

AUGUST 2019

A Significant Step for International Mediation: The Singapore Convention on Mediation

The United Nations Convention on International Settlement Agreements Resulting from Mediation (“the Convention”) was signed in Singapore by 46 states including Turkey. Delegations from more than seventy states attended the signing ceremony which was held in Singapore on 7 August 2019.

Currently, mediated settlement agreements cannot be enforced across cross borders. Therefore, the Convention is a landmark instrument to provide a cross-border enforcement of mediated settlement agreements which is expected to bring certainty and stability to the international framework on mediation.

The courts of member states of the Convention are expected to handle applications either to enforce such settlement agreements or to allow the parties to invoke the agreement to prove that the matter has already been resolved. It is expected that the Convention, once enters into force, will foster the settlement of commercial disputes and will be beneficial for the harmonization of legal framework for invoking mediated settlement agreements as well as their enforcement. It will undoubtedly enhance the use of mediation.

The Convention is a relatively short document (consisting of 16 Articles) and in fact bears much resemblance to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Under the Convention, each party to the Convention will have a right to determine the procedural mechanisms on enforcing mediated settlement agreement.

Mediation is defined as *“an attempt by parties to reach 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”* under the article 2/3 of the Convention. This broad definition aims to increase the attractiveness of the Convention.

The Convention does not apply to settlement agreements concluded by a consumer for personal, family or household purposes, or relating to family, inheritance or employment law.

Furthermore, a settlement agreement that is enforceable as a judgement or as an arbitral award is also excluded in order to avoid possible overlap with existing conventions namely, the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958) and the Convention on Choice of Court Agreements (2005).

The entry into force clause of the Convention is not demanding as it will come into force only six months after the ratification, acceptance, approval or accession of the third state.

Opportunities for Turkey

The potential benefits of being party to Singapore Convention on Mediation is significant since the Convention provides the elimination of the need for full court proceedings on the dispute resolution.

The Convention offers all signatory states the opportunity to close the enforcement gap. Introduction of the Convention will bring greater awareness to the mediation process.

It promises a risk management mechanism accessible to cross-border business players. After the ratification of the Convention, Turkish mediators and lawyers will take the advantage especially both in domestic and cross-border mediation for disputes arising out of infrastructure, technology, investment etc.

CONTACT US

Polat İş Merkezi No: 29 Offices: 28 - 29
Mecidiyeköy, İstanbul, Turkey
+ 90 (212) 215 30 00
info@gurulkan.com
www.gurulkan.com