



# **The Singapore Convention on Mediation: Australia's Options for Implementation**

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**SINGAPORE  
CONVENTION  
ON MEDIATION**



# Outline

## **Singapore Convention on Mediation**

- Background
- Scope
- Mechanisms for recognition and enforcement
- Formal and evidentiary requirements
- Grounds of refusal
- No 'setting-aside'
- *Lis pendens*
- Reservations

## **Model Law 2018**

## **Australia's options for implementation**

## **Concluding remarks**

# Singapore Convention on Mediation

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## Background

- Proposal for new legal instrument on mediation (2014)
- UNCITRAL Working Group II (Dispute Settlement) (2015–18)
- Draft Singapore Convention on Mediation finalised and updated Model Law adopted (June 2018)
- Adopted by UN General Assembly (20 Dec 2018)
- Opened for signature in Singapore (7 Aug 2019)
- Entry into force (12 Sep 2020)
- Australia signs (10 Sep 2021)
- 55 signatories; 9 ratifications/approvals (25 Feb 2022)

# Singapore Convention on Mediation

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## Scope

'Mediated' (Article 2(3)):

... 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.

# Singapore Convention on Mediation

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## Scope

'International' (Article 1(1))

A settlement agreement will be 'international' if, at the time of its conclusion:

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

# Singapore Convention on Mediation

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## Scope

'Commercial'

- Wide interpretation (Model Law 2018, n 1)
- Exclusions:
  - Consumer disputes + relating to family, inheritance or employment law
  - Settlement agreements approved by court, concluded in course of court proceedings, or enforceable as a judgment in contracting state's court
  - Arbitral awards

# Singapore Convention on Mediation

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## Mechanism for recognition and enforcement (Article 3)

- **Sword (Article 3(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.

- **Shield (Article 3(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 the matter has already been resolved.

# Singapore Convention on Mediation

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## Formal and evidentiary requirements (Article 4)

- **Signed by the parties**
- **Evidence that agreement resulted from mediation:**
  - Mediator's signature
  - Document signed by mediator indicating mediation carried out
  - Attestation by institution that administered mediation
  - Any other evidence acceptable to competent authority
- **Signature requirement can be met by electronic communication**



# Singapore Convention on Mediation

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## Grounds of refusal (Article 5)

- Contract, eg:
  - Incapacity
  - Null and void, inoperative or incapable of being performed
  - Lack of finality
- Mediator (mis)conduct
- Public policy
- Subject matter not capable of settlement by mediation under *lex fori* of competent authority

## Determination of the applicable law? (article 5(1)(b)(i))

## No setting-aside mechanism

# Singapore Convention on Mediation

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## ***Lis pendens* (Article 6)**

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.

# Singapore Convention on Mediation

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## Reservations (Article 8)

- Government or governmental agencies
- Opt-in

# Model Law 2018

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- International commercial mediation (Section 2)
  - Focused on mediation process
- International settlement agreements (Section 3)
  - Mirrors Singapore Convention

# Australia's options for implementation

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- Standalone Act?
- Part of a *International Civil Law Act*?
- No implementation at all?



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