

The Singapore Convention on International Settlement Agreements Resulting from Mediation 2018

1. **Introduction:** Adopted 20 December 2018 by General Assembly resolution 73/198, the *United Nations Convention on International Settlement Agreements Resulting from Mediation* furthers harmonisation of the legal framework for commercial mediation. The Convention recognises the benefit of mediation as opposed to litigation in maintaining relationships between parties and improving cost efficiency in the administration of justice. Importantly, it recognises that differences in the legal, social and economic systems of States make harmonisation essential (Preamble). The Convention opened for signatures on the 7th of August 2019. As at 27 August 2019, there were 46 signatories.¹ Australia is not yet a signatory. According to Art 14(1) of the Convention, the Convention enters into force six months after deposit of the third instrument of ratification. The Convention enters into force for States 6 months after the deposit of instrument for ratification (Article 14(2)).
2. **Scope:** The Singapore Convention applies to *mediated* agreements to resolve a *commercial* dispute. Such agreements must be in writing (Art 1) and must be international in nature. An agreement is international if at least two of the parties have their places of business in different States (Art 1(a)); or parties' places of business differ from the State in which a substantial part of obligations under the agreement is to be performed (Art 1(b)); or parties' places of business differ from the State to which the subject matter of the settlement agreement is mostly connected (Art 1(c)).

The Convention applies only to settlement agreements concluded after the entry into force of the Convention for a State Party (Article 9). The Convention does not apply to agreements concluded for personal, family or household purposes or relating to family, inheritance or employment law (Article 1(1)(2)) and agreements enforceable by a State court or recorded and enforceable as arbitral awards (Article 1(3); 1(3)(b)).
3. **Definition of mediation:** A mediation is defined 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'. (Article 2(3)). The enforcement of settlement agreements under the Convention is governed by rules of procedure applicable in the State party to the Convention subject to conditions laid down by the Convention (Article 3(1)).
4. **Relying on the Convention:** A party seeking to rely on convention must supply relevant documents to the competent authority of a State party to the Convention including signed settlement agreement and evidence that agreement resulted from a mediation. Such evidence includes a mediator's signature on the settlement agreement or other document indicating mediation took place or attestation by the institution administering mediation or any other evidence acceptable to the competent authority (Article 4(1)). A mediator's electronic signature is acceptable (Article 4(2)).
5. **Grounds for refusing grant or relief:** At the request of the party against whom the relief is sought, enforcement of a mediated settlement agreement may be refused by a competent authority (Art 5(1)). Grounds for refusal include incapacity of a party (Art 5(1)(a)); where

¹List of signatories can be found here:

https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXII-4&chapter=22&clang=en

agreement is null and void, inoperative or incapable of performance under the applicable law as adopted by the parties, or in the absence of an adopted law, the law deemed applicable by competent authority (Art 5(1)(b)(i)); where terms of the agreement indicate it is not binding or final or have been subsequently modified (Art 5(1)(b)(ii)(iii)); where agreement has been performed or is unclear or incomprehensible (Art 5(1)(c)); where granting relief would contradict terms of settlement agreement (Art 5(1)(d)); where a serious breach of applicable mediator standards has occurred, and the party would not have entered into the agreement but for that serious breach, OR:

- the mediator failed to disclose circumstances that raise justifiable doubts as to their impartiality or independence, and
- the failure to disclose had a material impact or undue influence on the party, and
- the party would not have entered into the agreement but for that failure (Art 5(1)(e)-(f)).

Relief may also be refused where the competent authority determines, *suo motu*, that granting relief would be contrary to public policy, or where the subject matter is not capable of being mediated under the laws of that State Party (Article 5(2)).

Where a matter which relates to settlement agreement is pending before another court or arbitral tribunal or other competent authority (Article 6), a competent authority may adjourn an application seeking relief.

6. **Benefits of the Convention:** Provisions may be taken advantage of through the Courts of a State only where that State is a signatory to the agreement. Generally, the Convention will provide business certainty, increase access to justice as mediated agreements become enforceable through the courts as opposed to being left to parties' goodwill and enhance the position of mediation as an internationally recognised alternative dispute resolution (ADR) process for commercial disputes.
7. **Conclusion:** As noted above, Australia is yet to become a signatory to the Convention. The implication of this is that parties to mediated settlement agreements which are commercial and international in nature cannot take advantage of the Convention before Australian courts. This in turn makes Australia less competitive as an international commercial dispute resolution hub, a position vehemently contested for by Singapore, Hong Kong, Dubai and China.