CLIENT ALERT

A New Dawn in International Enforcement of Mediation Agreements: The Singapore Convention

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On August 7, 2019 in Singapore, forty six states signed up to the United Nations Convention on International Settlement Agreements Resulting from Mediation (the Singapore Convention).

The purpose of the Singapore Convention is to provide a general framework for the streamlined enforcement of mediated settlements of disputes between international parties. By comparison, the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) has been in operation since 1958 and has by now been ratified by over 200 countries. The fact that the New York Convention has allowed for the enforcement of arbitral awards in countries across the world with minimal interference and challenge procedures in local courts for the last 60 years is often noted as an important reason for the popularity of arbitration as an international dispute resolution mechanism. This is particularly so given the comparison with court judgments, which are often more challenging to have recognized by foreign courts.

What does mediation mean in this context? The Singapore Convention seeks to capture a wide net by defining mediation 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*

An agreement in writing between two international parties, and which is also signed by the mediator, qualifies for enforcement in the courts of a ratifying member state of the Singapore Convention. Grounds for objection to enforcement are provided in article 5 of the Convention, which are very similar to those of the New York Convention.

The Singapore Convention could encourage sequential dispute resolution agreements including binding mediation as a first step, with the parties only able to proceed to arbitration or litigation should the mediation fail. Without the Convention, a settlement agreement made in isolation from formal dispute resolution would most likely be treated simply as a contract, which would require dispute resolution mechanisms of its own and need to be sued upon if a party breached its obligations. In this scenario of direct enforcement under the Convention, the outcome of an international mediation becomes immediately more certain in disputes involving parties from signatory states and the avoidance of new court proceedings to enforce is likely to result in significant costs savings for the parties.

Although two large players on the world stage, the United States and China, have signed the Convention, at this time no European state has joined. This may be indicative of the maturity of mediation in those jurisdictions, often directly tied to litigation and arbitration procedures. Indeed, mediation is often expressly encouraged by the courts after litigation has commenced. And it is the case that a settlement made when formal proceedings are already underway may be made enforceable within those proceedings. For example, in the English court a settlement can conclude litigation by way of a *Tomlin* order, where the settlement agreement terms are made an agreed order of the court. Similarly, arbitrations seated in England which are settled may have their terms recorded as an agreed award (section 51 Arbitration Act 1996). That award could then

enjoy the enforcement benefits of the New York Convention. However, both of these do, of course, require that the parties commit to formal dispute resolution before mediating, which can create hostility and undermine the very goals of a mediation.

The inception of the Singapore Convention is a very helpful new framework to the enforcement of mediation agreements. However, it remains to be seen whether the U.K. and the rest of Europe sign up to it and expand its scope beyond the current 46 signatories.

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