
CLIENT NOTE

AN ALTERNATIVE DISPUTE RESOLUTION MECHANISM: MEDIATION, AND HOW SINGAPORE MAY HELP!



OVERVIEW

The United Nations Convention on international agreements for the settlement of disputes resulting from mediation (more commonly known as the Singapore Mediation Convention) has been opened to being signed by States since 7 August 2019. At the moment, the Convention has been signed by 58 states and ratified by three¹.

The Covid-19 pandemic and its economic consequences will lead to domestic and international economic disputes. Many people may initially want to turn to courts or arbitration. However, mediation is a strong alternative to these two and The Singapore Convention offers several solutions.

¹ See more by the provided link: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=XXII-4&chapter=22&clang=en

WHAT IS MEDIATION?



By itself, the concept of mediation is not new, especially in terms of applicability in the domestic legal system. Due to certain features of trade culture, as an effective structure for resolving trade disputes, it initially had a wider application in the Western world. Currently, mediation is widely used in almost every area of the legal system.

Mediation is an alternative out-of-court method of dispute resolution. Mediation rules provide parties with an opportunity to resolve a legal dispute that has arisen between them through a third, neutral, impartial party. The

latter in these relationships acts as a mediator, who does not have the authority to impose their version of a solution. Their sole mission is to help the parties reach a mutually acceptable solution for the dispute. As a rule, after reaching a consensus through mediation, the parties sign an agreement of resolution for the dispute.

In comparison with judicial and arbitration dispute resolution procedures, the frequently mentioned advantages of mediation include the active participation of parties in the process, which allows achieving a mutually acceptable solution through constructive dialogue. Moreover, international experience shows that disputes are resolved much faster through mediation, allowing parties to save time and money.

The analysis of the features mentioned above allow us to conclude that mediation can be an effective tool for resolving disputes especially in the context of cross-border disputes. Surveys² conducted by The International Institute for Mediation found that 93 percent of respondents are more likely to settle a dispute through mediation when the opposing party lives in another state. However, mediation currently has limited applicability in this context. Why? The lack of confidence in the effectiveness of this method of dispute resolution is connected with the absence of international legal framework³. In particular, there are no effective mechanisms to enforce mediation agreements.

Currently, settlement reached by mediation can only be enforced the same way as any other contract – through commencing a claim for failure to fulfil it and trying to enforce any award or judgment obtained. In an international context, this can prove to be difficult, lengthy and costly. As such, there

² SEE International Mediation Institute, IMI survey results overview: How Users View the Proposal for a UN Convention on the Enforcement of Mediated Settlements (16 January 2017) available from <https://www.imimmediation.org/2017/01/16/users-view-proposal-un-convention-enforcement-mediated-settlements>

³ Find more here <http://arbitrationblog.kluwerarbitration.com/2019/08/31/the-singapore-mediation-convention-what-does-it-mean-for-arbitration-and-the-future-of-dispute-resolution/>

has been limited incentive to use mediation in international disputes as the New York Convention already has a prepared framework to enforce arbitration awards in over 150 countries. So, in order to ensure the global application of mediation, it is necessary to establish direct and effective mechanisms to implement agreements in the international legal system.

WHAT DOES SINGAPORE SAY?

It is predicted that the Singapore Mediation Convention, as an incentive to use mediation to resolve disputes, will play the same role as the New York Convention once did in promoting arbitration. The main purpose of the Convention is to establish effective mechanisms for the implementation of agreements concluded as a result of mediation. In particular, the Convention defines the structure of direct enforcement through State courts. You can find a summary of the essence of the Convention below.

The Convention applies only to those agreements that are international in nature. Therefore, they must be concluded:

- between two or more parties operating in different countries;
- when all States, where the parties are engaged in activities, have ratified the Singapore Mediation Convention.

The Convention also clearly defines the scope of those agreements to which it does not apply. Particularly, those are the agreements that:

- relate to family, inheritance, or employment law;
- are approved by the court and subject to execution as a court decision;
- are registered and enforceable as an arbitral award.

The Convention provides a simplified procedure for the implementation of agreements, in which the interested party in the implementation of the agreement must provide the competent authority with the following documents:

- * a copy of the agreement concluded between parties
- * proof that the submitted agreement was concluded as a result of mediation

After receiving the required information, the competent authority has an obligation to ensure the fulfillment of the agreement within the scope of his authority.

THE RELEVANCE AND POSSIBLE ROLE OF THE CONVENTION

The success of the Singapore Mediation Convention largely depends on its ratification by States. The main purpose of the Convention is to strengthen the confidence of parties in the effectiveness of the mediation process. Mediation has a number of advantages in resolution of cross-border disputes. Successful mediation can be more time- and cost-effective than arbitration or litigation. Moreover, the lack of competition makes it more realistic to continue maintaining trade relations between parties. In this context, taking into consideration the current global economic problems resulting from the spread of the COVID-19 pandemic, we believe that the potential role of the Convention needs to be reassessed. In particular, ensuring effective mechanisms for resolving cross-border economic disputes should be considered a priority for each state.



Therefore, we believe that ratification of the Convention for the Republic of Armenia should also be considered as one of the steps aimed towards eliminating the adverse economic consequences. It is the right time to proceed the ratification of the Convention and become one of the leaders in creating a favorable environment in this area.

NOTE: This material is for general information only and is not intended to provide legal advice.

VAROUJAN AVEDIKIAN
Managing Partner
vavedikian@tk.partners



GOHAR TOVMASYAN
Junior Associate
gtovmasyan@tk.partners

