Kluwer Mediation Blog

The International Reach Of The Singapore Mediation Act

Christine Sim (Centre for International Law, National University of Singapore) · Sunday, December 17th, 2017

The Singapore Mediation Act entered into force on 1 November 2017. As noted in an earlier post by Joel Lee, it is the product of painstaking study since 2013 by the Ministry of Law's International Commercial Mediation Working Group, the Chief Justice, mediators, counsel, consultants, students, funders, international practitioners and dispute resolution institutions including the Singapore International Mediation Centre and Singapore International Mediation Institute.

What use is the Singapore Mediation Act to the rest of the world?

First, by far, the most interesting mechanism is the recording of mediated settlement agreements as court judgements—giving 'teeth' to mediation.

Next, the ability to request the court to stay other proceedings in order to give proper respect to the mediation process is invaluable.

Last, the relaxation of domestic regulations on foreign counsel and third party funding makes mediation more attractive than court litigation.

International Enforcement of Settlements

The Singapore Mediation Act adopts a hybrid approach to mediated settlements by setting up a legal regime that mirrors the enforceability of arbitral awards.

By making Singapore the 'seat' of your mediation, the resulting settlement can be recorded as a Singapore court judgment, and enforced all over the world wherever a Singapore court judgment is enforceable.

Currently, Singapore Court judgments are enforceable by registration in at least 38 countries: 28 countries under the 2005 Hague Convention, and 11 commonwealth countries referred to under the Reciprocal Enforcement of Commonwealth Judgments Act.

Furthermore, if the mediation is conducted as a pre-condition to an arbitration, or as a part of Arb-Med-Arb, for example the Singapore International Arbitration Centre (SIAC)'s and Singapore International Mediation Centre (SIMC)'s SIAC-SIMC Arb-Med-Arb-Protocol, it could be recorded as an arbitration award, and enforced as an arbitral award in any New York Convention jurisdiction

because Singapore is also a party to the New York Convention.

Stay of Court Proceedings

The days where zealous disputing parties or counsel can easily torpedo a mediation by going directly to court are over. Mediations commenced in good faith, pursuant to a previously negotiated mediation clause—and which cost the parties fees–-should be given a real chance to succeed.

Singapore courts, according to precedent set by the Court of Appeal's 2013 judgment, have consistently enforced pre-conditions to mediate before arbitration can be commenced. The Mediation Act gives force to this position that agreements to mediate must be respected. Section 8 provides support at the early stages of a dispute by allowing parties to apply for a stay of proceedings by showing a valid mediation clause.

Although it has not been attempted yet, Section 8(2) may provide international remedies, to a party seeking to mediate, akin to requests for court-ordered provisional measures in support of an arbitration. While the Mediation Act does not reflect an express intention—to aid a mediation seated in Singapore with provisional measures in the same fashion as Section 12 of the International Arbitration Act–-Section 8(2) could nevertheless form a basis for parties to request orders in aid of their mediation.

Section 8(2) provides that when a party seeks a stay of proceedings in favour of mediation, "The court hearing the application may make an order, upon such terms or conditions as the court thinks fit, staying the proceedings so far as the proceedings relate to the matter." This type of court discretion has been interpreted to be quite wide under the very similarly worded Section 6(2) of the International Arbitration Act.

In particularly egregious cases where the party in breach of a mediation agreement has resorted to abuse of court processes in multiple jurisdictions to frustrate the financial capacity of the innocent party, an anti-suit injunction would be necessary. Considering that many parties insert mediation clauses into their contracts precisely with cost-saving intentions, court-ordered assistance with mediation would be in line with larger policy aims.

Relaxation of Regulations on Foreign Counsel and Third Party Funding

Although litigation funding is still prohibited, Singapore has indicated its openness for third party funding of mediation. Amendments to the Civil Law Act to permit third party funding for arbitration, has also been extended to mediations undertaken as part of the arbitration.

The Civil Law Act defines "dispute resolution proceedings" to mean the" entire process of resolving or attempting to resolve a dispute between 2 or more parties and includes any civil, mediation, conciliation, arbitration or insolvency proceedings".

Foreign mediators and foreign-qualified counsel in mediation sessions in Singapore now also need not fear that they are deemed to be practicing Singapore law in contravention of legal professional regulations. As long as Singapore is the venue for the mediation and the mediation is conducted by a certified mediator or administered by a designated mediation service provider, any foreign lawyer representing any party in any dispute involving a cross?border agreement is exempt from the legal profession regulations.

Singapore: new ground for mediation

Unfortunately, some perceive mediation as less effective than binding arbitration or litigation, and settlements as prone to corrupt manipulation. This Mediation Act leads international mediations out of the shadows. By locating a mediation in the sunny city-state, international parties can be assured of at least two things: of the qualifications of the mediator and mediation institution, and that their settlement agreement will be enforceable as a reputable court judgment.

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