

The “Singapore Convention”: The way forward in international mediation?

Mediation is an established alternative dispute resolution mechanism, especially in the commercial sector. Compared with court or arbitration proceedings, mediation is often less formal, expensive and time-consuming. However, it currently suffers from a major disadvantage with regard to disputes with an international background: mediated settlements are not internationally binding.

In the future, however, settlements reached through mediation could be enforceable internationally just like arbitral awards, should the so-called Singapore Convention, which UNCITRAL has been preparing since 2014, come into force. In this alert we analyse the key aspects of the draft Convention and report on the current status of the project.

1 Background

Since 2014, a UNCITRAL working group has been looking for ways to enhance the enforceability of mediated settlements. 85 member states and 35 intergovernmental and non-governmental organisations participated in the project and the text of the Convention was recently finalised.

Inspired by the successful New York Convention of 1958, under which many arbitration awards are directly enforceable in a large number of countries across the world, the Convention would ensure the cross-border enforceability of international settlement agreements arising from mediation, through an international framework. Currently, mediated settlement agreements are not enforceable unless the mediation is part of a pending arbitration and they are converted into an arbitral award, or the settlement agreement is transferred into another form of enforceable title with both parties' consent. This lack of enforceability carries risks for both parties and mediators. A party wishing to enforce a mediated dispute settlement against a reluctant opposing party is forced to engage (again) in proceedings to obtain a court judgment in a foreign jurisdiction – an often lengthy, difficult and costly endeavour. Mediators, on the other hand, may refuse to serve as sole arbitrators simply to convert a settlement agreement into an arbitral award, since that service is often not covered by their professional insurance.

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2 Contents of the draft Convention

The Convention aims to end this enforceability deficit in order to increase the attractiveness of mediation for parties choosing a dispute resolution mechanism.

2.1 Scope

Under the Convention, in future, most agreements to resolve international commercial disputes resulting from a mediation and concluded in writing would be enforceable in the courts of any signatory state. Only settlement agreements relating to family, inheritance or employment law, and settlement agreements that have been approved by a court or concluded during court proceedings (and which are therefore enforceable as a judgment), would not be governed by the Convention.

2.2 Enforcement mechanisms

The Convention aims to grant mediated settlement agreements a status similar to arbitral awards, thereby increasing the recognition of mediation as a means of alternative dispute resolution. Each signatory to the Convention would enforce settlement agreements in accordance with its own rules of procedure and under the conditions laid down in the Convention. The draft Convention also provides that if a party commences court proceedings in respect of a dispute that has already been resolved by a settlement agreement or takes any other action inconsistent with the settlement agreement, the opposing party would be able to rely on the settlement agreement to prove that the matter had already been resolved.

2.3 Requirements for reliance on settlement agreements

A party relying on a settlement agreement under the Convention would have to provide various documents to the competent authority of the member state in order to prove validity of the settlement agreement. These include the settlement agreement signed by the parties and evidence that the settlement agreement had resulted from mediation. The competent authority may also request any necessary additional documentation to verify that the requirements of the Convention have been met.

2.4 Grounds for refusal

The competent authority may nevertheless refuse enforcement under the Convention. For instance, it may refuse to grant enforcement upon request if a party to the settlement was under some form of incapacity, the settlement agreement is technically ineffective, is not binding or not final, or if the obligations in the settlement agreement have been fulfilled or are not clear or comprehensible.

3 Next steps

UNCITRAL resolved to recommend the draft Convention for adoption by the United Nations at its 51st annual session on 26 June 2018. The UN General Assembly is expected to approve the draft Convention and recommend it for signature by its member states in the course of this year. It is intended that the finalised Convention will be signed at a ceremony in Singapore on 1 August 2019 and it will therefore be called the Singapore Convention on Mediation. To come into force, the Convention must be ratified by at least three member states.

4 Forecast

It is expected that the enforcement regime to be established by the Convention will increase confidence in mediation among international parties. The Convention will represent an important milestone in the development of international mediation and may encourage parties from different jurisdictions to choose this method of alternative dispute resolution more often. It is hoped that the Convention will not only be ratified by a sufficient number of member states soon, but that it will quickly become as widely accepted as the New York Convention, thereby paving the way for mediation to become another attractive and successful means of dispute resolution.

The text of the draft Convention is available [here](#).

Linklaters has published a review of the availability and process of mediation in 21 jurisdictions across the Americas, South Africa, Asia-Pacific and Europe, available [here](#).

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