

Bird & Bird ATMD



Dispute Resolution Update Singapore strengthens its position and capabilities as a leading hub for international dispute resolution

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The Singapore Dispute Resolution team examines the Singapore Convention on Mediation Act 2020 and its impact on international arbitration.

Why is Singapore introducing new mediation legislation?

The Singapore Convention on Mediation Bill (Singapore) 2020 was just recently passed by Parliament. The Singapore Convention on Mediation Act 2020 (SCMA 2020) intends to implement Singapore's obligations under the United Nations Convention on International Settlement Agreements Resulting from Mediation, also known as the Singapore Convention on Mediation (Convention).

As one of the first signatories of the Convention, Singapore now aims to be among the first countries to ratify the Convention, which will enter into force six months after a third State deposits its instrument of ratification, acceptance, approval or accession. At present, the Convention has 52 State signatories but is not presently in force. SCMA 2020 will similarly only come into force on a gazetted date.

The SCMA 2020 ought to further strengthen Singapore's position and capabilities as a leading hub for international dispute resolution. It provides a vital complement to the international dispute resolution enforcement framework, which includes the Hague Convention on Choice of Court Agreements for litigation (domesticated through the Choice of Court Agreements Act 2016 (CCAA 2016)) and the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (the NYC) for international arbitration (domesticated through the International

Arbitration Act (Cap 143A) (IAA)). How will the new legislation change mediation in Singapore?

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SCMA 2020 should enhance the attractiveness of mediation as a mode of alternative dispute resolution and particularly, for Singapore to develop as a hub for mediation both in the region and globally. In this regard, compliance with the mediated settlement agreement and enforcement of the settlement against a foreign counterparty in the face of non-compliance are oft-cited challenges which parties face. The lack of an efficient and harmonised framework for the enforcement of settlement agreements resulting from mediation is of particular concern, especially in the context of cross-border disputes. In the absence of an automatic recognition and enforcement regime, parties to a settlement agreement could potentially be subject to subsequent or even duplicitous court or arbitral proceedings to enforce the settlement.

Previously, parties which concluded a mediated settlement outside the context of certain court proceedings or arbitration would only be able to enforce the settlement as a contract. This would necessitate the commencement of court or arbitration proceedings in order to obtain a court judgment or award for breach of contract. Thereafter, there might even be additional enforcement proceedings to enforce the award or judgment in a foreign jurisdiction. The Convention thus provides a framework which facilitates cross-

border recognition and enforcement of international settlement agreements arising from mediation. SCMA 2020 provides for a party to apply to the Supreme Court of Singapore to enforce an international settlement agreement, or to invoke the settlement agreement as a defence to court proceedings in respect of the same subject matter.

Essentially, the Convention and SCMA 2020 seek to do for mediation what the NYC has done for arbitration. While achieving the traction of the NYC is not a matter of course, it is only a matter of time for even greater number of signatories sign on and to ratify the instrument. Further, the present numbers of State signatories gives rise to optimism that the Convention will likely have a significant impact on the practice of international trade and dispute resolution.

Practitioners and commercial parties should also note that SCMA 2020 is not the only statute in Singapore which provides an enforcement regime for settlement agreements arising out of mediation. The Singapore Mediation Act 2017 (SMA 2017) provides for the enforcement of mediation agreements (through stay of Singapore court proceedings) as well as mediated settlement agreements. However, unlike SCMA 2020, the SMA 2017 only applies to Singapore proceedings. In this regard, SCMA 2020 does not purport to supersede the SMA 2017 but provides an additional enforcement option to the existing regimes (ie SMA 2017 and usual contractual rights). It is entirely up to the parties to decide on the relevant framework under which enforcement of an agreement arising from a mediated settlement is sought.

Are there any provisions in the SCMA 2020 of particular interest for international lawyers?

As mentioned above, the Convention is intended to be the functional equivalent for cross-border mediation as the NYC is for international arbitration. Thus, disputes practitioners in international arbitration and the court litigation sphere would find the provisions and concepts in SCMA 2020 familiar.

For instance, the concepts of issue estoppel and res judicata which are given effect to in IAA, s 29 and CCAA 2016, s 13 are reflected in SCMA 2020, s 4, which essentially allows a party to an international settlement agreement to invoke the agreement in Singapore court proceedings which involve a

dispute on a matter resolved by the agreement in order to prove that the matter has already been resolved.

Further, the incapacity of parties or the fact that the international settlement agreement itself is 'null and void, inoperative or incapable of being performed' are grounds on which to refuse enforcement of the international settlement agreement (see SCMA 2020, s 7(2)). This mirrors provisions in the NYC and IAA. Similarly, public policy and non-mediability (ie the mediation equivalent of non-arbitrability of subject matter) are also grounds for refusing enforcement thereof (see SCMA 2020, s 7(3)).

Similarly, the requirements for applications under SCMA 2020, s 4 to record the international settlement agreement as an order of court or to invoke the agreement in any proceedings before the Singapore courts, are very similar to those in the IAA (see SCMA 2020, s 6 ; IAA, s 30)

A key difference is that the Convention and SCMA 2020 are only relevant once the parties have arrived at a settlement agreement post-mediation. This is unlike the NYC and the IAA which provide a 'one-stop-shop' – in that they cover both agreements to arbitrate and the resultant awards. Where there is an agreement to arbitrate, the commencement of court proceedings would be regarded as a breach thereof and would (assuming the requirements under IAA, s 6 are met) have to be stayed automatically. Conversely, notwithstanding an agreement to mediate, parties may still be embroiled in court proceedings. Since agreements for mediation are not covered by the Convention and SCMA 2020, parties would have to separately rely on SMA 2017, s 8 to obtain a (discretionary) stay of any Singapore court proceedings.

As the relevant civil procedure rules for SCMA 2020 have not been promulgated, it remains to be seen whether an application under SCMA 2020, s 5, for the grant of leave to record an international settlement agreement as a Singapore court order, will mirror those provisions for leave to record an arbitral award as a court order. It is hoped that the Rules of Court will provide for such SCMA 2020, s 5 applications to be made on an ex-parte basis and that the courts will also adopt a formalistic approach in which leave will be granted with the onus on the party contesting the international settlement agreement to take out an application to set aside the order pursuant to SCMA 2020, ss 8 and 9.

When does the SCMA 2020 come into force?

SCMA 2020 was recently passed in Parliament on 4 February 2020 and will come into operation on a date that the Minister appoints by notification in the Gazette. SCMA 2020 is expected to come into force shortly after the Convention does so. It is hoped that SCMA 2020 will be gazetted in the coming months and before the middle of this year.

This interview article was first published on Lexis®PSL [here](#).

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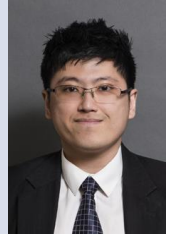
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