
The New Singapore Mediation Convention

By Steven M. Richman / Aug 26, 2019

On August 7, 2019, forty-six countries, including the United States, signed the United Nations Convention on International Settlement Agreements Resulting from Mediation, also known as the Singapore Mediation Convention. This is significant for clients involved in cross border disputes and provides a means of expeditious cross-border enforcement of such agreements. It means that a settlement may be enforced directly in the country where the breaching party is, rather than having to bring an action here and seek recognition in the foreign jurisdiction, or starting from scratch to get a judgment for breach of contract. It applies only to settlement agreements concluded after the date that the Convention enters into force for the relevant nations. While the United States, China, India, and South Korea have signed, the United Kingdom, European Union, and Australia have not yet signed.

The convention applies to a settlement agreement resulting from mediation of a commercial dispute and confirmed in writing, where at least two parties have their places of business in different countries or if both parties are in one country, the substantial part of the obligations is performed in a different country or a different country is more closely connected with the subject matter. It does not apply to consumer, family, inheritance or employment settlement agreements, nor to court-approved settlement agreements that are enforceable as a judgment in the country's courts, or those that are recorded and enforceable as arbitration awards. The writing may be an electronic communication. Mediation itself 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."

Each signatory nation must enforce a settlement agreement meeting the criteria of the convention, provided the settlement agreement is signed by the parties, resulted from mediation, is signed by the mediator who confirms the mediation was carried out, the institute administering it attests to it, or in the absence of any of these criteria, "other evidence acceptable to the competent authority." Relief may be denied if (1) one of the settling parties is shown to have operated under an incapacity, (2) the settlement agreement is null and void, inoperable or incapable of performance under the applicable law, is not binding or final under its terms, or has been modified, (3) the obligations have been performed or are not clear or comprehensible, (4) granting the relief would be contrary to the settlement agreement, (5) the mediator breached applicable standards, or (6) the mediator's impartiality was compromised due to a failure to disclose circumstances having a material impact or undue influence. In addition to these discretionary factors, a country where enforcement is sought may decline to grant relief on the basis of its public policy or the dispute could not have been settled by mediation under its laws.

Other provisions relate to parallel applications or claims, the availability of other laws or treaties, certain reservations, participation by regional economic integration organizations, and ability of a nation with a non-unified legal system to apply it to those territorial units.

While some concerns have been raised regarding mediator attestation, particularly where mediators may decline to sign the document, on its face the Convention affords sufficient flexibility in the requirements to enable enforcement by proof of a mediation process without that. Certainly, as with the New York Convention on arbitration awards, development of jurisprudence will address such issues; whether that becomes an impediment in the United States remains to be seen. There are also those who see these as counterintuitive to the mediation process, i.e., forcing parties to do something they did not agree to. However, once a settlement agreement is signed, that is what becomes enforceable in its own right; the Convention provides a streamlined mechanism for enforcement of the settlement agreement.

If and when more countries adopt the Convention and practice and jurisprudence develop, the Convention may prove its potential to facilitate cross border disputes. At a minimum, it places mediation at the forefront of awareness as a means of addressing such disputes.