This is a post on the blog of the Singapore International Dispute Resolution Academy, discussing an implied ground for refusal to enforce IMAs under the Singapore Convention on Mediation: The Effect of Article 6.

An Implied Ground For Refusal To Enforce IMAs Under The Singapore Convention On Mediation: The Effect Of Article 6

February 17, 2019

Nadja Alexander (Editor)

The grounds for refusal may be grouped into four main categories:

1. Contract-like defences (Article 5(1) (a)—(d))
2. Mediator misconduct defences (Article 5(1) (e)—(f))
3. Subject matter not capable of settlement by mediation (Article 5(2))
4. Public policy (Article 9(2) (a))

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Now, where a party seeks to challenge the enforceability of an IMA in one jurisdiction (e.g., Germany), the courts of the other signatory States (e.g., Australia) may, according to Article 6, adjourn enforcement proceedings before it. If the court rules that the IMA is unenforceable, the IMA will be ‘declared unenforceable’.

We could look to Article 6 of the Singapore Convention. Article 6(1) of the Singapore Convention provides that if an application has been made to the court of a party to the Convention for an order that the IMA be refused enforcement on public policy grounds or because its subject matter may not be susceptible to mediation, the court may adjourn enforcement proceedings before it. If the court rules that the IMA is unenforceable, the IMA will be ‘declared unenforceable’.

It should be emphasised that the proposed implied defence would not apply to IMAs refused enforcement on public policy grounds or because its subject matter may not be susceptible to mediation. This is because the legal test administered to adjudicate whether these grounds for refusal are available are likely to be peculiar to the jurisdiction in which the IMA was made.

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