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Singapore Convention on Mediation Enters into Force in Turkey

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Taking effect as of 11 April 2022, what's it about and how to benefit from it?

Turkey has become the eighth State Party to the United Nations Convention on International Settlement Agreements Resulting from Mediation, also known as the Singapore Convention on Mediation ("**Convention**") on 11 October 2021. In accordance with the Article 14 of the Convention and the Presidential Decree no. 5235[1], the entry into force will be realized on 11 April 2022, 6 months after the deposit of the instrument of ratification to the United Nations ("**UN**").

The Convention is a multilateral treaty which offers a uniform and efficient framework for the enforcement of international settlement agreements resulting from mediation. As publicly announced by the UN, the Convention aims to facilitate international trade and promotes mediation as an alternative and effective method of resolving commercial disputes by providing an effective mechanism for the enforcement of international settlement agreements resulting from mediation.

The Convention introduces mediation as a cost effective and amicable alternative to arbitration and litigation in the resolution of international disputes. It ensures that an international mediated settlement agreement reached by parties becomes binding and enforceable under a simplified and streamlined procedure. Parties to the Convention undertake to enforce settlement agreements resulting from mediation processes under their own domestic law.

The text adopted and the idea behind seems to be theoretically impeccable. However, potential users' consciousness about the existence, scope, and benefits of the Convention as well as its implementation by the national authorities are of utmost importance for an efficient and swift transition. While the effective date is fast approaching for Turkish users, we take a look at the most significant aspects of the Convention and the status of national legislation.

Scope of Application of Convention

The scope of application of the Convention is clearly defined in its Article 1. Under this article, the Convention applies to agreements resulting from mediation and concluded in writing by parties to resolve a commercial dispute which, at the time of their conclusion, are international. Accordingly, the Convention finds application if the below conditions are met:

1. The settlement agreement must be resulting from mediation: Mediation is defined as *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* [Article 2(3)]. Accordingly, if there is a procedure falling under this definition, it will be deemed as a mediation regardless of its denomination.

The Convention also makes clear that settlement agreements that are enforceable as arbitral awards or judgments; or that have been concluded during court proceedings do not fall within its scope of application [Article 1(3)].

2. There must be an international settlement agreement: The Convention sets the criteria of internationality. A dispute is international if

i. *at least two parties to the agreement having their places of business in different States**[2]** or*
ii. *the parties to the agreement having their places of business different than the State in which a substantial part of the obligations under the agreement is performed or the State with which the subject matter of the agreement is most closely connected.* [Article 1(1)]

3. The dispute must be commercial: As the aim is to cover agreements concluded in relation with commercial disputes, the Convention clearly excludes settlement agreements which are

i. *concluded to resolve a dispute arising from transactions engaged in by one of the parties (a consumer) for personal, family or household purposes;*
ii. *relating to family, inheritance or employment law* [Article 1(2)]

4. The settlement agreement must be in writing: The Convention deems a settlement agreement as "in writing" if its content is recorded in any form. Further, if the information contained in an electronic communication is accessible so as to be useable for subsequent reference, "in writing" requirement is considered to be met [Article 2(2)].

How to Rely on Settlement Agreements under Convention?

If there is a settlement agreement falling within the scope of application, it can be relied on in two ways:

- It can be directly enforced through the competent authority of a State Party, in accordance with its rules of procedure and under the conditions laid down in the Convention [Article 3(1)]
- It can be invoked to prove that the matter has been resolved, in case a dispute arises relating to a matter which has already been resolved by the settlement agreement [Article 3(2)]

Party seeking relief through the settlement agreement shall supply the below to the competent authority of the State Party where the relief is sought:

- The settlement agreement signed by the parties,
- Evidence that the settlement agreement resulted from mediation [Article 4].

Such evidence proving that settlement agreement resulted from a mediation may appear in the form of the mediator's signature on the agreement, a document signed by the mediator confirming the performance of the mediation process or attestation from the institution that conducted the mediation process.

It is also necessary that the settlement agreement to be signed by the parties. the Convention regulates that electronic communication in the mediation process and the settlement agreement is also viable if a proper method that would identify the parties and their intention in respect of the information contained in the electronic communication is utilized. Opportunity to reach settlement agreements through electronic communication is notably significant as such practice would make international mediation processes even more convenient and cost efficient for parties based in different countries.

The competent authority holds right to request any further documents in order to confirm whether the requirements of the Convention are met, and while considering the request, the authority shall act expeditiously.

Grounds for Refusal of the Request for Enforcement

The Convention lists the grounds for refusing to grant a relief sought through a settlement agreement. In order for the competent authority of the State Party to refuse granting a relief, the party against whom the relief is sought should

present proof that;

- one of the parties to the settlement agreement was under incapacity
- the settlement agreement is null and void or inapplicable under the law which the parties have subjected it
- the settlement agreement is not binding or is provisional or has been amended subsequently
- the obligations set forth in the settlement agreement have already been performed or are not precise
- granting relief would be contrary to the settlement agreement
- there was a breach of standards applicable to the mediation process by the mediator which substantially affected a party to enter into the settlement agreement
- the mediator refrained from disclosing information to the parties that would raise justifiable doubts concerning their independence and impartiality and such situation caused a party to enter into the settlement agreement who otherwise would not under normal circumstances [Article 5].

The authority may also refuse to grant a relief without any demand if granting the relief would be contrary to its public policy or the subject matter of the settlement agreement is not suitable to be resolved by mediation in the said State Party. In fact, those conditions are comparable to those of recognition and enforcement of foreign judgments and arbitral awards.

It should also be noted that the competent authority is entitled to adjourn the decision and, on the request of a party, to order the other party to give suitable security, 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 [Article 6].

The Convention shall apply only to settlement agreements concluded following the entry into force of the Convention in the relative State Party [Article 9]. Accordingly, settlement agreements resulting from mediation will be enforceable in Turkey as of 11 April 2021.

Where does Turkey stand while the effective date is fast approaching?

Turkey signed the Convention on 7 August 2019, becoming one of the 55 current signatories. In the justification of the parliamentary bill proposed to the Grand National Assembly, the purpose is set as follows:

In the recent years, awareness regarding the mediation, which is an alternative dispute resolution mechanism that has been implemented our country in 2013 and that ensures the disputes are resolved within a shorter time with less expenditure, has risen; and the frequency of the utilization of it has increased.

Mediation has been made a statutory condition for an action in the cases regarding employee or labor receivables and compensations and restitution claims based on individual or collective labor agreements in 2018; and in the commercial cases regarding monetary claims in 2019. In the present case, mediation has been utilized in more than one million disputes.

It has been assessed that our country becoming a party to the Convention would been in line with the progress made in the recent years regarding the mediation and also would contribute to enforcing the international cooperation concerning the enforceability of the settlement agreements resulting from commercial mediation."

In the Foreign Affairs Commission Report dated 22 October 2020, it is stated that that being a party to both the Singapore Convention and the New York Convention dated 1958 would make Turkey a safe harbor for the foreign investors.

On 25 February 2021, the parliamentary bill concerning the ratification was approved in the Grand National Assembly and published in the Official Gazette on 11 March 2021.

As the final internal step, a Presidential decree concerning the ratification of the Convention was published in the Official Gazette on 22 April 2021. Following the completion of the internal ratification procedure, instrument of ratification was deposited to the UN on 11 October 2021, which made Turkey the eight State Party to the Convention. In accordance with the Article 14 of the Convention and the Presidential Decree no. 5235, the entry into force will be realized on 11 April 2022.

Following the publication of the Presidential decree ratifying the Convention in the Official Gazette in April, a press release on the issue was released by the Ministry of Justice. In the release it is stated that with the Convention, a cross-border dimension is reached in Turkey's recent development in mediation. It is also indicated that becoming a party to the Convention reenforces Turkey's legal security status for the business environment and makes it more attractive to the foreign investors.

Turkey has not declared any reservations to the Convention. Nevertheless, in accordance with the Article 8 of the Convention, parties are allowed to make reservations with regard to two issues and the parties may declare such reservations at any time.

Accordingly, the parties may declare reservations on that;

1. a) They shall not apply the Convention to settlement agreements to which they are a party, or to which any governmental agencies or any person acting on behalf of a governmental agency is a party, to the extent specified in the declaration;
2. b) They shall apply the Convention only to the extent that the parties to the settlement agreement have agreed to the application of the Convention.

No other reservations can be declared other than the above ones.

Although there are not any reservations declared by Turkey yet, reservations may still be made, concerning the issues allowed in the Article 8 and such reservation would become effective 6 months after their deposit to the UN.

Looking at the national legislation regarding implementation of the Convention, there is not a precise road map yet for the users. On the other hand, national legislation contains many features that would make harmonization of the domestic law and the Convention rather easy. As part of the efforts to ensure efficiency of the judiciary, alternative dispute resolution mechanisms such as arbitration or arbitrary and mandatory mediation are greatly supported by the Ministry of Justice in Turkey, and parties and attorneys are encouraged to have recourse to those. While mediation has been officially practiced in Turkey since 2013, a notable reform that aims to reduce the workload of the courts was introduced in the form of mandatory pre-litigation mediation stage in commercial disputes with monetary claims as of 1 January 2019. Accordingly, parties to a commercial dispute pertaining to monetary receivables cannot bring their case before a court unless the mandatory mediation process is completed, and a final report is issued by the mediator putting forth the parties' failure to settle the dispute. The parties must first apply for mediation; otherwise, the case will be dismissed on procedural grounds without further examination on the merits.

Turkey has enacted the Law on Mediation in Civil Disputes in 2012, which introduces the notion of enforceability annotations in the settlement agreements resulting from mediations. In accordance with the Article 18 of Law on Mediation in Civil Disputes, the parties may request an enforceability annotation to be added in the settlement agreement reached at the end of the mediation process. In the event that the mediation process was utilized before initiation of a lawsuit, the enforceability annotation may be requested from the civil peace court at the place where the mediator is located. Therefore, since the notion of the enforceability of the settlement agreements that contain enforceability annotations as a court decision has already become an established practice in Turkey, it can be said that the procedure to be introduced with the Convention is not unfamiliar in terms of the current practice.

It is also noteworthy that Turkey has been a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards since 1992. Since the recognition and enforcement of the foreign arbitral awards are already established under Turkish Law, the concept of enforceability of settlement agreements is predicted to be

easily adaptable. In light of the above features, it is fair to conclude that the Convention fits perfectly in the national legislative framework and targets of the Ministry of Justice aiming at promotion of mediation as an alternative dispute resolution method.

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[1] Presidential Decree no. 5235, published in the Official Gazette no. 31761, dated 25 February 2022.

[2] As per Article 2(1) of the Convention, *(…)* (a) If a party has more than one place of business, the relevant place of business is that which has the closest relationship to the dispute resolved by the settlement agreement, having regard to the circumstances known to, or contemplated by, the parties at the time of the conclusion of the settlement agreement; (b) If a party does not have a place of business, reference is to be made to the party's habitual residence.

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