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Singapore Convention Series: Bill to Ratify before Singapore Parliament

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Update: As this post was published, the Singapore Convention Bill was passed into law.

In previous blog entries, we have outlined the provisions of the United Nations Convention on International Settlement Agreements Resulting from Mediation (also known as the Singapore Convention on Mediation), reported on its signing ceremony and observed that more than 50 States have since signed on to it.

Signing on to the Singapore Convention is only the beginning. The Convention will come into force six months after three States have ratified it into their domestic law (Article 14 of the Convention). A Bill currently before the Singapore Parliament seeks to pave the way for that – ratify the Convention in Singapore through the enactment of legislation to implement its terms. It is anticipated that the Singapore Convention on Mediation Bill (the 'Bill') will be passed into Law before the end of March 2020. It may very well be the first piece of legislation that ratifies the Convention. Other signatory States may model their ratifying legislation after the Singapore Bill. This post outlines the main provisions of the Bill and provides a comparative table of provisions as between the Bill and the Convention itself.

The Singapore Convention on Mediation Bill (Singapore) 2020

On 6 January 2020, the Singapore Convention on Mediation Bill was tabled for its first reading in the Singapore Parliament. This is the precursor to Singapore's ratification of the Singapore Convention on Mediation, which it signed on 7 August 2019 alongside 45 other State Parties. At the time of writing, five more States have signed on to the Singapore Convention: Armenia, Chad, Ecuador, Gabon and Guinea-Bissau. The Bill not only gives effect to the Articles of the Singapore Convention, it also amends the Singapore Mediation Act 2017 (Act 1 of 2017) to accommodate the legal instruments, namely international mediated settlement agreements (iMSAs), recognised and enforceable under the Singapore Convention (Clause 12 of the Bill), as well as the Singapore Supreme Court of Judicature Act (Cap. 322) to clarify that the High Court of Singapore yields the necessary jurisdiction to recognise and enforce iMSAs in accordance with the Articles of the Singapore Convention (Clause 13 of the Bill).

Clause 1 of the Bill provides that when passed by the Singapore Parliament, the resulting legislation will be known as the Singapore Convention on Mediation Act 2020, coming into force

on a date predetermined by the Law Minister upon notification in the Gazette.

Clause 2 of the Bill establishes the definitions of the "Convention", "international settlement agreement", "mediation", "parties" and "settlement agreement": these are terms that are applied in the Bill. It is noteworthy that Clause 2(2) expressly provides that settlement agreements may be recorded in any form, including through electronic communication methods.

Clause 3 establishes the scope of the Bill, essentially mirroring the provisions set out in Articles 1 and 2 of the Convention, read with Articles 8, 12 and 13. Whilst Clause 3(2)(b) provides that the Bill does not apply to an iMSA vis-a-vis a subsisting reservation made by Singapore in accordance with Article 8 of the Singapore Convention, it is to our knowledge that Singapore has not lodged such a reservation at the time of writing, and it should not impact the scope of recognition and enforcement of iMSAs in Singapore. Furthermore, Clause 3(4) of the Bill expressly states that it binds the Singapore Government.

Clauses 4 and 5 provides for the recognition and enforcement of iMSAs falling within the scope of the Convention, in accordance with Article 3. Specifically, Clause 4 provides that parties to iMSAs may do any of the following:

a) apply to the High Court to record the agreement as an order of court for the purposes of –
i) enforcing the agreement in Singapore; or
ii) invoking the agreement in any court proceedings in Singapore involving a dispute concerning a matter that the party to the
international settlement agreement claims was already resolved by the agreement, in order to prove that the matter has already been
resolved; or
b) in any proceedings in the High Court (whether exercising its original or appellate jurisdiction), or in any proceedings in the
Court of Appeal –
i) to which the party to the international settlement agreement is a party; and
ii) which involves a dispute concerning a matter that the party claims was already resolved by the agreement,
apply to the High Court or the Court of Appeal (as the case may be) to invoke the agreement in the proceedings in order to prove that the matter has already been resolved.

Clause 4(2) further clarifies that parties are not deprived of any other rights or remedies which they are entitled to under an iMSA, which may already subsist or arise outside of this piece of legislation. For instance, if they may enforce an iMSA under the provisions of the Singapore Mediation Act 2017, their right to do so is not affected or circumscribed by the advent of the forthcoming Singapore Convention on Mediation Act 2020. This corresponds to Article 7 of the Singapore Convention.

Clause 5 establishes the effect of a High Court order in Singapore to record an iMSA as an order of court. The resulting order of court would essentially be enforced in a similar manner as an ordinary High Court order or judgment, and engenders its usual consequential effects.

Clause 6 establishes the formal requirements which parties must satisfy when they take their iMSAs to the Singapore High Court for enforcement. This mirrors the requirements established by Article 4 of the Convention. To reiterate, a written iMSA which has been signed by the parties

must first be produced. Parties must also prove it was a result of mediation; to do so, they may produce the mediator's signature on the settlement agreement, a separate document signed by the mediator confirming that mediation was carried out in respect to the settlement agreement concerned or an official attestation by the institution or dispute resolution service provider administering the mediation. Additionally, there is a 'catch-all' provision (Clause 6(1)(b)(iv)) which provides the High Court with broad discretion to decide what other forms of evidence may be produced to show that the iMSA was a result of mediation.

Clause 7 provides the circumscribed grounds for the Singapore High Court's refusal to recognise or enforce an iMSA, mirroring Article 5 of the Convention.

Clause 8 envisions the circumstances where an iMSA is enforced or invoked in the Singapore High Court as an order in default of appearance of an absent defendant party. Under this clause, the High Court is provided with the usual discretion to set aside these orders allowing the absent defendant – when they eventually appear to defend their case in court – to lodge a defence, in accordance with the rules and normal practices in court.

Clause 9 establishes the circumstances under which the Singapore High Court may adjourn a recognition and enforcement application, where a parallel claim (or claims) under the same iMSA is made to a court or competent authority of another State. The High Court has some discretion to adjourn proceedings, and on the request of a party, order the other to provide suitable security. This clause mirrors Article 6 of the Convention.

Some Noteworthy Points

It is noteworthy that the Bill permits parties to invoke an iMSA as a complete defence (e.g., a 'shield') against court proceedings where issues in dispute have already been resolved by an iMSA resulting from a concluded mediation without further formalities (Clause 4(b) of the Bill). However for enforcement purposes, the Bill envisions that an application to the Court involving the Court recording the iMSA as an order of the Court is necessary (Clause 4(a)). For invocation, a court order may also be sought (Clause 4(a)(ii)); however as indicated previously, Clause 4(b) makes it clear that this is not necessary and the iMSA on its own will suffice for invocation.

It is also noteworthy that Clause 12 of the Bill implicitly preserves the option for parties to iMSAs to pick and choose the better mechanism available in Singapore for their enforcement: namely between the mechanism under the forthcoming Singapore Convention on Mediation Act 2020 and the Singapore Mediation Act 2017. Considerations which may affect the parties' preference for one mechanism over the other may lie in the subject matter of the dispute resolved, or in respect to the time frame of the enforcement proceedings which parties think they are most comfortable with. According to the Singapore Mediation Act 2017, the application to record an iMSA as a court order must be made within 8 weeks and with all parties' consent. The Singapore Convention on Mediation Bill contains no such time limit and only requires one party – the party seeking to enforce or invoke – to make a successful application. If an iMSA resolves a dispute involving intellectual property rights, and parties endeavour to enforce that dispute resolution outcome extraterritorially, it may be better for parties to record the iMSA under the forthcoming Singapore Convention on Mediation Act, rather than under the Singapore Mediation Act 2017. This is because while a court order flowing from the Singapore Mediation Act 2017 may be rendered enforceable under the Hague Choice of Court Convention's enforcement mechanism between ratifying States, court judgments which deal with the subject matter of intellectual property are

expressly excluded from that Convention's enforcement mechanism. Ultimately, this will be a risk management decision for parties. Factors affecting parties' choice of mechanism might include level of trust with the other parties, costs, and desire for flexibility in terms of place and mechanism of enforcement, especially if it is possible that enforcement may take place outside of Singapore.

Click here for a Comparative Table of Most Important Provisions

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This entry was posted on Tuesday, February 4th, 2020 at 5:00 am and is filed under cross-border mediation, Developing the Field, International commercial mediation, International Law, International Mediation, Investor-state mediation, Mediation Act, Mediation Practice, Mediation Reforms (Legislation, etc.), Settlement Agreements, Singapore, Singapore Convention on Mediation, UNCITRAL
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