral tribunals. This provides greater certainty to the parties, particularly where the terms of settlement contemplate future performance and enforcement remains an ongoing concern, and may incentivize parties to consider mediation at an earlier stage in their dispute.



By facilitating the enforcement of mediated settlement agreements in cross-border disputes, the Convention promotes the use of mediation and obviates the need for the involvement of courts or arbitral tribunals.



Notably, the Convention defines "mediation" broadly as any process whereby "the parties attempt to reach amicable settlement of their dispute with the assistance of a third person or persons... lacking the authority to impose a solution upon the parties to the dispute." While certain types of disputes are specifically excluded from its scope of application (e.g. consumer transactions or domestic relations matters), there is no requirement that the parties refer to the process as "mediation" or the third party as a "mediator." As a result, settlement agreements arising from other alternative dispute resolution processes—such as conciliation, expert determination or even dispute resolution boards—are potentially covered by the

Convention.

For parties seeking to rely on the Convention, however, one challenge may be demonstrating to the satisfaction of an enforcing court that mediation has taken place within the meaning of the Convention and the settlement agreement arises from that process. While potential challenges are likely to be reduced where the parties have agreed to a process called "mediation" and have conducted such a process in accordance with the rules of a reputable mediation center, consideration may need to be given to confidentiality obligations imposed on the mediation or applicable under the background law and potential reservations under Article 8 of the Convention.

A signing ceremony for the Convention is expected in Singapore on August 1, 2019, and the Convention will come into force once it is ratified by at least three member states. Singapore has already announced its intention to sign the Convention and has invited other member states to sign the Convention.

TWO KEY TAKEAWAYS

1. The UN General Assembly has adopted the Convention and a signing ceremony for the Convention is expected in Singapore on August 1, 2019.
2. The Convention, if widely adopted by member states, will promote the use of mediation as a dispute resolution mechanism for cross-border transactions.



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