Singapore Convention on Mediation

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The forthcoming Singapore Convention on Mediation will be the first UN Treaty named after Singapore.

At the 51st Session of the United Nations (UN) Commission on International Trade Law (UNCITRAL) on 26 June 2018, the final drafts of the Convention on the Enforcement of International Settlement Agreements and corresponding Model Law were approved. A resolution to name the Convention the "Singapore Mediation Convention" was also approved. This concludes three years of vigorous debate with participation by 85 member states and 35 international governmental and non-governmental organisations.

Once finalised and adopted by UNCITRAL, the next step is for the UN General Assembly to adopt the Convention and Model Law before member states may sign on to the Singapore Convention on Mediation. The Convention will come into force once it is ratified by at least three member states. A signing ceremony for the Singapore Convention on Mediation is expected in Singapore in 2019.

Previously on this Blog, A Convention on the enforcement of iMSAs … AND a new Model Law , it was explained how UNCITRAL Working Group II (WGII) prepared the draft instruments and supported Singapore's bid to host a signing ceremony for the Convention.

Main Features of the Singapore Convention and Model Law

Terminology
UNCITRAL developed the Model Law on International Commercial Conciliation (2002 Model Law) in 2002. The new Model Law seeks to revise this, primarily by replacing the term "conciliation" with "mediation". WGII recognized that the terms 'mediation' and 'mediator' were more widely used and changing the terminology would make it easier to promote and enhance the visibility of the Convention and Model Law.

Scope
The Convention is significant as it facilitates, for the first time, the enforcement of international commercial settlement agreements resulting from mediation. The Convention applies to "international agreements resulting from mediation" and concluded "in writing" by parties to resolve a "commercial dispute". The Convention excludes settlement agreements which (a) have been approved by a court or have been concluded in the course of court proceedings; (b) are enforceable as a judgment in the state of that court or (c) that have been recorded and are enforceable as an arbitral award. The rationale of the carve out is that there are other widely accepted international instruments such as the New York Convention and the Hague Convention on the Choice of Court Agreements that specifically govern those types of settlement agreements. The Singapore Convention will focus on circumstances where these other instruments are not applicable.

Mode of Enforcement
The Draft Convention provides flexibility and autonomy to the State Parties in not prescribing a specific mode of enforcement. Instead it lists conditions to be fulfilled in order for a State to enforce a settlement agreement under the Convention, i.e.:
– "in accordance with its rules of procedure, and
– under the conditions laid down in this Convention, in order to prove that the matter has been already resolved" (for applicable conditions, see Articles 2(1) and 4).

Enforcement application
According to Article 4, a party relying on a settlement agreement shall supply to the competent authority of the State where relief is sought, the following:
(a) the signed settlement agreement; and
(b) evidence that the settlement resulted from mediation

Examples of evidence that the settlement resulted from mediation might include the mediator's signature on the settlement agreement, document signed by the mediator confirming the mediation was carried out, an attestation by the institution administering the mediation or any other evidence acceptable to the competent authority. However, the 'catch-all' provision leaves the competent authority of the State Party the autonomy to decide what evidence is acceptable.

Exceptions to enforcement/Refusing relief
States may refuse relief only if one of five grounds in Article 5 is proved. The five grounds Article 5(1) include:
• Incapacity of a party to the settlement
• The settlement agreement is null and void, inoperative or incapable of being performed under the applicable law
• The settlement agreement
o Is not binding, or is not final, according to its terms
o Has been subsequently modified
o The obligations in the settlement agreement
o Have been performed or
o Are not clear or comprehensible
o Granting relief would be contrary to the terms of the settlement agreement
• There was a serious breach by the mediator of mediator standards
• 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

The penultimate and last grounds, relating to mediator conduct, align with Articles 5(4), 5(5) and 6(3) of the 2002 Model Law on International Commercial Conciliation.

In addition, pursuant to Article 5(2), relief may be refused where it is "contrary to the public policy" of the State in which enforcement is sought or the "subject matter of the dispute is not capable of settlement by mediation under the law of that State".

Unlike the New York Convention (which does not specifically address reservations), the Singapore Convention expressly permits a number of reservations including in relation to whether or not the Convention would apply to the government of signatory state (Article 8).