



IMPLEMENTATION OF THE SINGAPORE CONVENTION ON MEDIATION IN SAUDI ARABIA

On 5 May 2020, Saudi Arabia ratified the United Nations Convention on the International Settlement Agreements Resulting from Mediation, also known as the "Singapore Convention on Mediation" ("the Convention"), which will enter into force in Saudi Arabia on 5 November 2020.

The Convention

The Convention applies to international settlement agreements resulting from mediation. It establishes a harmonised framework to invoke cross-border settlement agreements and to enforce them, thereby bringing more certainty and stability to mediation procedures between international parties.

To date, 52 states have signed the Convention and it will enter into force on 12 September 2020. The only other GCC state to both sign, ratify, and implement the Convention as of the date of writing is Qatar.

Implementation

The Convention, as per Article 1, applies to written settlement agreements arising from mediation relating to a commercial dispute, which, at the time of its conclusion is international in that:

1. At least two parties to the settlement agreement have their place of business in different States; or
2. 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 in which the subject matter of the settlement agreement is mostly connected.

A party relying on a settlement agreement under the Convention must supply to the competent authority in Saudi Arabia the following (Article 4):

- The settlement agreement signed by the parties;
- Evidence that the settlement agreement resulted from mediation, such as:
 - The mediator's signature on the settlement agreement;
 - A document signed by the mediator indicating that the mediation was carried out;
 - An attestation by the institution that administered the mediation; or

- In the absence of the above, any other evidence acceptable to the competent authority in the Kingdom of Saudi Arabia.

Following this, the competent authority in Saudi Arabia must then enforce the settlement agreement in accordance with its rules of procedure and provisions of the Convention (Article 3). By doing so, the Convention has left it to Saudi Arabia to determine the exact mode of invocation and enforcement in accordance with their own rules of procedure. The competent authority will likely rely on the SCCA Mediation Rules, which provide a code of ethics for mediators, potentially the Execution Law, any other applicable laws. As the Convention has not yet been ratified in Saudi Arabia, the exact method is still unknown.

Article 5 of the Convention sets out the grounds in which the competent authority in Saudi Arabia may refuse enforcement, which are:

- If a party to the settlement agreement was under some incapacity;
- The settlement agreement sought to be relied upon:
 - 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 in Saudi Arabia;
 - Is not binding, or is not final, according to its terms; or
 - Has been subsequently modified;
- The obligations in the settlement agreement:
 - Have been performed; or
 - Are not clear or comprehensible;
- Granting relief would be contrary to the terms of the settlement agreement;
- 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

- 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 Convention does not apply to the following settlement agreements:

- Those concluded to resolve a dispute arising from transactions for personal family, or household purposes;
- Those which are enforceable as a judgment in Saudi Arabia; and
- Those that are enforceable as an arbitral award.

Saudi Arabia has an Enforcement Law which sets strict hurdles for the enforcement of foreign judgments (including a reciprocity test) but is also a signatory to the New York Convention on the recognition and enforcement of arbitral awards.

If a party can show that the settlement agreement falls within the scope set out above, a relevant court or other competent authority in a signatory country has limited grounds for refusing enforcement.

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