

Singapore Convention Series - Mediation In The Middle East: Before And After The Singapore Convention

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The United Nations Convention on International Settlement Agreements Resulting from Mediation, known as the Singapore Convention on Mediation (the "Singapore Convention"), was opened for signature on 7 August 2019. The Singapore Convention, hailed as the "missing piece" in the international dispute resolution enforcement framework, establishes a framework for the cross-border recognition and enforcement of settlement agreements (Article 3 of the Singapore Convention) and already boasts 46 signatories. Of these 46 nations, five belong to the Middle East. At first sight, and when compared to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958) (the "New York Convention") in absolute numbers of Middle Eastern signatories, it would appear that the Singapore Convention may not have been as warmly received as the New York Convention (with a total of 13 Middle Eastern signatories). However, on a closer look, and when compared on the basis of the number of Middle Eastern signatories at the time of its launch (only Jordan from the Middle East signed the New York Convention on 10 June, 1958), the prospects of the Singapore Convention in the region instantly seem brighter.

In this article, we aim to provide a vignette of mediation practice across the Middle East and highlight the prospects of its continued development in the region in light of the Singapore Convention.

Mediation in the Middle East: In Retrospect

As noted in [this](#) piece, mediation ('al-Wasata') has historically been an integral element of the traditional structure of dispute resolution in the Middle East. While it has been popular as an informal means of settling commercial disputes across the region, recently, there have been continuous developments in commercial mediation as well.

For example, in the United Arab Emirates ("UAE"), agreements resulting from mediation have been enforceable through certain avenues for some time now. Federal Law No 26 of 1999 Concerning the Establishment of Conciliation and Arbitration Committees at Federal Courts established conciliation and reconciliation committees at the Federal Courts for facilitating the settlement of civil, commercial and labour disputes. Any settlement reached through the committees is embodied in a court document and treated as a writ of execution. Similarly, the Centre for Amicable Settlement of Disputes in Dubai was established pursuant to Dubai Law No. 16 of 2009 Establishing a Centre for Amicable Settlement of Disputes. The Centre is associated with the Dubai courts and is tasked with attempting to mediate disputes before they are referred to the courts. Any settlement agreement arrived at is legally enforceable and is equivalent to an executive instrument which may be directly enforced through the Execution Courts.

Jordan passed the Mediation in Resolving Civil Dispute Act in 2006. This paved the way for a standalone regime for court-based mediation; mediations were subject to time constraints (they had to be completed within three months) and the settlements arising out of them were final. Private mediations were also recognised however they were not privy to the enforcement mechanisms that are available to court-based mediations.

Similarly, in Saudi Arabia, the Saudi Centre for Commercial Arbitration (SCCA) which was set up in 2016 provides both arbitration and mediation services. With regard to mediation, the Centre has developed rules closely modelled on the ICDR-AAA Rules and also provided a code of ethics for the mediators. In December last year, the Ministry of Justice also organised an advanced training program for qualifying court mediators on best practices to settle disputes following international standards.

In Qatar, the Qatar International Center for Conciliation and Arbitration (QICCA) was established in 2006 and adopted a set of Conciliation Rules in May 2012 (the QICCA Conciliation Rules), which was modelled on the UNCITRAL Conciliation Rules. The Qatar International Court and Dispute Resolution Centre (QICDRC) has also been providing mediation services in partnership with the Centre for Effective Dispute Resolution (CEDR) since 2010.

As it stands currently, and within the Arabic States, the Singapore Convention has been signed by Jordan, Qatar and Saudi Arabia. This leaves behind established centres of ADR in the region like UAE as well as growing centres such as Egypt, Bahrain, Kuwait, Lebanon and Oman. This is not to say however that significant changes are not already underway in these countries.

In Bahrain, the Bahrain Chamber for Dispute Resolution (BCDR-AAA), an independent dispute-settlement institution in operation from 2010, has been offering mediation services to commercial and governmental parties in the region. In July this year, the Mediation Rules were updated to "coincide with the signing" of the Singapore Convention. Most notable amongst the changes are the updated provisions on independence and impartiality and the option for parties to commence or continue parallel arbitral or judicial proceedings.

Within the last year, the following three countries have seen major changes to their mediation frameworks. In Lebanon, Law No. 82, was published in the Official Gazette on 18 October 2018. This law, which entered into force in May 2019, enables parties to access mediation once their dispute is submitted to the court, at any time during the court proceedings. This will supplement the Lebanese Arbitration and Mediation Center (LAMC) that already provides mediation services. In Oman, the Oman Commercial Arbitration Centre (OCAC) was launched in July this year. At the press conference, an OCAC Board Member noted that the Centre would include mediation services as part of its competencies. Around the same time in the UAE, the Abu Dhabi Global Market (ADGM) Courts announced the launch of their court-annexed mediation service for ADGM entities and litigants before ADGM Courts. This brings the ADGM Courts on par with the other offshore jurisdiction in the UAE - the Dubai International Financial Centre (DIFC), where the DIFC Courts include mediation in certain procedures and promote mediation as an alternative means of resolving disputes (the DIFC-LCIA Arbitration Centre also offers mediation services to users modelled on the LCIA Mediation Rules.).

Mediation in the Middle East: Prospects

As underlined at the start of this article, the initial reception of the Singapore Convention in the Middle East is not to be deemed conclusive as to its ultimate success. As State parties may accede to the Singapore Convention at any stage, it is more than likely that the nations in the Middle East that have not yet signed the Singapore Convention will soon follow in the path of their peers that have already done so to keep up with the rising demand for mediation in the region. In the UAE alone, the Dubai International Arbitration Centre (DIAC), which sits under the umbrella of the Dubai Chamber of Commerce and Industry, [reported](#) 127 mediation cases valued at Dh18 million in the first quarter of 2018. By granting settlements solely resulting from mediation a level of authority that is equal to that granted by the New York Convention to settlements achieved through mediation as part of Med-Arb and Arb-Med-Arb processes, the Singapore Convention will address apprehensions amongst potential ADR users of the effectiveness of mediation as a credible and standalone dispute resolution mechanism.

With the need to bring their national laws in line with their obligations under the Singapore Convention, signatories in the region will have to amend or, as in most cases, introduce dedicated standalone national laws on mediation.

One area where significant development can be expected is with regard to the standards employed to assess the conduct of the mediation, the mediator or the latter's impartiality. Articles 5(1)(e) and (f) of the Singapore Convention provide that the competent authority may refuse relief on the grounds of "serious breach of standards applicable to the mediator or the mediation" and failure to disclose "circumstances that raise justifiable doubts as to the mediator's impartiality or independence" without setting out the applicable standards for the same. According to the [Travaux Préparatoires](#), "the competent authority [would be allowed] to determine the standards applicable, which could take different forms such as the law governing conciliation and codes of conduct, including those developed by professional association" and further stated that "the text accompanying the instrument would provide an illustrative list of examples of such standards."

Consequently, and where required, signatory States will have to include standards within their own national laws before they will be able to ratify the Singapore Convention. In turn, this may spur the production of soft law instruments to streamline and harmonise these standards. As a result, there is sure to be the creation of standards so far elusive in mediation aside from the generation of greater awareness and discussion of mediation in the visible future. It is worth repeating in this context, that at present, the SCCA provides a [code of ethics](#) for mediators in Saudi Arabia.

While there is much that remains in the air regarding how effectively, and through what strategies, each of these countries will implement the Singapore Convention in their jurisdictions, one thing that we know for certain is that mediation in the Middle East is in for a facelift in view of a promising future.