



International Mediation Institute

PROFESSIONAL MEDIATION WORLDWIDE

Promoting Consensus and Access to Justice

www.IMImediation.org

United Nations Convention on International Settlement Agreements Resulting from Mediation

International Mediation Institute Briefing Paper

This paper sets out the aims of the United Nations (“UN”) Convention on International Settlement Agreements Resulting from Mediation (“the Convention”); how it will benefit businesses; what countries stand to gain from signing the Convention; as well as what signing the Convention may entail.

The Convention

1 Mediation has been growing in popularity as a means to resolve cross-border commercial disputes. Mediation is an effective mode of alternative dispute resolution that involves parties requesting a third person(s), the mediator(s), to assist them in reaching an amicable settlement of their disputes. It can be used for almost all types of disputes, regardless of size of claim and geographical reach, and is an alternative to litigation in the courts or arbitration before a tribunal, which are the other main modes of resolving cross-border disputes. Mediation is flexible enough also to allow it to be attempted in parallel to these formal processes.

2 A successful mediation results in a settlement agreement. Currently, however, a party may face difficulties in ensuring that the other party complies with the terms of the settlement agreement, which is only binding contractually and therefore not directly enforceable in the courts. This has posed an obstacle to the international growth of mediation as was recognised in surveys of lawyers and users conducted by the recent IMI Global Pound conferences. Thus far, there has been no international mechanism for the efficient recognition and enforcement of such settlement agreements for international commercial parties. This contrasts with the historic position of international arbitration

awards which have benefited from a UN convention on cross-border recognition and enforcement, the New York Convention.

3 The Convention will be the first multilateral agreement to facilitate the recognition and enforcement of mediated settlement agreements across borders. It is the result of work undertaken by a Working Group of the United Nations Commission on International Trade Law (“UNCITRAL”)¹, and is expected to be adopted by the 73rd United Nations General Assembly in December 2018. The Convention will be open for signature in Singapore in August 2019 and is expected to be designated as the Singapore Convention.

Benefits of Mediation

4 By addressing an oft-cited weakness of mediation, the Convention will promote the use and acceptability of mediation as an option for businesses to resolve their disputes. Where there is trade and commerce, it is inevitable that there will be disputes. The advantages for businesses which choose to use mediation to resolve these disputes include:

- a. **Cost and time savings.** Mediations can be organised within weeks, and concluded in a day or two, and therefore incur less costs than court proceedings or arbitrations. Around 70% of disputes mediated globally are settled within one day.
- b. **Control over outcome.** Parties are responsible for, and jointly determine the terms of the settlement, with the mediator facilitating the resolution. This gives parties ownership over the outcome, and allows more creative ways of resolving the dispute. This is unlike litigation or arbitration, where the outcome is decided by the judge(s) or arbitrator(s), for the parties.
- c. **Preservation of relationship.** Mediation is non-confrontational and facilitated by the mediator, whereas litigation and arbitration are more adversarial forms of dispute resolution. Mediation may be more suitable where parties wish to preserve and avoid affecting long-term commercial relationships.
- d. **Confidentiality.** Mediation is a confidential process where what was discussed or agreed in private would not be disclosed to a third party without the consent of the Parties. Even if the mediation does not result in an agreement, the parties can still

¹ The United Nations Commission on International Trade Law is the core body of the United Nations working on the harmonisation and modernisation of international trade law.

proceed to arbitration or litigation, and what went on at the mediation remains confidential and will not be disclosed or used at the arbitration or court hearing.

Benefits of Signing the Convention

5 The positive results of signing the Convention are expected to reinforce the efforts of governments to grow the economy in order to bring benefits to its citizens. For businesses, quick and cheaper forms of resolving disputes mean more profits. Ultimately, the consumer will benefit.

6 First, signing the Convention will add to the signatory's attractiveness as a place for doing business, and contribute to the economy.

- a. Businesses and investors will have greater assurance that they can use mediation to resolve any disputes that arise, with the benefit of cross-border recognition and enforceability.
 - i. This is especially important as the number of cross-border commercial transactions that entities are involved in is set to increase, in line with: the growing contribution of investment to GDP; efforts to grow foreign and private investments in key sectors such as infrastructure, tourism, financial services and manufacturing; and the modernisation of investment laws and regulations to bring them in line with international standards.
 - ii. The ability to resolve disputes reliably and effectively is a key consideration for businesses and investors when they enter into commercial relationships across borders. A survey found that the majority of potential corporate disputants would be "much more likely" to mediate a dispute with a party from another State that had ratified a Convention providing for the cross-border enforcement of mediated settlement agreements.² This would provide them with greater certainty when conducting business with parties from that State.
- b. For countries which are in the process of building up the physical infrastructure to support their economic growth, mediation can prove particularly useful, allowing

² International Mediation Institute, "IMI survey results overview: How users view the proposal for a UN Convention on the Enforcement of Mediated Settlement Agreements" (16 January 2017). The survey was conducted in October and November 2014.

disputes to be resolved in a timely and cost-efficient manner without jeopardising the entire project, given that infrastructure projects tend to be complex, long-term, and high-value ones.

- c. The benefits to businesses and investors will grow over time, as the number of signatories to the Convention increases. This is akin to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention), which today has 159 contracting parties³.

7 Second, being among the first signatories of the Convention will cement a signatory's status. Signatories will be among the first to offer commercial parties the ability to mediate with the advantage of cross-border enforceability.

8 Third, being among the first signatories of a ground-breaking Convention on international trade law would strengthen the signatories' stature in the international community. Signatories can position themselves as active leaders in the international community (particularly in the area of international trade law) by associating themselves with the Convention.

Signing the Convention

9 It may be necessary to create a legislative framework to implement the obligations under the Convention. This may entail passing an Act and amending the procedural rules of the courts to give effect to the Convention. Singapore will be happy to assist in training and technical assistance.

10 The key features of the Convention are set out below, with references to the articles of the latest text (as at 25 June 2018), which may be found at [Annex A](#).

- a. Article 1, read with the definitions in Article 2, sets out the scope of the Convention, namely that it will apply to international commercial settlement agreements resulting from mediation.
- b. Article 3 and 4 set out the principles of application of the Convention, i.e. that each Party will be expected to recognise and enforce a settlement agreement which falls under the scope of the Convention, in accordance with its own rules of procedure, and under the conditions laid down in the Convention. To implement these

³ As at April 2018.

obligations, a court will have to be appointed as the competent authority to handle applications under the Convention. The rules of the court will need to provide for this.

- c. Article 5 sets out the grounds for the competent authority of a Party to refuse to recognise or enforce a settlement agreement, e.g. if granting relief would be contrary to public policy, or where an agreement lacks sufficient clarity, or where there has been a serious breach of mediator standards without which a party would not have entered the settlement agreement.
- d. Article 8 allows a Party to declare that it will not apply the Convention to settlement agreements to which it, any governmental agencies or any person acting on behalf of a government agency, is a party, to the extent specified in the declaration. A Party can also declare that it shall apply the Convention only to the extent that the parties to the settlement agreement have agreed to the application of the Convention. The reservations can be made at any time, including after the time of signature. The reservations can also be withdrawn at any time.
- e. Article 11 states that the Convention is open to all States for signature in Singapore on 7 August 2019 and thereafter at the UN Headquarters.
- f. Article 14 states that the Convention will enter into force six months after ratification by three States.

11 After signing the Convention, a signatory must deposit its instrument of ratification with the Secretary-General of the United Nations. The Convention shall enter into force for the signatory six months after the date of the deposit of its instrument of ratification.

Conclusion

Countries who sign up to the Convention will be well positioned to be a first mover to take advantage of the potential benefits the Convention can bring to their economies and business. They will also help to promote further a methodology, mediation, which has proved to be an excellent additional practice for supporting effective cross-border and domestic business relationships.