

# Article

## The Singapore Convention

Laurence Katz\*

On 20 December 2018, the United Nations General Assembly adopted the United Nations Convention on International Settlement Agreements Resulting from Mediation ('the Singapore Convention' or 'the Convention'). The Singapore Convention opened for signature on 1 August 2019 and will enter into force six months after the deposit of the third instrument of ratification, acceptance, approval or accession. The Convention is not yet in force and, at 31 January 2020, although it had been signed by 51 States,<sup>1</sup> no State had ratified, accepted, approved or acceded to the Convention. Singapore itself is expected to be among the first countries to ratify the Convention and The Singapore Convention on Mediation Bill had its first reading in the Singapore Parliament on 6 January 2020.

The Singapore Convention will apply to written settlement agreements resulting from mediation, to resolve commercial disputes which (at the time of conclusion of the settlement agreement) are international in that (a) at least 2 parties to the settlement agreement have their places of business in different States; or (b) the State of the parties' places of business is different from either (i) the State in which a substantial part of the obligations under the settlement agreement are to be performed; or (ii) the State with which the subject matter of the settlement agreement is most closely connected (Article 1(1)).

The Singapore Convention specifically excludes from its scope settlement agreements:

- where the dispute arises from a transaction entered into by a consumer for personal, family or household purposes;
- relating to family, inheritance or employment law;

- that have been approved by a court or concluded in the course of court proceedings and in either case are enforceable as a judgment in the State of that court;
- that have been recorded and are enforceable as an arbitral award. (Article 1(2)(3))

For the purpose of the Singapore Convention, '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 Singapore Convention provides that the Parties to it shall enforce a settlement agreement in accordance with their own rules of procedure and under the conditions laid down in the Singapore Convention itself. Where a dispute rises about a matter which a party claims has already been resolved by a settlement agreement, the Singapore Convention also requires the Parties to it to allow a party to invoke a settlement agreement in order to prove that the matter has already been resolved (Article 3).

In order for a party to rely on a settlement agreement under the Singapore Convention, it is required to supply to the competent authority of the Party to the Convention where relief is sought:

- the signed settlement agreement;
- 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 a mediation took place; (iii) an attestation by the institution which

\* Partner at gunnercooke llp in London, United Kingdom.

1. [https://uncitral.un.org/en/texts/mediation/conventions/international\\_settlement\\_agreements/status](https://uncitral.un.org/en/texts/mediation/conventions/international_settlement_agreements/status).

administered the mediation; (iv) or in the absence of any of these, other evidence acceptable to the competent authority (Article 4(1)).

In circumstances where the settlement agreement would otherwise be within the scope of the Singapore Convention, parties to an international commercial dispute will want to ensure that a mediation remain open in the event that a settlement agreement is not entered into on the day/last day of a mediation so that evidence can be provided that a settlement agreement ‘resulted from mediation.’ Relief may be refused at the request of the party against whom the relief is sought only if it provides to the competent authority of the Party to the Singapore Convention where relief is sought proof that:

- it was under some incapacity;
- the settlement agreement sought to be relied upon:
  - is null and void, inoperative or incapable of being performed under its applicable law;
  - is not binding or final;
  - has subsequently been modified;
- the obligations in the settlement agreement have been performed or are unclear or are incomprehensible;
- granting relief would be contrary to the terms of the settlement agreement;
- the mediator seriously breached standards applicable to the mediator or the mediation without which breach that party would not have entered into the settlement agreement; or
- the mediator failed to disclose to the parties circumstances that raise justifiable doubts as to the mediator’s impartiality or independence and that failure had a material impact on or unduly influenced a party and without that failure that party would not have entered into the settlement agreement (Article 5(1)).

The competent authority of the Party to the Singapore Convention where relief is sought may also refuse relief if granting relief would be contrary to the public policy of that Party; or the subject matter of the dispute is not capable of settlement by mediation under the law of that Party (Article 5(2)). The Singapore Convention provides for a Party to it to declare that:

- it shall not apply the Convention to settlement agreements to which it is a party or to which a governmental agency or person acting on behalf of a governmental agency is a party (to the extent specified in the declaration);
- it shall apply the Convention only to the extent that the parties to the settlement agreement agree to the application of the Convention (Article 8 - Reservations).

To date, two Parties to the Convention have made declarations limiting the application of the Convention.

The Singapore Convention presents an opportunity for written settlement agreements of international commercial disputes reached as a result of mediation to be enforced by the competent authorities of Parties to the

Convention in accordance with the procedure set out in the Convention. This is subject to the limitations on scope set out in Article 1 of the Convention, to reservations of the types set out in the Convention and, importantly, on the number of States which ultimately acceded to the Convention. It remains to be seen whether, in an era of increasing globalization, take up of the Convention proceeds at a faster pace than, for example, that of the New York Convention on the Recognition of Foreign Arbitral Awards, 1958<sup>2</sup> to which there were 80 Parties by the end of the 1980s, just over 120 by the end of the 1990s and 161 by the end of the last decade.

2. [https://uncitral.un.org/en/texts/arbitration/conventions/foreign\\_arbitral\\_awards/status2](https://uncitral.un.org/en/texts/arbitration/conventions/foreign_arbitral_awards/status2).