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THE SINGAPORE CONVENTION ON MEDIATION

Mr George Lim, Senior Counsel
Chairman, Singapore International Mediation Centre

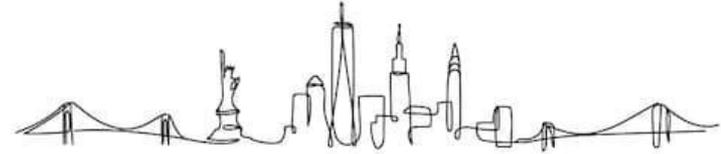
Ms Georgia Quick, Partner
Dispute Resolution, Ashurst / Vice President, ACICA

**IF YOU ARE A PARTY
TO A CONTRACT,
WOULD YOU NOT
WANT IT TO BE
ENFORCEABLE?**





Arbitral Award



New York Convention
(1958)



International Mediated
Settlement Agreement



?









Annex I

United Nations Convention on International Settlement Agreements Resulting from Mediation

Preamble

The Parties to this Convention,

Recognizing the value for international trade of mediation as a method for settling commercial disputes in which the parties in dispute request a third person or persons to assist them in their attempt to settle the dispute amicably,

Noting that mediation is increasingly used in international and domestic commercial practice as an alternative to litigation,

Considering that the use of mediation results in significant benefits, such as reducing the instances where a dispute leads to the termination of a commercial relationship, facilitating the administration of international transactions by commercial parties and producing savings in the administration of justice by States,

Convinced that the establishment of a framework for international settlement agreements resulting from mediation that is acceptable to States with different legal, social and economic systems would contribute to the development of harmonious international economic relations,

Have agreed as follows:

Article I. Scope of application

1. This Convention applies to an agreement resulting from mediation and concluded in writing by parties to resolve a commercial dispute ("settlement agreement") which, at the time of its conclusion, is international in that:
 - (a) At least two parties to the settlement agreement have their places of business in different States; or
 - (b) The State in which the parties to the settlement agreement have their places of business is different from either:
 - (i) The State in which a substantial part of the obligations under the settlement agreement is performed; or
 - (ii) The State with which the subject matter of the settlement agreement is most closely connected.
2. This Convention does not apply to settlement agreements:
 - (a) Concluded to resolve a dispute arising from transactions engaged in by one of the parties (a consumer) for personal, family or household purposes;
 - (b) Relating to family, inheritance or employment law.
3. This Convention does not apply to:
 - (a) Settlement agreements:
 - (i) That have been approved by a court or concluded in the course of proceedings before a court; and
 - (ii) That are enforceable as a judgment in the State of that court;
 - (b) Settlement agreements that have been recorded and are enforceable as an arbitral award.



United Nations Convention on International Settlement Agreements Resulting from Mediation

**IN JUNE 2018, THE UN
COMMISSION GAVE THE GO-
AHEAD FOR THE CONVENTION.**

**26 COUNTRIES SPOKE IN
SUPPORT OF SINGAPORE
HOSTING THE SIGNING
CEREMONY IN AUGUST 2019.**





**Convention adopted by the
UN General Assembly at
its 73rd session on
20 December 2018**



Scope of Application (Article 1)

- International
- Commercial
- Settlement Agreements resulting from mediation

Article 2(3) “Mediation” means 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.



Form Requirements (Art. 1 and Art. 4)

- Signed by the parties
- Evidence that the settlement agreement resulted from mediation
 - Mediator's signature on settlement agreement;
 - Document signed by the mediator indicating that the mediation was carried out;
 - Attestation by mediation institution; or
 - In the absence of the above, other acceptable evidence

Article 1(1): ... an agreement .. concluded in writing ...

Article 4(1): A party relying on a settlement agreement under this Convention shall supply to the competent authority of the Party to the Convention where relief is sought:

(a) The settlement agreement signed by the parties;

(b) Evidence that the settlement agreement resulted from mediation, such as:

(i) The mediator's signature on the settlement agreement;

(ii) A document signed by the mediator indicating that the mediation was carried out;

(iii) An attestation by the institution that administered the mediation; or

(iv) In the absence of (i), (ii) or (iii), any other evidence acceptable to the competent authority.



Grounds for refusal to grant relief (Art. 5)

- Incapacity
- Null and void
- Non-binding or not final
- Subsequently modified

Article 5(1): ... proof that:

(a) A party to the settlement agreement was under some incapacity;

(b) The settlement agreement sought to be relied upon:

(i) Is null and void, inoperative or incapable of being performed under the law to which the parties have validly subjected it or, failing any indication thereon, under the law deemed applicable by the competent authority of the Party to the Convention where relief is sought under article 4;

(ii) Is not binding, or is not final, according to its terms; or

(iii) Has been subsequently modified;



Grounds for refusal to grant relief (Art. 5)

- Obligations:
 - have been performed
 - are not clear or comprehensible
- Contrary to terms of settlement agreement
- Serious breach of mediator standards

Article 5(1): ...

(c) The obligations in the settlement agreement:

- (i) Have been performed; or
- (ii) Are not clear or comprehensible;

(d) Granting relief would be contrary to the terms of the settlement agreement;

(e) There was a serious breach by the mediator of standards applicable to the mediator or the mediation without which breach that party would not have entered into the settlement agreement; or



Grounds for refusal to grant relief (Art. 5)

- Failure of mediator to disclose circumstances that raise justifiable doubts as to mediator's impartiality or independence and this caused material impact or undue influence
- Contrary to public policy
- Not capable of settlement under the law

Article 5(1): ...

(f) There was a failure by the mediator to disclose to the parties circumstances that raise justifiable doubts as to the mediator's impartiality or independence and such failure to disclose had a material impact or undue influence on a party without which failure that party would not have entered into the settlement agreement.

Article 5(2) ...

(a) Granting relief would be contrary to the public policy of that Party; or

(b) The subject matter of the dispute is not capable of settlement by mediation under the law of that Party.

**NEXT GAME CHANGER
FOR INTERNATIONAL
DISPUTE RESOLUTION**





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Signing Ceremony on 7 August 2019 in

SINGAPORE

**PENDING THE
CONVENTION, WHAT DO
PARTIES WHO ARE
CONCERNED ABOUT
ENFORCEABILITY DO?**



Singapore International Mediation Centre

A brief introduction

About Us



Not-for-profit organisation

Specialists in cross-border disputes

Launched in Nov 2014 by the Chief Justice of Singapore Sundaresh Menon and Minister for Law, K Shanmugam SC.

SIAC & SIMC Arb-Med-Arb (AMA) Protocol

A one-stop process



新加坡国际调解中心 中国国际贸易促进委员会调解中心

备忘录签署仪式 MOU Signing Ceremony



MOU with CCPIT Mediation Center



China's Chief Justice Zhou Qiang (Centre)

Our International Reach

China: Belt & Road Initiative

Our International Reach



Asian Development Bank



Japan

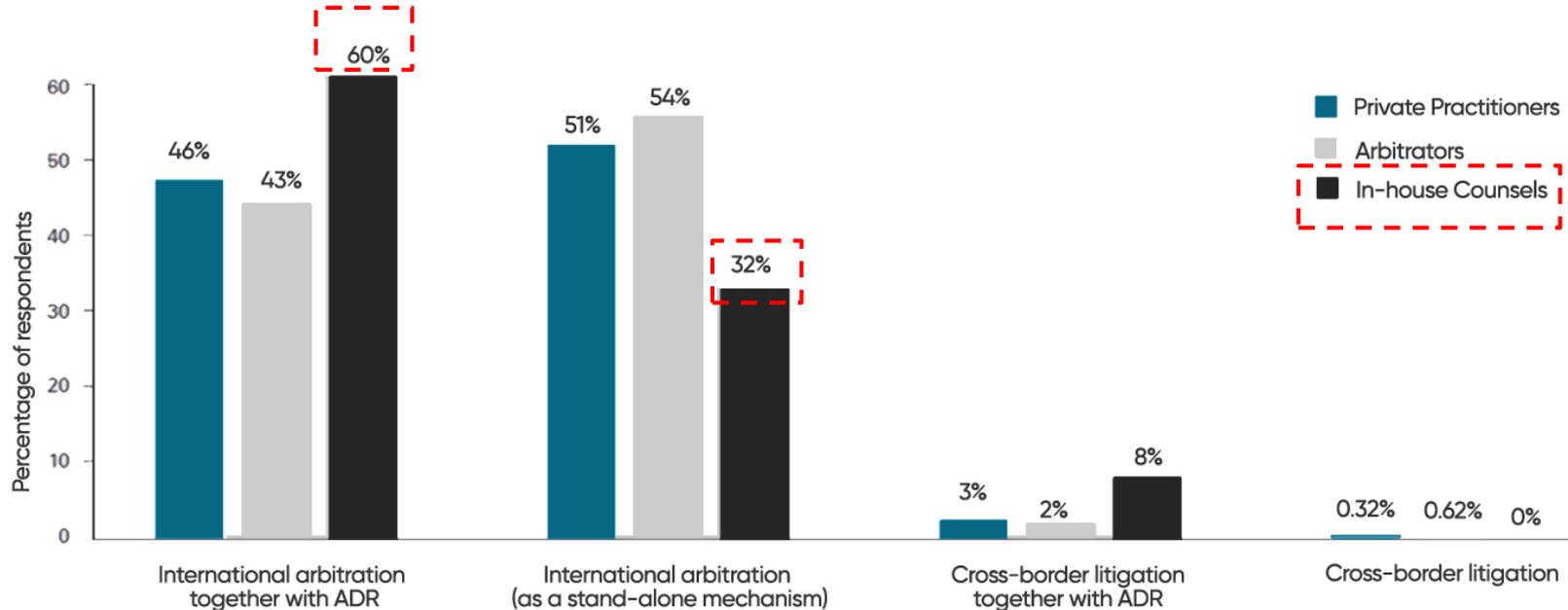


Korea



Cambodia

Preferred method of resolving cross-border disputes: Sub-groups based on primary role*



*Source: 2018 International Arbitration Survey: The Evolution of International Arbitration by White & Case & Queen Mary University of London

Our hope is for Australia to be a signatory to the Convention.

Georgia Quick, Partner

Dispute Resolution, Ashurst / Vice President, ACICA



ashurst



2014 Survey

A survey of in-house counsel, senior corporate managers, and others by the *International Mediation Institute* found that over 93 per cent of respondents would be more likely (either “much more likely” or “probably”) to mediate a dispute with a party from another country if that country had ratified a convention on the enforcement of mediated settlement agreements.



Views of various countries



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"Establishing an international framework for the enforcement of settlement agreements may go toward increasing the popularity and utility of a mediation and conciliation."



"The US believes that a convention would encourage parties to consider investing resources in conciliation and would be an attractive proposal."



"Singapore Convention will allow parties to rely on a mediated settlement agreement and enforce it in a cross-border context according to simplified procedures...the reservations will allow States to tailor its application in a flexible manner (including in the context of investor-State dispute settlement.)"



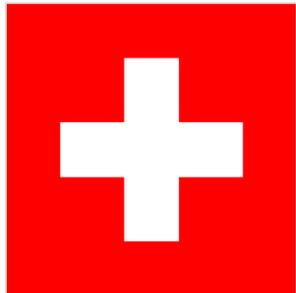
The Singapore Convention "would create a good legal environment for the operation of micro-, small-, and medium-sized enterprises."



“Singapore is generally supportive of mediation/conciliation processes, and the enhanced enforceability of international mediated/conciliated settlement agreements will be useful for mediation users. That said, it would be useful to hear more about what the proposers have in mind for such a multilateral convention...bearing in mind that the implementation details of such a convention will have to be carefully worked out, taking into account different approaches across jurisdictions.”



“Austria is very sceptical towards an attempt to find and regulate sufficient criteria for mediation/conciliation proceedings that could justify immediate enforceability of their results. We also doubt the necessity of such an endeavour as there already exist functioning structures for generating enforceability, in particular international arbitration which allows for converting an agreement into an arbitral award and thereby making it enforceable under the regime of the 1958 New York Convention.”



“Swiss law has no specific rules as to the enforcement of commercial settlement agreements resulting from international mediation or conciliation proceedings. Agreements of that kind are not treated in any different way than other commercial agreements between private parties.”

Areas for greater scrutiny

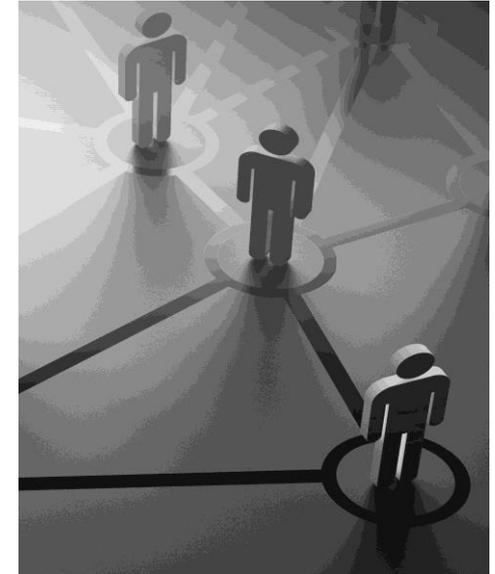
- Article 2(3) definition of Mediation
- Article 4(1) requirements for reliance
- Article 5(1) grounds for refusal
 - 5(1)(b)(ii) not binding according to its terms
 - 5(1)(c)(ii) not clear or comprehensible
 - 5(1)(e) serious breach of standards



Article 2(3)

Definitions

“Mediation” means 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 4(1)

Requirements for reliance on settlement agreements



A party relying on a settlement agreement under this Convention shall supply to the competent authority of the Party to the Convention where relief is sought:

(a) The settlement agreement signed by the parties;

(b) Evidence that the settlement agreement resulted from mediation, such as:

(i) The mediator's signature on the settlement agreement;

(ii) A document signed by the mediator indicating that the mediation was carried out;

(iii) An attestation by the institution that administered the mediation; or

(iv) In the absence of (i), (ii) or (iii), any other evidence acceptable to the competent authority.

Article 5(1)

Grounds for refusal

The **competent authority of the Party to the Convention where relief is sought** under article 4 may refuse to grant relief **at the request of the party against whom the relief is sought** only if that party furnishes to the competent authority proof that...



Article 5(1)(b)(ii)

Grounds for refusal



The **settlement agreement** sought to be relied upon:

...

Is **not binding**, or is **not final**, according to its terms.

Article 5(1)(c)(ii)

Grounds for refusal



The **obligations** in the settlement agreement:

...

Are **not clear or comprehensible**.

Article 5(1)(e)

Grounds for refusal



There was a **serious breach** by the mediator of **standards** applicable to the mediator or the mediation without which breach that party would not have entered into the settlement agreement.

Practical Tips

Education/training on the practical implications of the Convention, e.g. by mediation institutions.

Mediator accreditation to be encouraged so that mediators practise under standards or rules of conduct.
- Art 5(1)(e)

Detailed terms of reference setting out expectations for mediator/mediation.
- Art 5(1)(e)

Template settlement agreement developed to ensure quality.
- Art 5(1)(b)(ii)
- Art 5(1)(c)(ii)

Terms of the settlement agreement should be final and stated clearly, precisely & comprehensively.
- Art 5(1)(b)(ii)
- Art 5(1)(c)(ii)

THANK YOU!