

Singapore Convention on Mediation

Forty-six countries have signed up to the United Nations Convention on International Settlement Agreements Resulting from Mediation (“Singapore Convention on Mediation”) today. The signatory countries included Singapore, China, India, South Korea and the USA. The Convention, which was adopted by the UN General Assembly in December 2018, facilitates the cross-border enforcement of international commercial settlement agreements reached through mediation. It complements existing international dispute resolution enforcement frameworks in arbitration (the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards) and litigation (the Hague Convention on Choice of Court Agreements and the recently concluded Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters). Article 1(3) of the Singapore Convention carves out settlement agreements which may fall within the scope of these other instruments to avoid an overlap. The Convention does not prescribe the mode of enforcement, but leaves it to each Contracting State to do so “in accordance with its rules of procedure and under the conditions laid down in this Convention” (Article 3(1)). Formal requirements to evidence the settlement agreement are specified although the competent authority in the state of enforcement is also granted flexibility to accept any other evidence acceptable to it (Article 4). The settlement agreement may only be refused enforcement under one of the grounds listed in Article 5. These grounds include the incapacity of a party to the settlement agreement, the settlement agreement is null and void under its applicable law and breaches of mediation standards. Only two reservations are permitted: one relating to settlement agreements to which a government entity is a party and the other relating to opt-in agreements whereby the Convention applies only to the extent that the parties to the settlement agreement have agreed to the application of the Convention (Article 8).

While mediation currently commands a much smaller slice of the international dispute resolution mode pie compared to arbitration or litigation, some countries are making concerted efforts to promote mediation. To that end, the Singapore Convention will assist to increase mediation’s popularity among litigants in

international commercial disputes.