

SINGAPORE CONVENTION ON MEDIATION ACT 2020

(No. 4 of 2020)

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An Act to give effect to the United Nations Convention on International Settlement Agreements Resulting from Mediation, also known as the Singapore Convention on Mediation, opened for signature on 7 August 2019 in Singapore, and to make related amendments to certain other Acts.

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

Short title and commencement

1. This Act is the Singapore Convention on Mediation Act 2020 and comes into operation on a date that the Minister appoints by notification in the *Gazette*.

Interpretation

2.—(1) In this Act, unless the context otherwise requires —

“Convention” means the United Nations Convention on International Settlement Agreements Resulting from Mediation, also known as the Singapore Convention on Mediation, opened for signature on 7 August 2019 in Singapore, a copy of the English text of which is set out in the Schedule;

“international settlement agreement” means a settlement agreement to which this Act applies under section 3;

“mediation” means a process (whether referred to by the expression “mediation” or “conciliation” or any term of similar import) —

(a) by which the parties to the mediation attempt to reach an amicable settlement of their dispute with the assistance of one or more third parties (called in this Act the mediator); and

(b) in which the mediator lacks the authority to impose a solution upon the parties to the dispute;

“parties”, in relation to a mediation, does not include any mediator conducting the mediation;

“settlement agreement” means an agreement resulting from mediation and concluded in writing by the parties to the mediation to resolve a commercial dispute.

(2) For the purposes of the definition of “settlement agreement” in subsection (1) —

- (a) a settlement agreement is in writing if the contents of the settlement agreement are recorded in any form; and
- (b) the requirement that a settlement agreement be in writing is met by an electronic communication if the information contained in the communication is accessible to be useable for subsequent reference.

(3) For the purposes of this Act, a reference to a State is to be read in conformity with articles 12 and 13 of the Convention.

(4) A reference in this Act to the High Court is, on or after the date of commencement of the Supreme Court of Judicature (Amendment) Act 2019 (Act 40 of 2019), a reference to the General Division of the High Court.

(5) A reference in this Act to the Court of Appeal is, on or after the date of commencement of the Supreme Court of Judicature (Amendment) Act 2019, a reference to the Appellate Division of the High Court or the Court of Appeal.

Application of Act

3.—(1) Subject to subsection (2), this Act applies to a settlement agreement which, at the time of its conclusion, is international within the meaning of article 1, paragraph 1(a) and (b), read with article 2, paragraph 1, of the Convention.

(2) This Act does not apply to —

- (a) a settlement agreement mentioned in article 1, paragraph 2 or 3 of the Convention; or
- (b) a settlement agreement in relation to which a reservation by Singapore under article 8 of the Convention has been made and the reservation is not withdrawn.

(3) Articles 12 and 13 of the Convention apply to the interpretation of the articles of the Convention mentioned in subsections (1) and (2).

(4) This Act binds the Government.

Applications in respect of international settlement agreements

4.—(1) Subject to this Act, a party to an international settlement agreement may —

(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.

(2) This section does not limit or restrict any right or remedy of a party to an international settlement agreement that exists or may arise apart from this Act.

Grant of leave to record international settlement agreement as order of High Court

5.—(1) The High Court may, following an application under section 4(1)(a), grant leave to record an international settlement agreement as an order of court if the requirements of this Act are complied with.

(2) Subject to this Act, an international settlement agreement that is recorded by the High Court as an order of court —

- (a) may be enforced in the same manner as a judgment given, or an order made, by the High Court; and
- (b) may be relied on by the party who made the application under section 4(1)(a) by way of defence, set-off or otherwise in any court proceedings.

Requirements for applications under section 4

6.—(1) A party to an international settlement agreement making an application mentioned in section 4(1) must provide to the court before which the application is made the following documents and evidence:

- (a) the international settlement agreement signed by the parties to the agreement or a certified copy of the signed agreement;
- (b) evidence that the international settlement agreement resulted from mediation, such as —
 - (i) the signature on the international settlement agreement of the mediator conducting the mediation;
 - (ii) a document signed by the mediator conducting the mediation indicating that the mediation was carried out;
 - (iii) an attestation by the institution that administered the mediation; or
 - (iv) in the absence of sub-paragraph (i), (ii) or (iii), any other evidence acceptable to the court before which the application is made.

(2) A requirement under subsection (1) that the international settlement agreement be signed by the parties to the agreement or by the mediator conducting the mediation that resulted in the international settlement agreement is met, in relation to an electronic communication, if —

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- (a) a method is used to identify the parties or the mediator (as the case may be) and to indicate the parties' or mediator's intention (as the case may be) in respect of the information contained in the electronic communication; and
- (b) the method used is either —
- (i) as reliable as is appropriate for the purpose for which the electronic communication was generated or communicated, in the light of all the circumstances, including any relevant agreement; or
 - (ii) proven in fact to have fulfilled the functions described in paragraph (a), by itself or together with further evidence.

(3) A party to the international settlement agreement making an application mentioned in section 4(1) may be required by the court before which the application is made to provide any necessary document in order to verify that the requirements of the Convention have been complied with.

(4) If the international settlement agreement is not in English, the international settlement agreement must be accompanied by a certified translation of it in the English language.

(5) In this section, “certified” means certified —

- (a) in the manner set out in rules prescribed by the Rules Committee constituted under section 80(3) of the Supreme Court of Judicature Act (Cap. 322); or
- (b) in the manner determined by the court before which the application mentioned in section 4(1) is made.

Grounds for refusing application

7.—(1) The court before which an application mentioned in section 4(1) is made may, at the request of the party (called “A”) against whom the international settlement agreement is sought to be enforced or invoked, refuse to grant the application if A furnishes proof of any of the grounds set out in subsection (2).

(2) For the purposes of subsection (1), the grounds are the following:

- (a) that a party to the international settlement agreement was under some incapacity;
- (b) that the international settlement agreement —
 - (i) is null and void, inoperative or incapable of being performed under the law to which the parties have validly subjected it or, failing any indication thereon, under the law deemed applicable by the court before which the application is made;
 - (ii) is not binding, or is not final, according to its terms;
or
 - (iii) has been subsequently modified;
- (c) that the obligations in the international settlement agreement —
 - (i) have been performed; or
 - (ii) are not clear or comprehensible;
- (d) that it is contrary to the terms of the international settlement agreement for the application mentioned in section 4(1) to be granted;
- (e) that there was a serious breach by the mediator who conducted the mediation that resulted in the international settlement agreement of the standards applicable to the mediator, or the mediation, without which breach *A* would not have entered into the international settlement agreement;
- (f) that —
 - (i) there was a failure by the mediator to disclose to the parties to the international settlement agreement circumstances that raise justifiable doubts as to the mediator's impartiality or independence; and

- (ii) the failure to disclose mentioned in sub-paragraph (i) had a material impact or undue influence on a party, without which failure that party would not have entered into the international settlement agreement.

(3) In addition to subsection (1), the court before which an application mentioned in section 4(1) is made may also refuse to grant the application if —

- (a) it would be contrary to the public policy of Singapore for the application to be granted; or
- (b) the subject matter of the dispute purported to be settled by the international settlement agreement is not capable of settlement by mediation under the law in force in Singapore.

Setting aside of order of court

8. Where an international settlement agreement has been recorded as an order of court under section 5(2) in the absence of the party against whom the order of court is sought to be enforced or invoked, the High Court may, upon the application of that party, set aside the order of court on any ground on which the High Court may refuse to grant the application mentioned in section 4(1)(a) to record the international settlement agreement as an order of court.

Parallel applications or claims

9. If an application or a claim relating to an international settlement agreement has been made to a court of any State, any arbitral tribunal or any other competent authority which may affect the grant of an application mentioned in section 4(1), the court before which the application mentioned in section 4(1) is made may —

- (a) if the court before which the application is made considers it proper, adjourn the decision on the application; and
- (b) on the request of a party, order the other party to give suitable security.

Rules of Court

10. The Rules Committee constituted under section 80(3) of the Supreme Court of Judicature Act may make Rules of Court with respect to —

- (a) applications and other proceedings, and the practice and procedure, of any court in respect of any matter under this Act; and
- (b) the fees and costs of those applications and other proceedings.

Regulations

11.—(1) The Minister may make regulations prescribing matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) The power conferred by subsection (1) does not extend to any matter for which Rules of Court mentioned in section 10 may be made.

Related amendments to Mediation Act 2017

12. Section 6 of the Mediation Act 2017 (Act 1 of 2017) is amended —

- (a) by inserting, immediately after the words “subsections (2),” in subsection (1), “(2A),”; and
- (b) by inserting, immediately after subsection (2), the following subsection:

“(2A) Subsection (2)(a) does not preclude —

- (a) an international settlement agreement as defined in section 2(1) of the Singapore Convention on Mediation Act 2020 (called in this subsection an international settlement agreement) from being a mediated settlement agreement to which this Act applies if, apart from

subsection (2)(a), the international settlement agreement would qualify as such; or

- (b) an international settlement agreement that is also a mediated settlement agreement to which this Act applies from being recorded as an order of court under this Act if the international settlement agreement has not been recorded as an order of court under section 5 of the Singapore Convention on Mediation Act 2020.”.

Related amendments to Supreme Court of Judicature Act

13. Section 17 of the Supreme Court of Judicature Act (Cap. 322, 2007 Ed.) is amended —

- (a) by deleting the word “and” at the end of subsection (1)(f);
- (b) by deleting the full-stop at the end of paragraph (g) of subsection (1) and substituting the word “; and”, and by inserting immediately thereafter the following paragraph:
- “(h) jurisdiction under the Singapore Convention on Mediation Act 2020 to grant the applications provided for in that Act in respect of international settlement agreements.”; and
- (c) by deleting subsection (2) and substituting the following subsection:

“(2) In this section —

“international settlement agreement” has the meaning given by section 2(1) of the Singapore Convention on Mediation Act 2020;

“mediated settlement agreement” and “mediation” have the meanings given by the Mediation Act 2017 (Act 1 of 2017).”.

THE SCHEDULE

Section 2(1)

UNITED NATIONS CONVENTION ON INTERNATIONAL SETTLEMENT AGREEMENTS RESULTING FROM MEDIATION

PREAMBLE

The Parties to this Convention,

Recognizing the value for international trade of mediation as a method for settling commercial disputes in which the parties in dispute request a third person or persons to assist them in their attempt to settle the dispute amicably,

Noting that mediation is increasingly used in international and domestic commercial practice as an alternative to litigation,

Considering that the use of mediation results in significant benefits, such as reducing the instances where a dispute leads to the termination of a commercial relationship, facilitating the administration of international transactions by commercial parties and producing savings in the administration of justice by States,

Convinced that the establishment of a framework for international settlement agreements resulting from mediation that is acceptable to States with different legal, social and economic systems would contribute to the development of harmonious international economic relations,

Have agreed as follows:

Article 1. Scope of application

1. This Convention applies to an agreement resulting from mediation and concluded in writing by parties to resolve a commercial dispute (“settlement agreement”) which, at the time of its conclusion, is international in that:

- (a) At least two parties to the settlement agreement have their places of business in different States; or
- (b) The State in which the parties to the settlement agreement have their places of business is different from either:
 - (i) The State in which a substantial part of the obligations under the settlement agreement is performed; or
 - (ii) The State with which the subject matter of the settlement agreement is most closely connected.

THE SCHEDULE — *continued*

2. This Convention does not apply to settlement agreements:
 - (a) Concluded to resolve a dispute arising from transactions engaged in by one of the parties (a consumer) for personal, family or household purposes;
 - (b) Relating to family, inheritance or employment law.
3. This Convention does not apply to:
 - (a) Settlement agreements:
 - (i) That have been approved by a court or concluded in the course of proceedings before a court; and
 - (ii) That are enforceable as a judgment in the State of that court;
 - (b) Settlement agreements that have been recorded and are enforceable as an arbitral award.

Article 2. Definitions

1. For the purposes of article 1, paragraph 1:
 - (a) If a party has more than one place of business, the relevant place of business is that which has the closest relationship to the dispute resolved by the settlement agreement, having regard to the circumstances known to, or contemplated by, the parties at the time of the conclusion of the settlement agreement;
 - (b) If a party does not have a place of business, reference is to be made to the party's habitual residence.
2. A settlement agreement is "in writing" if its content is recorded in any form. The requirement that a settlement agreement be in writing is met by an electronic communication if the information contained therein is accessible so as to be useable for subsequent reference.

3. "Mediation" means a process, irrespective of the expression used or the basis upon which the process is carried out, whereby parties attempt to reach an amicable settlement of their dispute with the assistance of a third person or persons ("the mediator") lacking the authority to impose a solution upon the parties to the dispute.

Article 3. General principles

1. Each Party to the Convention shall enforce a settlement agreement in accordance with its rules of procedure and under the conditions laid down in this Convention.

THE SCHEDULE — *continued*

2. If a dispute arises concerning a matter that a party claims was already resolved by a settlement agreement, a Party to the Convention shall allow the party to invoke the settlement agreement in accordance with its rules of procedure and under the conditions laid down in this Convention, in order to prove that the matter has already been resolved.

Article 4. Requirements for reliance on settlement agreements

1. A party relying on a settlement agreement under this Convention shall supply to the competent authority of the Party to the Convention where relief is sought:

- (a) The settlement agreement signed by the parties;
- (b) Evidence that the settlement agreement resulted from mediation, such as:
 - (i) The mediator's signature on the settlement agreement;
 - (ii) A document signed by the mediator indicating that the mediation was carried out;
 - (iii) An attestation by the institution that administered the mediation; or
 - (iv) In the absence of (i), (ii) or (iii), any other evidence acceptable to the competent authority.

2. The requirement that a settlement agreement shall be signed by the parties or, where applicable, the mediator is met in relation to an electronic communication if:

- (a) A method is used to identify the parties or the mediator and to indicate the parties' or mediator's intention in respect of the information contained in the electronic communication; and
- (b) The method used is either:
 - (i) As reliable as appropriate for the purpose for which the electronic communication was generated or communicated, in the light of all the circumstances, including any relevant agreement; or
 - (ii) Proven in fact to have fulfilled the functions described in sub-paragraph (a) above, by itself or together with further evidence.

3. If the settlement agreement is not in an official language of the Party to the Convention where relief is sought, the competent authority may request a translation thereof into such language.

THE SCHEDULE — *continued*

4. The competent authority may require any necessary document in order to verify that the requirements of the Convention have been complied with.

5. When considering the request for relief, the competent authority shall act expeditiously.

Article 5. Grounds for refusing to grant relief

1. The competent authority of the Party to the Convention where relief is sought under article 4 may refuse to grant relief at the request of the party against whom the relief is sought only if that party furnishes to the competent authority proof that:

- (a) A party to the settlement agreement was under some incapacity;
- (b) The settlement agreement sought to be relied upon:
 - (i) Is null and void, inoperative or incapable of being performed under the law to which the parties have validly subjected it or, failing any indication thereon, under the law deemed applicable by the competent authority of the Party to the Convention where relief is sought under article 4;
 - (ii) Is not binding, or is not final, according to its terms; or
 - (iii) Has been subsequently modified;
- (c) The obligations in the settlement agreement:
 - (i) Have been performed; or
 - (ii) Are not clear or comprehensible;
- (d) Granting relief would be contrary to the terms of the settlement agreement;
- (e) There was a serious breach by the mediator of standards applicable to the mediator or the mediation without which breach that party would not have entered into the settlement agreement; or
- (f) There was a failure by the mediator to disclose to the parties circumstances that raise justifiable doubts as to the mediator's impartiality or independence and such failure to disclose had a material impact or undue influence on a party without which failure that party would not have entered into the settlement agreement.

THE SCHEDULE — *continued*

2. The competent authority of the Party to the Convention where relief is sought under article 4 may also refuse to grant relief if it finds that:

- (a) Granting relief would be contrary to the public policy of that Party; or
- (b) The subject matter of the dispute is not capable of settlement by mediation under the law of that Party.

Article 6. Parallel applications or claims

If an application or a claim relating to a settlement agreement has been made to a court, an arbitral tribunal or any other competent authority which may affect the relief being sought under article 4, the competent authority of the Party to the Convention where such relief is sought may, if it considers it proper, adjourn the decision and may also, on the request of a party, order the other party to give suitable security.

Article 7. Other laws or treaties

This Convention shall not deprive any interested party of any right it may have to avail itself of a settlement agreement in the manner and to the extent allowed by the law or the treaties of the Party to the Convention where such settlement agreement is sought to be relied upon.

Article 8. Reservations

1. A Party to the Convention may declare that:

- (a) It shall not apply this Convention to settlement agreements to which it is a party, or to which any governmental agencies or any person acting on behalf of a governmental agency is a party, to the extent specified in the declaration;
- (b) It shall apply this Convention only to the extent that the parties to the settlement agreement have agreed to the application of the Convention.

2. No reservations are permitted except those expressly authorized in this article.

3. Reservations may be made by a Party to the Convention at any time. Reservations made at the time of signature shall be subject to confirmation upon ratification, acceptance or approval. Such reservations shall take effect simultaneously with the entry into force of this Convention in respect of the Party to the Convention concerned. Reservations made at the time of ratification, acceptance or approval of this Convention or accession thereto, or at the time of making a declaration under article 13 shall take effect simultaneously with the entry into force of this Convention in respect of the Party to the Convention concerned. Reservations deposited after the entry into force of the Convention for

THE SCHEDULE — *continued*

that Party to the Convention shall take effect six months after the date of the deposit.

4. Reservations and their confirmations shall be deposited with the depositary.

5. Any Party to the Convention that makes a reservation under this Convention may withdraw it at any time. Such withdrawals are to be deposited with the depositary, and shall take effect six months after deposit.

Article 9. Effect on settlement agreements

The Convention and any reservation or withdrawal thereof shall apply only to settlement agreements concluded after the date when the Convention, reservation or withdrawal thereof enters into force for the Party to the Convention concerned.

Article 10. Depositary

The Secretary-General of the United Nations is hereby designated as the depositary of this Convention.

Article 11. Signature, ratification, acceptance, approval, accession

1. This Convention is open for signature by all States in Singapore, on 7 August 2019, and thereafter at United Nations Headquarters in New York.

2. This Convention is subject to ratification, acceptance or approval by the signatories.

3. This Convention is open for accession by all States that are not signatories as from the date it is open for signature.

4. Instruments of ratification, acceptance, approval or accession are to be deposited with the depositary.

Article 12. Participation by regional economic integration organizations

1. A regional economic integration organization that is constituted by sovereign States and has competence over certain matters governed by this Convention may similarly sign, ratify, accept, approve or accede to this Convention. The regional economic integration organization shall in that case have the rights and obligations of a Party to the Convention, to the extent that that organization has competence over matters governed by this Convention. Where the number of Parties to the Convention is relevant in this Convention, the regional economic integration organization shall not count as a Party to the Convention in addition to its member States that are Parties to the Convention.

THE SCHEDULE — *continued*

2. The regional economic integration organization shall, at the time of signature, ratification, acceptance, approval or accession, make a declaration to the depositary specifying the matters governed by this Convention in respect of which competence has been transferred to that organization by its member States. The regional economic integration organization shall promptly notify the depositary of any changes to the distribution of competence, including new transfers of competence, specified in the declaration under this paragraph.

3. Any reference to a “Party to the Convention”, “Parties to the Convention”, a “State” or “States” in this Convention applies equally to a regional economic integration organization where the context so requires.

4. This Convention shall not prevail over conflicting rules of a regional economic integration organization, whether such rules were adopted or entered into force before or after this Convention: (a) if, under article 4, relief is sought in a State that is member of such an organization and all the States relevant under article 1, paragraph 1, are members of such an organization; or (b) as concerns the recognition or enforcement of judgments between member States of such an organization.

Article 13. Non-unified legal systems

1. If a Party to the Convention has two or more territorial units in which different systems of law are applicable in relation to the matters dealt with in this Convention, it may, at the time of signature, ratification, acceptance, approval or accession, declare that this Convention is to extend to all its territorial units or only to one or more of them, and may amend its declaration by submitting another declaration at any time.

2. These declarations are to be notified to the depositary and are to state expressly the territorial units to which the Convention extends.

3. If a Party to the Convention has two or more territorial units in which different systems of law are applicable in relation to the matters dealt with in this Convention:

- (a) Any reference to the law or rule of procedure of a State shall be construed as referring, where appropriate, to the law or rule of procedure in force in the relevant territorial unit;
- (b) Any reference to the place of business in a State shall be construed as referring, where appropriate, to the place of business in the relevant territorial unit;

THE SCHEDULE — *continued*

- (c) Any reference to the competent authority of the State shall be construed as referring, where appropriate, to the competent authority in the relevant territorial unit.

4. If a Party to the Convention makes no declaration under paragraph 1 of this article, the Convention is to extend to all territorial units of that State.

Article 14. Entry into force

1. This Convention shall enter into force six months after deposit of the third instrument of ratification, acceptance, approval or accession.

2. When a State ratifies, accepts, approves or accedes to this Convention after the deposit of the third instrument of ratification, acceptance, approval or accession, this Convention shall enter into force in respect of that State six months after the date of the deposit of its instrument of ratification, acceptance, approval or accession. The Convention shall enter into force for a territorial unit to which this Convention has been extended in accordance with article 13 six months after the notification of the declaration referred to in that article.

Article 15. Amendment

1. Any Party to the Convention may propose an amendment to the present Convention by submitting it to the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the Parties to the Convention with a request that they indicate whether they favour a conference of Parties to the Convention for the purpose of considering and voting upon the proposal. In the event that within four months from the date of such communication at least one third of the Parties to the Convention favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations.

2. The conference of Parties to the Convention shall make every effort to achieve consensus on each amendment. If all efforts at consensus are exhausted and no consensus is reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the Parties to the Convention present and voting at the conference.

3. An adopted amendment shall be submitted by the depositary to all the Parties to the Convention for ratification, acceptance or approval.

4. An adopted amendment shall enter into force six months after the date of deposit of the third instrument of ratification, acceptance or approval. When an amendment enters into force, it shall be binding on those Parties to the Convention that have expressed consent to be bound by it.

THE SCHEDULE — *continued*

5. When a Party to the Convention ratifies, accepts or approves an amendment following the deposit of the third instrument of ratification, acceptance or approval, the amendment shall enter into force in respect of that Party to the Convention six months after the date of the deposit of its instrument of ratification, acceptance or approval.

Article 16. Denunciations

1. A Party to the Convention may denounce this Convention by a formal notification in writing addressed to the depositary. The denunciation may be limited to certain territorial units of a non-unified legal system to which this Convention applies.

2. The denunciation shall take effect 12 months after the notification is received by the depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation shall take effect upon the expiration of such longer period after the notification is received by the depositary. The Convention shall continue to apply to settlement agreements concluded before the denunciation takes effect.

DONE in a single original, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic.
