



# Enforcement of Mediation Agreements : The Singapore Convention

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UNIL Mediation Breakfast

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# Introduction

- UNCITRAL: United Nations Commission on International Trade Law
- Status today :
  - CISG (1978)
  - UNCITRAL Model Law on International Commercial Conciliation (“Mediation”) (2002)
  - UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York 1958)
- Working Group II (out of 6 working groups of UNCITRAL) – 4 years of negotiations
- June 2018: Approval of the **UN Convention on International Settlement Agreements resulting from Mediation** (Singapore Convention), after 8 sessions held with
  - 85 members States & 35 Non-Governmental Organizations
- The Convention is accompanied by a corresponding new Model Law
- The Convention is open for signature from 1 August 2019 and will come into effect upon ratification of at least 3 contracting States

# Purpose

Purpose: **Recognition & Enforcement** of international commercial settlements reached through mediation

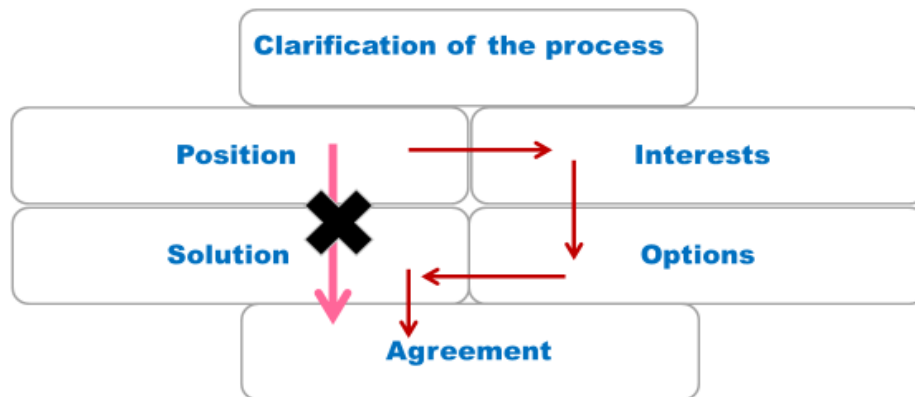
- Strong support for a legislation to the enforcement of mediated settlements (particularly in the Asia-Pacific region)
  - even though there is no evidence that mediated agreements are not being honored
  - see report of the GPC Global Pound Conference <https://www.globalpound.org/>
  
- Potential to boost the credibility and the status of mediation as a reliable option for parties in commercial international disputes
  - Provide reassurance and confidence in the mediation process for cross-border transactions
  - Promotion of the use of mediation as a dispute resolution mechanism
  
- Depends on the scope of operations & whether it will be perceived as widely applicable

# Article II: Definitions

“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.

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## How does the Mediation process work ?



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# Reservation provision

➤ **great challenge!**

- To respect parties' autonomy ?

- The ratifying States can elect to apply it only on a opt-in basis:

i.e. insofar as the parties to a settlement agreement have specifically agreed that the Convention will apply

When? In the mediation agreement ?

During the course of the mediation ?

- What if the parties are from States with different opt-in rules ? Imbalance – bargaining power ?
- Not a very comprehensive regime under which mediated settlements are widely enforceable

# Article I: Scope of application

➤ **International disputes**

- At least two parties to the settlement agreement have their place of business in different States
- or
- Their place of business is different from the place of execution of the agreement / the place with which the agreement is most closely connected to

➤ **Commercial disputes**

- No consumer matters with personal, family or household purpose
- Disputes not related to family, inheritance or employment law

➤ **Exclusion of settlement agreement enforceable as Arbitral awards or Court orders**

- To avoid overlaps with the NY Convention and the Hague Choice of Court Convention
- It is not clear whether it applies to EU cross border mediations under the EU Directive

## Article III : General Principles

- 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.
- 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.
- Exclusion of settlement agreement enforceable as Arbitral awards or Court orders

## Article IV: Defining Mediated Settlement Agreements

- The settlement agreement is signed by the parties

*and*

- There is evidence that the settlement agreement resulted from mediation, such as :
  - (i) The **mediator's signature** on the settlement agreement; *or*
  - (ii) **A document signed by the mediator** indicating that the mediation was carried out; *or*
  - (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.



## Article V: Defenses to Enforcement

Grounds for refusing to grant relief :

(e) There was a **serious breach by the mediator of standards applicable to the mediator or to 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.

## Selected Concerns

- Attesting to Mediation
  - European Code of Conduct for Mediators Art. 4 : “The mediator must keep confidential all information arising out of or in connection with the mediation, **including the fact that the mediation is to take place or has taken place**, unless compelled by law or grounds of public policy to disclose it”
  
- Mediator breach of standards
  - European Code of Conduct
  - Swiss Rules
  - UIA Code of Ethics
  - AAA, CPR, ABA, ...
  
- Risk of judicialization of the process
- May be detrimental to flexibility

# Questions ?

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