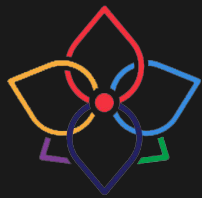


Overview of the Singapore Convention on Mediation



**SINGAPORE
CONVENTION**
ON MEDIATION

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Part 1

Mediation and its Benefits

Dispute Resolution

Litigation and Alternative Dispute Resolution (ADR)

1. Negotiation
2. Conciliation
3. Mediation
4. Adjudication
5. Arbitration

What is Mediation?

1. Mediation is a party-driven process for discussing and resolving disputes whereby the mediator's role is to facilitate discussions between disputing parties to arrive at a mutually acceptable solution.
2. The mediator lacks the authority to impose a solution upon the parties to the dispute.

Difference from Conciliation:

1. A mediator facilitates communication between parties and helps them attempt to resolve differences, but he is not actively working to offer potential solutions to the dispute at hand.
2. A conciliator also acts as an evaluator and intervener offering potential solutions.

Benefits of Mediation?

1. It creates a supportive and constructive environment.
2. It enables the parties to control the outcome of their dispute.
3. It promotes communication between the parties.
4. It uses time efficiently.
5. It is cost-effective.
6. It is a confidential process.
7. Settlement can be reached voluntarily.
8. Tension in the adversarial litigation system can be avoided.

Other Benefits of Mediation?

1. It offers flexibility to the parties.
2. It facilitates the administration of international transactions by commercial parties.
3. It promotes the preservation of relationships between the parties, reducing the instances where a dispute leads to the termination of a commercial relationship.
4. The process can help relieve pressure on the state court system producing savings in the administration of justice by States.

Part 2

Impact and Purpose of the Convention

About UNCITRAL

1. The United Nations Commission on International Trade Law (UNCITRAL) was established by the General Assembly in 1966 (Resolution 2205(XXI) of 17 December 1966).
2. The UNCITRAL is the core legal body of the United Nations system in the field of international trade law. A legal body with universal membership specializing in commercial law reform worldwide.
3. UNCITRAL's business is the modernization and harmonization of rules on international business.



United Nations
UNCITRAL

Background of the Convention

1. In July 2014, at its 47th session the UNCITRAL Commission agreed that the Working Group II (Dispute Settlement) (“WGII”) should consider the issue of enforcement of international settlement agreements resulting from conciliation proceedings.
2. In July 2015, WGII reached a compromise on various issues, upon which the Commission expressed support for WGII to finalize its work by preparing a draft convention on international settlement agreements resulting from mediation.
3. In July 2018, the Convention was finalized at the 51st UNCITRAL Commission session.
4. In December 2018, the United Nations General Assembly, by consensus, passed a resolution to adopt the United Nations Convention on International Settlement Agreements Resulting from Mediation, recommended that the Convention be known as the “Singapore Convention on Mediation”, and authorized the signing ceremony of the Convention to be held in Singapore on 7 August 2019.

What is the Singapore Convention on Mediation?

The Singapore Convention on Mediation is a multilateral treaty that offers a uniform and efficient framework for the enforcement and invocation of international settlement agreements resulting from mediation, concluded by parties to resolve a commercial dispute.

Purpose of Convention

1. The establishment of a framework for international settlement agreements resulting from mediation that is acceptable to States with different legal, social, and economic systems.
2. The ultimate goal of the Convention is to facilitate the development of ‘harmonious international economic relations between states’.

Impact of Convention

1. The Convention establishes a regime under which contracting states will be obliged (except in limited circumstances) to recognize settlement agreements that result from mediation in international commercial disputes, either to enforce the agreement or allow it to be invoked as a defense to a claim.
2. Businesses will benefit from mediation as an additional dispute resolution option to litigation and arbitration in settling cross-border disputes.
3. The Convention is likely to encourage the adoption of multitier dispute resolution agreements, including binding mediation as a step in the process.
4. Signing the Convention is a strong statement of a country's commitment to trade, commerce, and investment, and strengthens its position in the field of international trade law.

Difference from the New York Convention

1. Unlike most other multilateral enforcement regimes such as the New York Convention, the Singapore Convention is not limited to enforcement amongst member states.
2. Unlike court judgments and arbitral awards, settlement agreements under the new regime do not have any “nationality”.

Facts about the Convention

1. As of 21 July 2023, 56 states have signed the convention and 11 states have deposited their respective instruments of ratification or approval.
2. Six languages: Arabic, Chinese, English, French, Russian, and Spanish texts are equally authentic.
3. The States that have made a reservation under Article 8.1(a) are Belarus, Georgia, Kazakhstan, and Saudi Arabia. The reservation excludes the possibility of the application of the Convention to investor-state disputes or to commercial disputes involving the State and governmental agencies.
4. The last State that signs the Convention is the United Kingdom of Great Britain and Northern Ireland on 3 May 2023.
5. The last State that ratifies the Convention is Uruguay on 28 March 2023.

Part 3

Key Provisions of the Convention

Overview of the Convention

Preamble

Article 1. Scope of application

Article 2. Definitions

Article 3. General principles

Article 4. Requirements for reliance on settlement agreements

Article 5. Grounds for refusing to grant relief

Article 6. Parallel applications or claims

Article 7. Other laws or treaties

Article 8. Reservations

Article 9. Effect on settlement agreements

Article 10. Depositary

Article 11. Signature, ratification, acceptance, approval, accession

Article 12. Participation by regional economic integration organizations

Article 13. Non-unified legal systems

Article 14. Entry into force

Article 15. Amendment

Article 16. Denunciations

Key Provisions

There are three main points in the Singapore Convention:

- 1. Enforceability of settlement agreements.** Article 3.1 requires member states to enforce settlement agreements resulting from mediation in accordance with their own rules of procedure (i.e., in accordance with state enforcement mechanisms).
- 2. Recognition of settlement agreements.** Article 3.2 ensures that parties will be able to use the settlement agreement as a defense in local litigation to prevent parties from litigating the matter.
- 3. Reservations.** Article 8.1 allows member states to declare that they will apply the Convention only to the extent that the parties to the relevant settlement agreement have agreed that the Convention will apply (the default position under the Convention is that it applies automatically without the need for the parties to “opt-in” to it).

Part 4

Ongoing Critiques of the Convention

Do we Need the Singapore Convention on Mediation?

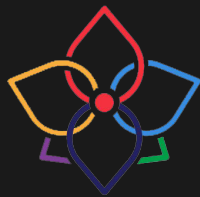
1. In practice, failure to honor settlement agreements reached through mediation is in fact relatively uncommon, at least compared to court judgments and arbitral awards.
2. It is very common for disputes that are not able to be settled on the day of a mediation to settle in the days or even weeks afterward, with or without the continued assistance of the mediator.
3. The fundamental principle of mediation confidentiality is underpinned by a well-accepted principle that the parties may not call a mediator to give evidence in relation to mediation.
4. It is difficult to establish what are the standards applicable to the mediator referred to in Article 5.1(e).

Q&A

Thank you!

For more information on the Singapore Convention visit
<https://www.singaporeconvention.org>

For more information on UNCITRAL visit
<https://uncitral.un.org/>



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