

ReSolution: In Brief

UNCITRAL Regional Centre for Asia and the Pacific issues its annual report

The UNCITRAL Regional Centre for Asia and the Pacific (RCAP) presented a report on its activities in 2019-2020 to the United Nations Commission on International Trade Law (**UNCITRAL**). The report was presented to the Commission at its 53rd session held virtually in Vienna in July this year. A main objective of RCAP is to raise awareness and promote effective understanding, adoption and use of UNCITRAL texts, in order to foster legal certainty in international commercial transactions. The report sets out the activities undertaken in the 2019-2020 year in reaching out and providing technical assistance on international trade and commercial law reforms within the Asia-Pacific region to States, international and regional organisations, and development banks. The topics included dispute settlement, e-commerce, security interests and sale of goods. The report highlights RCAP's active support of events and initiatives to raise awareness and promote effective understanding, adoption and use of a wide range of UNCITRAL texts, such as the Singapore Convention on Mediation, the UNCITRAL Model Laws on Electronic Transferable

Records, Public Procurement, and Secured Transactions, and the United Nations Convention on Contracts for the International Sale of Goods. Highly successful flagship events were reported on, such as the Incheon Law & Business Forum, held in the Republic of Korea; the Asia Pacific ADR Conference held in Seoul; the UNCITRAL Asia Pacific Judicial Summit.

The full report is available [here](#).

Australia ratifies the Mauritius Convention on Transparency

On 17 September 2020, Australia became the sixth state party to ratify the United Nations Convention on Transparency in Treaty-based Investor-State Arbitration (**Mauritius Convention**), alongside Cameroon, Canada, Gambia, Mauritius, and Switzerland.

By becoming a party to the Mauritius Convention, Australia is consenting to apply the UNCITRAL rules on transparency in treaty-based investor-state arbitration (**Rules on Transparency**) to investor-state arbitration initiated in accordance with pre-existing investment treaties. The Mauritius Convention extends the application of the Rules on Transparency to investment treaties concluded prior to 1 April 2014, and therefore supplements pre-existing investment treaties with respect to transparency-related obligations.

The aim of the Rules on Transparency is to increase transparency and ensure public accessibility to investor-state dispute settlement (**ISDS**) proceedings. The Mauritius Convention, through incorporation of the Rules on Transparency, now considers both the public interest in such arbitrations and the interest of the parties to resolve disputes in a fair and efficient manner. Going forward, this means investor-state arbitrations commenced under the ISDS provisions in Australia's investment treaties and under the Rules on Transparency will have certain documents made public. These include the notice of arbitration and response (Article 3) and hearings for the presentation of evidence or oral argument



(Article 6). Other key provisions of the Rules on Transparency can be found here.

The Mauritius Convention will enter into force for Australia on 17 March 2021. It remains open for signature, ratification, and accession by states and regional economic integration organisations. For more up-to-date information on the Mauritius Convention and its status, visit the UNCITRAL website.



Singapore Convention on Mediation now in force

The United Nations Convention on International Settlement Agreements Resulting from Mediation (**Singapore Convention on Mediation**) applies to international settlement agreements resulting from mediation. It is a binding international instrument aimed at facilitating international trade, which came into force on 12 September 2020. It advocates mediation as an effective alternative method of resolving commercial disputes. In particular, it promotes the benefits of mediation being both time and cost efficient, as the parties do not need to resort to full court proceedings to enforce international mediation settlement agreements. The conciliatory nature of mediation is regarded as a significant benefit in trade relations, as it helps preserve relationships despite disputes arising between parties.

The United Nations predicts the Singapore Convention on Mediation will bring certainty and stability to the international framework on mediation and expects it to be an effective mechanism for the enforcement of international mediation settlement agreements. It is considered one of the most successful multilateral treaties prepared by the United Nations Commission on International Trade Law (**UNCITRAL**) since it opened for signatures on 7 August 2019, with 53 States having now signed. It remains open for signature, ratification, and accession by States and regional economic integration organisations. The Singapore Convention on Mediation applies to international settlement agreements resulting from mediation which have been concluded in writing by parties to resolve a commercial dispute. It does not extend to non-commercial disputes such as employment or family matters. Belarus and Ghana have both recently approved the Singapore Convention. Approval by Belarus was effected on 15 July 2020 and it will enter into force there on 15 January 2021. Belarus has stated it believes the Singapore Convention will have a positive impact on the entire system of international commercial mediation.

Ghana became the 53rd state to sign the Singapore Convention on Mediation. This follows in the footsteps of Ghana ratifying the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards earlier this year. As a result, both domestic and international mediation is now recognised under Ghanaian law, with domestic mediation already enjoying statutory recognition in the Alternative Dispute Resolution Act 2010 (Act 798). With the signing of the Singapore Convention on Mediation, Ghana has taken a further step towards its goal of becoming a mediation and arbitration hub in Africa. More information on the Singapore Convention including its purpose and key provisions is available on the UNCITRAL website here.

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New York Convention Updates

The United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (**New York Convention**) came into force in 1959 and is widely accepted as the foundation instrument governing international arbitration. Under this convention, contracting states are required to give effect and recognise arbitration agreements as binding, and recognise and enforce arbitral awards made in other states, pursuant to the rules and conditions outlined in the convention. Since its establishment, the New York Convention has significantly contributed to the increasing use of international arbitration as parties' preferred method of resolving commercial disputes. The principal aim of the New York Convention is to ensure that foreign and non-domestic arbitral awards are recognised and enforced in

the same way as domestic awards, regardless of the jurisdiction, and provide common legislative standards for doing so. A non-domestic award is regarded as an award which imports some foreign element into the arbitral proceedings, such as another state's procedural law.

A further aim of the Convention is to require courts to deny parties access to the court system, when granting such access would be in contravention of the parties' agreement to refer disputes to an arbitral tribunal.

More information on the New York Convention can be found [here](#).

Three new signatories to the New York Convention: The Kingdom of Tonga, Ethiopia and Sierra Leone.

On 12 June 2020, the Kingdom of Tonga became the 164th State Party to the Convention. It came into force in Tonga on 12 September 2020 and will be applicable to arbitral awards issued on or after that date.

This will be a welcome development for parties involved in international business disputes, as it means they can be certain that arbitration awards will be enforced in Tonga.

The move is a reflection of the growing recognition in the Pacific of the importance of arbitration in international dispute resolution. Tonga has historically had no legal framework to resolve cross-border disputes through international arbitration and this has stifled trade and investment in the nation. Pacific region member states such as New Zealand, Australia, the USA, China, South Korea and Japan are key trading partners of Tonga. For those states, there is now a credible dispute resolution and enforcement regime that will overcome the perceived and real uncertainties of settling commercial disputes in Tonga and enforcing arbitration awards through the local

court system. The UNCITRAL website notes that Tonga will apply the New York Convention only on differences arising out of legal relationships, whether contractual or not, that are considered commercial under Tonga's national law.

The next State Party to accede to the New York Convention was Ethiopia, where it will come into force on 22 November 2020. The Ethiopian economy has grown rapidly over the last decade and, while the market offers many opportunities, the Government of Ethiopia acknowledges doing business in the country has its challenges. Given enforcing contracts is one of the 11 indicia the World Bank uses to rank ease of doing business, Ethiopia's accession to the New York Convention should assist the Government in its stated goal of improving the country's World Bank's Ease of Doing Business ranking, where it currently sits at 159.

On 28 October 2020, Sierra Leone deposited its instrument of accession with the United Nations Secretary General and became the 166th State Party to the New York Convention. The Parliament of Sierra Leone approved ratification of the Convention on 9 November 2018 and it will enter into force there on 26 November 2021. Sierra Leone has acceded to the Convention subject to three reservations,

which are that it will only apply to:

- the recognition and enforcement of awards made in the territory of another contracting State;
- differences arising out of legal relationships, whether contractual or not, which are considered commercial under the laws of Sierra Leone; and
- arbitration agreements concluded and arbitral awards rendered after the date of its accession to the Convention.



ARBITRATION MODEL CLAUSE



"Any dispute or difference arising out of or in connection with this contract, or the subject matter of this contract, including any question about its existence, validity or termination, shall be referred to and finally resolved by arbitration in accordance with the Arbitration Rules of the New Zealand International Arbitration Centre."

To secure the appointment of an arbitrator contact NZIAC at registrar@nziac.com or visit www.nziac.com