"The impact of ratifying the Singapore Convention on Mediation for Ireland"

by

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ACRONYMS

ADR: Alternative Dispute Resolution

CPR: Civil Procedure Rules

ENE: early neutral evaluation

IMA: Irish Mediation Act

IMI: International Mediation Institute

iMSA: International mediated settlement agreement

iMSAs: International mediated settlement agreements

MII: Mediator's Institute of Ireland

SCMA: Singapore Convention on Mediation Act

SIMI: Singapore Mediation Institute

SMA: Singapore Mediation Act

UNCITRAL: United Nations Commission on International Trade Law

WGII: Working Group II

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ABSTRACT

This research aims to assess the impact of ratifying the Singapore Convention on Mediation for Ireland.

Chapter one examines literature across various topics that include the concept of mediation, awareness of mediation in commercial disputes, the Iris Mediation Act, the Singapore Mediation Act, the Singapore Convention on Mediation, The Model Law, UNCITRAL, and explore the impact of the convention on signatory countries.

Chapter two explains the methodology and methods used in this work, data collection through interviews and presents the data analysis, concluding with explaining the research limitations.

Chapter three introduces the reader to the data collected and the sampling population.

Chapter four refers to the data analysis and findings during the research.

Finally, chapter five presents the discussion regarding the data analysis according to each objective. Conclusions and reflexions.

INTRODUCTION

As an effective way of Alternative Dispute Resolution (ADR), the popularity of mediation for resolving cross-border commercial disputes has been growing due to its benefits in resolving disputes of this nature.

Characteristics like cost-effectiveness, speediness and the control of the process by the parties make mediation an attractive alternative to resolve commercial disputes because it is likely that the parties preserve their commercial relation by reaching an amicable agreement expecting it to comply voluntarily.

However, the fact that the parties reach a mutual agreement during the mediation does not guarantee that they will comply with it. One party can face difficulties ensuring that the other party complies with the settlement agreement terms.

The Singapore Convention on Mediation is an instrument to resolve the difficulty for the parties in a dispute to enforce international commercial settlement agreements resulting from mediation. (Quek Anderson, 2020)

Ireland is a country that encourages the use of mediation to resolve disputes. The Mediation Act 2017 indicates in article 16 that a Court may consider if the circumstances of the case allow it to "invite the parties to the proceedings to consider mediation as a means of attempting to resolve the dispute subject of the proceedings".

Considering that the mediation Act 2017, in its article 11 (2), states that the mediation settlement shall have effect as a contract between the parties, the problem for the parties to enforce their international commercial settlements agreements resulting from mediation remains as it is not directly enforceable in Court.

JUSTIFICATION OF STUDY

Mediation in the international context has raised some topics for discussion among its different actors. One of these topics includes the enforcement of international mediated settlement agreements, which have led to the creation of the Singapore Convention on Mediation.

The convention is an international treaty that establishes a framework to facilitate the enforcement of settlement agreements reached between parties in a mediation proceeding across borders.

The Singapore Convention has been controversial since it is open for signature; there are different opinions and criticism. There is also the question mark related to the accession to the convention from the European Union state members.

Ireland is a member state of the EU. Exploring the country's autonomy to sign the convention is of interest in this research.

Assessing the different points of view relating to the impact of the convention on Ireland is also the subject of this study.

The value of this research is to create awareness of the existence of the Singapore Convention on Mediation due to it was open for signature on 7 August 2019. It is a relatively new instrument; its study is necessary to create the awareness of its existence to consider if ratification is required to strengthen the legal framework on international mediated settlement agreements in Ireland.

The potential impact of this research can lead to considering the ratification of the convention as part of the Political Agenda if the effect of its implementation in the country is positive.

RESEARCH QUESTION

Which can be the effects for Ireland in ratifying the Singapore Convention on Mediation?

OBJECTIVES

From the research question, three objectives have emerged:

1. To examine the degree of autonomy of Ireland as state Member of the European Union if considering signing the Singapore Convention on Mediation
2. To critically asses, the Singapore Convention on Mediation and the Mediation act 2017 as complementary laws.
3. To explore the effects on the signatory states in applying the Singapore Convention on Mediation.

Chapter 1: LITERATURE REVIEW

Introduction

This literature review will, for different parameters, refer to what the Singapore Convention on Mediation holds for Ireland. Various authors' views from different angles will help the readers understand how the Singapore Convention can impact Ireland. To understand the purpose of the Convention, focusing on the research objectives with qualitative research (interviews).

1. Concept of mediation:

According to the Irish Mediation Act (IMA) 2017, the term mediation means a facilitative and voluntary process in which parties to a dispute attempt to reach a mutually acceptable agreement to resolve their conflict with the assistance of a mediator.

According to the Initiative Mediation Support Deutschland (2017), in mediation, the facilitation of dialogue toward and understanding of the other parties' perspectives and needs leads to a potential transformation of the relationship, resulting in trust and, as a result, a resolution of the parties' conflicts.

On the other hand, Nolan-Haley (2020) has defined mediation as a form of Alternative Dispute Resolution through which two or more parties agree on some disagreements with substantial effects such as cost-effectiveness, flexibility, and speed compared to courtroom litigation.

Another characteristic of mediation highlighted by Lee and Alexander (2019) is flexibility. The procedure can adapt to parties' needs, such as the choice of place of the mediation and the language.

Mulder (2017) also agreed that one of the strengths of resolving conflicts through mediation is its versatility and flexibility, especially in the commercial world in those areas where the cases are diverse and complex. Therefore, mediators can develop their styles according to their experience, training and regional bias, shaped for their specific field. Thus, most commercial

mediators know how to evaluate each case with their styles for conflict resolution and the best approach to each case.

As can be seen from the preceding, there are no set rules for mediation; instead, a mediator must use their judgment and keen observation to help the parties to reach an agreement. As a result of all of the authors' perspectives, mediation can be defined as a method of dispute resolution that is less expensive and faster than the traditional court system

2. Awareness of mediation in commercial disputes

Arbitration has been seen as the most reliable means for resolving cross-border disputes for a long time. However, the business community is raising awareness about the benefits of mediation at the international level, Alexander and Tunkel (2021). To this end, it is worth mentioning that the SIDRA Survey Report (2020) examined the preference of the decision-makers in business regarding their choice of dispute resolution confirming the commercial appeal of mediation for business. The report further highlighted that in terms of speed, mediation is the most effective mechanism for dispute resolution in contrast to arbitration and litigation.

Furthermore, Barker (1996) has stated that through mediation, "non-arbitrable" or "non-justiciable" matters can be resolved, e.g. personal interest, emotional concerns and intangible feelings, and cannot be addressed through an arbitral procedure or a court case. Thus, mediation has the potential to turn an adversarial situation into a cooperative relationship between the parties, and they can take advantage of the mediation process to narrow the issues to keep the relationship and facilitate future bargains.

Mulder (2017) claims that the use of mediation by the International Chamber of Commerce has expanded more than before. In many countries and instances, the mediation process is seen as cost-effective, and many states are now turning to it for justice. The governments are pressing parties to use mediation to resolve their complicated issues quickly.

Further, Alexander and Tunkel (2021) have made it clear that common law jurisdictions were 'early adopters' of mediation, and it was an accepted tool for resolving commercial disputes. In many Asian countries, mediation is used to settle commercial conflicts due to its consistency with

their culture. In China, for example, mediation is well accepted, and the Chinese government uses mediation to resolve disputes in the commercial field, Chua (2019).

Furthermore (Alexander, 2003) states that various stakeholders groups such as the judiciary, reform-minded legislators and governments have identified new reasons for the need and utilisation of ADR behind the new wave of interest in mediation that includes:

- The recognition of the alienating effects on the community that accompany the overregulation and legalisation of disputes,
- The globalisation of law concerning the internationalisation of consumer and environmental protection laws and trade,
- The increasing self-regulation of specific industry groups, particularly in the banking, financial and commercial sector, and
- Socio-cultural changes such as the decline of the culturally homogenous nation-state. The increasing pluralisation of societal value systems and the emerging role of women in the workplace.

On the other hand, S. I. (2016) suggests that commercial mediation may follow the same route similar to how international commercial arbitration grew in popularity after the universal adoption of the New York Convention.

The above discussion clarifies that mediation, especially in the commercial field, has been accepted for dispute resolution. For example, Asian countries like China use commercial mediation for effective and easy solutions to commercial issues in business.

In the case of Singapore, as stated by Lim (2019), the establishment of Community Mediation Centres (CMCs) to deal with community disputes and the Singapore Mediation Centre (SMC) to deal with commercial disputes were the foundation for the future development of commercial mediation.

Three more essential institutions emerged after; the Singapore International Mediation Centre (SIMC), the Singapore International Mediation Institute (SIMI), and the Singapore International

Dispute Resolution Academy (SIDRA), which play an essential and complementary role in the area of international commercial mediation in the country.

Indeed, O'Dwyer (2020) states that commercial actors committing to mediation are increasing, explaining that the World Bank, in conjunction with the International Finance Corporation, is working to promote international commercial mediation. Several multinational companies have adopted mediation as a dispute resolution

3. The Irish Mediation Act 2017 and the Singapore Mediation Act 2017. An overview.

This chapter gives a general overview of the IMA and the SMA regarding the most relevant provisions for each legislation, followed by a brief comparison.

3.1 The Irish Mediation Act 2017 (IMA)

Following the recommendations of the Law Reform Commission's 2010 report on Alternative Dispute Resolution: Mediation and Conciliation, the Irish Mediation Act 2017, is considered a positive step toward reinforcing the mediation process and regulations as part of the Civil Justice System. The regulation steps of mediation are a crucial part of the act and set out the principal characteristics of mediation: voluntariness, confidentiality, the right of the parties to have legal advice and the right of the parties to step out of the mediation process any time. Gilvarry, Kavanagh and Munnelly (2017).

The IMA was signed on the 2nd of October 2017, placing some obligations on the parties interested in resolving their disputes through mediation, reducing time and costs for those effectively involved in the mediation process, Geary (2017).

Section 2 (1) (o) of the Mediation Act defines mediation as follows:

> ""mediation" means a confidential, facilitative and voluntary process in which parties to a dispute, with the assistance of a mediator, attempt to reach a mutually acceptable agreement to resolve the dispute;"

Section 3 states that before starting court proceedings, the practising solicitor must inform their clients of the rules and regulations of the mediation process and its advantages. It is also required

to swear a statutory declaration regarding compliance with this obligation when the court proceedings commence.

Further, Section 6 rules that participation in mediation shall always be voluntary, and parties can withdraw at any time if they so choose. Establishes the parties' right to be accompanied by a person of their choice or a legal advisor.

However, it should be borne in mind that Section 16 sets the power of the court to invite parties to consider mediation as a way of dispute resolution. Moreover, the court can impose economic sanctions on the party that unreasonably refuses to engage in mediation.

Section 8, describes the role of the mediator, highlighting the fact that the mediator shall determine if there is any possible conflict of interest that might affect their impartiality. It is essential to mention that in such a situation, the mediator is duty bound to inform the parties of the conflict of interest and withdraw from the mediation if there is a conflict. It also mentions that the mediator has to act with integrity while being fair to all the parties.

Section 10 highlights the confidentiality of the process, establishing that ‘all communications (including oral statements) and all records and notes relating to the mediation shall be confidential and shall not be disclosed in any proceedings before a court or otherwise. Establishes the exceptions to this rule of confidentiality, like protecting a party who might be subject to physical or psychological violence or where law obliged communication.

Section 11 establishes that it is on the parties to determine when a settlement agreement is reached and if it will be enforceable between them. It also states that a mediation settlement agreement shall have effects as a contract between the parties unless otherwise agreed.

Under section 19, mediation can occur adjourning the court proceeding if an agreement to mediate is signed and one or more parties have initiated proceedings related to the dispute. A court will grant an adjournment provided when it is satisfied that there are sufficient reasons that mediation cannot take place and the applicant is ready and willing to comply with the agreement to mediate. Cheevers (2020)

Sections 20 and 21 spell out the fees and costs in a mediation proceeding, providing the court's factors to consider in awarding costs and ensuring that parties share the costs of the process equally unless the court orders otherwise. The costs should be reasonable and proportionate to the importance and complexity of the issues involved, considering the mediator's amount of work. While section 21 allows a court to consider when the parties refuse to engage in mediation unreasonably to decide on a cost award.

By developing a Code of Practice and a Mediation Council to strengthen the legal framework in mediation, the IMA 2017 also provides regulations to strengthen mediation regulation effectiveness and make it a more compelling aspect of court processes. However, according to Cheevers (2020), these dispositions have not been addressed, limiting the Act's effectiveness, so the regulatory process is not entirely completed.

Gilvarry, Kavanagh and Munnelly (2017), on the other hand, believe that the IMA is an opportunity to encourage more businesses to use it as a mechanism for settling commercial disputes. However, the Act's implementation of some provisions has added to its limits, lowering the overall effectiveness criteria and thus, rendering the Irish statute implementation. However, the responsibility of parties to consider mediation is because it has the potential to impact dispute resolution in Ireland significantly. Geary (2017).

From the above discussion, it can be said that the Mediation Act 2017 is a good tool to benefit the mediation process. However, some areas still need to be covered to make mediation a more efficient process in Ireland.

3.1.1 Mediation. A voluntary process?

According to the Mediation Act, the mediation process should be confidential, impartial, and voluntary. One of the main characteristics of mediation is voluntariness, yet when comparing the content of sections 6 and 16 of the IMA, there appears to be a discrepancy in the voluntary aspect of mediation. However, courts in other jurisdictions have dealt with this issue.

Indeed, the **Halsey v Milton Keynes NHS**[1] decision has created a controversy in the Court of England & Wales on whether the mediation process is: 1) voluntary, 2) the parties are compelled, or 3) considering the mediation process with the imposition of Court's penalties following unreasonable behaviour (BAILII, 2019).

Cheevers (2020) has declared that the duel statement has made the act confusing, inconsistent and contradictory in many areas of law. In this regard, two cases are highlighted.

As stated in the Mediate (2017) report, in the case of ***Thakkar v Pattel***[2], the Court of appeal imposed cost on a client as punishment because the defendant failed to meet in the mediation, which the claimant invited. On the contrary, after four months of the above case, in another case, as discussed by Ahmed and Anderson (2019), ***Gore v Naheed***[3] Court refused to punish the defendant for not participating in a mediation that the claimant invited. Therefore, the compulsion to participate in mediation and punishment for not attending is quite confusing, and it depends on different situations and the judgment of the Courts.

In the case of ***Lomax v Lomax***[4], the Court of Appeal was requested to consider the Halsey criteria because a party to the mediation cannot be compelled to attend mediation, and this should be extended to an early neutral evaluation (ENE). However, Civil Procedure Rules (CPR) governs this principle. According to these rules, a party to mediation is asked to enter the ENE process for managing a challenging situation by the Court. The claimants in the Lomax v Lomax case argued that a party's consent to enter the ENE process is not required, while the defendants argued that the Court could not ask a party to enter the ENE process according to the principles of Halsey rules.

However, as Ahmed and Arslan (2019) explained, it was decided in the Court that Halsey principles are involved in several CPR cases, which indicate that any compulsion could limit the right of access of the party to the Court.

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[1] [2004] EWCA Civ 576.
[2] [2017] EWCA Civ 117.
[3] [2017] EWCA Civ 369.
[4] [2019] EWCA Civ 1467.

In this context, section 6(2) of the IMA 2017 states that "participation in mediation shall at all times be voluntary." Sections 6(3) and 6(4) of the Act provide that parties are permitted to withdraw from mediation at any time and to be accompanied by a person of their choice or a legal advisor. However, according to Cheevers (2018), this is still a problem since the Irish courts tend to be readier to side with a party who is arguing against mediation, rather than a party who is advocating for the process, and the application of the rules has curtailed the use of mediation Instead of introducing a new mechanism of resolving conflicts, the Mediation Act simply adds to the existing system.

Concluding that voluntarism is not without limits, pointing that the parties as well as the mediator have the obligation to 'make every reasonable effort to conclude the mediation in an expeditious manner which is likely to minimize costs' section 8(2)(c).

3.2. The Singapore Mediation Act 2017 (SMA)

More than two decades have elapsed since mediation was first established in Singapore, and mediation programs have been operating in Singapore without a unified statutory framework. Anderson (2017) But on his report in November 2013, the Ministry of Law Working Group on International Commercial Mediation recommended the creation of a mediation accreditation body (the Singapore International Mediation Centre) and establishing a Mediation Act. Lee (2017).

Like Ireland, Singapore enacted its Mediation Act in 2017, sharing some common characteristics with the Irish regulation.

In his article entitled "Singapore Developments – The Mediation Act 2016", Lee (2017) states that the critical aspect of fulfilling the purpose of the Act is "to promote, encourage and facilitate the resolution of disputes by mediation." are:

- The endorsement of a mediation model in which the mediator has a facilitative role.
- The possibility of applying the Act to mediations that are not physically conducted in Singapore adapts to the reality of international commercial disputes.

- The possibility of applying the Act to mediations that are not physically conducted in Singapore adapts to the reality of international commercial disputes.

The author concludes with the affirmation that the Act is a significant step in mediation for Singapore. It will encourage mediation at the local and international levels, reinforcing Singapore's position as a hub for dispute resolution.

A similar perspective from Sim (2017) regarding the provisions of the Act asserts that mediated settlement agreements are recorded as court judgments giving 'teeth' to mediation as well as the possibility to request the Court to adjourn proceedings in order to give proper recognition to the mediation process, making mediation a more attractive process than court litigation at the same time that makes Singapore an attractive 'seat' for mediation.

Similar to the IMA, the SMA provides a framework for mediation and, in Section 3 (1), defines mediation as follows:

> "In this Act, "mediation" means a process comprising one or more sessions in which one or more mediators assist the parties to a dispute to do all or any of the following with a view to facilitating the resolution of the whole or part of the dispute:
> (a) identify the issues in dispute;
> (b) explore and generate options;
> (c) communicate with one another;
> (d) voluntarily reach an agreement."

Section 4 defines the concept of the mediation agreement and establishes that a mediation agreement must be in writing. This condition is satisfied as long as the agreement is recorded in any form. It also means that the agreement can be contained as part of a more comprehensive agreement or as a single agreement.

Section 6 states that the Act applies to any mediation conducted under a mediation agreement where (a) the mediation is wholly or partly conducted in Singapore, or (b) the agreement provides that the Act or the law of Singapore is to apply to the mediation.

Section 8 provides that a Court can stay proceedings if one of the parties to the mediation agreement begins a proceeding against the other party concerning any matter subject to that agreement to preserve the parties' rights.

Under Section 9, there is a restriction to disclosure except for specified situations, when there is consent from the parties, or where disclosure is necessary to prevent or minimize injury or neglect, for seeking legal advice, authorized by a Court of Law.

Section 10 provides that unless permission has been granted, the communication in mediation cannot be admitted in evidence in any court, arbitral or disciplinary proceedings.

In connection with Section 10, section 11 specifies the facts that a Court or an arbitral tribunal must take into consideration to grant permission to disclose a mediation communication or admitted evidence.

3.3. Mediation Act 2017: More to do.

Ireland has made a great effort to implement a legal framework for mediation with the enactment of the Mediation Act 2017 as a step forward. However, there are some things to do yet, in the opinion of some authors.

As opined by (Chua 2019), the SMA, unlike the Irish Mediation Act, is more developed and implemented on the ground that it has a robust framework. Thus, the country has developed 'an elaborate commercial mediation ecosystem'. McFadden (2017) has stated, as an essential matter of fact, that the government of Singapore supports the ecosystem mentioned above. The Ministry of Law and the National University of Singapore created the Singapore International Mediation Institute (SIMI) as a non-profit. It was made up of representatives of mediators and the users of mediation to support the mediation process in Singapore. Unlike the Mediation Council (S. 12 IMA), proposed in Ireland, it is operational.

In this regard, it is clear that both jurisdictions have regulated mediation in different ways. Whereas Singapore has the SIMI, a non-profit body supported by the government of Singapore that provides certification to ensure that mediators meet the standard requirements, Ireland has

opted to delegate that regulation to private mediation organizations like the Mediator's Institute of Ireland (MII).

Anderson, (2017) also highlights that in Ireland, mediation remains very much an alternative rather than the primary approach foreseen in the Act. Whereas (NUI Galway Law Review, n.d.) states that 'mediation allows for a settlement without reverting to litigation', concluding that in contrast with a court proceeding, mediation is a quicker process and benefits court services in Ireland. "The more cases that are resolved via mediation will reduce court backlogs and allow more cases (where mediation is not an option) to be heard".

In contrast to Ireland, Cheevers (2020) believes that Singapore is well aware of and supportive of the development of mediation as a viable solution for domestic and international disputes. He claims both countries recognised the necessity of mediation regulation and that the jurisdictions have been followed in various ways. As a result, the Singapore Mediation Act is more effective and practical than the IMA. It is continually updated to reflect regular changes in personal life and international levels.

As an example, what was previously said, can be traced to February 2020, when the Singapore Convention on Mediation Act 2020 (SCMA) was enacted to give effect to the provisions of the Singapore Convention. According to Alexander and Chong (2019), the SCMA amends the SMA to 'accommodate and acknowledge the new status of International Mediation Settlement Agreements (iMSAs), which are recognised and enforceable under the Singapore Convention'. The authors agreed that such an amendment is to give the parties a broader procedural choice to preserve their rights under the SMA and the SCMA in the case that an iMSA falls within the scope of both pieces of legislation.

4. The Mediation Directive 2008/52/EC

From the preceding discussion, it is clear that the Irish Mediation Act does not include a provision for cross-border mediation because it only operates on a local level. However, at the European Union level, the "Directive 2008/52/EC of the European Parliament and the Council on Certain Aspects of Mediation in Civil and Commercial Matters" (from now on "European Directive"

"Mediation Directive" or just "Directive") entered into force the 13 June 2008 and is the regulation to address this matter.

Accordingly, with the definitions of mediation contemplated in the IMA and the SMA previously analysed, the Directive, in its article 3, defines mediation as follows:

> '"Mediation' means a structured process, however named or referred to, whereby two or more parties to a dispute attempt by themselves, on a voluntary basis, to reach an agreement on the settlement of their dispute with the assistance of a mediator. This process may be initiated by the parties or suggested or ordered by a court or prescribed by the law of a Member State.
>
> It includes mediation conducted by a judge who is not responsible for any judicial proceedings concerning the dispute in question. It excludes attempts made by the court or the judge seised to settle a dispute in the course of judicial proceedings concerning the dispute in question."

Article 2 of the Directive defines cross-border disputes: as the disputes in which at least one of the parties is habitually resident or is domiciled in a Member State other than that of any other party on the date on which: 1) the parties agree to use mediation 2) mediation is ordered by a court 3) the obligation to use mediation arises under national law; or 4) an invitation by a court to use mediation in terms of article 5.

From the content of Article 2, it can be noted that in cross-border disputes, at least one of the parties has to be a resident or domiciled in an EU Member State. However, according to Steffek (2012), the Directive is not a restriction for the Member States to enact laws covering cross-border or pure national mediations. It also affirms that it is desirable to have one set of national and international mediation rules because it fosters the practice and understanding of mediation and avoids arbitrarily different regulations.

Concerning the enforcement of mediation agreements, Article 6 of the Directive provides in the relevant part that:

> "1. Member States shall ensure that it is possible for the parties, or for one of them with the explicit consent of the others, to request that the content of a written agreement resulting from mediation be made enforceable. The content of such an agreement shall be made enforceable unless, in the case in

question, either the content of that agreement is contrary to the law of the Member State where the request is made or the law of that Member State does not provide for its enforceability.

2. The content of the agreement may be made enforceable by a court or other competent authority in a judgment or decision or in an authentic instrument in accordance with the law of the Member State where the request is made.

…"

According to Article 6, the "parties" or "one of them with the explicit consent of the others" may require the enforceability of a mediation settlement agreement, unless the agreement's content is contrary to the law of the member state where the request is made or it does not provide for its enforceability. According to the above mentioned article, the enforceability can be done through a judgment or decision of a court or other competent authority, or through an authentic instrument in line with the law of the Member State where the request is made.

To this respect, Chua (2019) states that "*The broad formulation of Article 6 has led to not only the procedure but also the issues surrounding enforcement, including available defences to enforcement, being left to the domestic law of each of the EU member states.*" The mentioned author concludes that "*the enforcement of iMSAs without an international instrument is challenging*", stating that the success of the European Directive has been limited.

However, in the opinion of De Palo (2018), EU member states still have the possibility of looking for guidance to develop effective mediation policies by assessing carefully other countries' mediation regulatory frameworks to determine what works better and implement policies that allows them to get the multiple benefits that mediation can generate.

5. UNCITRAL

The United Nations Commission on International Trade Law (UNCITRAL) is a subsidiary body of the General Assembly of the United Nations (UN). It was established in 1966 by resolution 2205(XXI) of 17 December. The International Trade Law division of the Office of Legal Affairs of the UN is the Secretariat of UNCITRAL. (Anon., 1966)

UNCITRAL member states are designated from among UN State Members, with initially 29 states; in 2002[5] due to the significant contribution and participation by non-member states, it was expanded by the UN General Assembly to 60 members. It is structured[6] in such a way to ensure the representation of the various geographic regions and the central economic and legal systems of the world. (United Nations, 2013).

activity aims to consider the options and interests of developing nations as part of its mandate to promote the unification and harmonisation of international trade law[7]. This is accomplished primarily through the preparation and promotion of international conventions, model laws and instruments dealing with substantive laws that control trade transactions or other parts of business laws that have an impact on international trade.

As a result, in order to fulfil its mandate, UNCITRAL member states, observer states and other interested intergovernmental and non-governmental international organisations debated, drafted and adopted legislative instruments relating to commercial and trade law such as conventions, model laws, legislative guides and model provisions that have an impact on international trade and cross-border commercial transactions[8] and the purpose of these documents is to be enacted voluntarily as part of the domestic legislation of the sates without prejudice of their membership to the UN.

5.1. UNCITRAL Model Laws and Conventions

For this work, the relevant legislations are the UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation, 2018 (Model Law

[5] See General Assembly resolution 57/20, paragraph 2. (Available at https://undocs.org/en/A/RES/57/20) The expansion was effective from the opening day of the thirty-seventh annual session of UNICITRAL in 2004.

[6] See Guide to UNCITRAL, online book https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/12-57491-guide-to-uncitral-e.pdf paragraph 3, for more derail about the structure.

[7] According to Alexander and Chong (2019) 'Harmonisation' refers to attempts to ensure that different legal systems generate transactions with similar effects across the jurisdiction. 'Unification' involves the adoption of the same laws in different legal systems. This process typically requires countries to repeal their existing relevant laws and replace them with a unified version.

[8] See the UNCITRAL website at www.uncitral.org (accessed 18 April 2022)

on Mediation) and the UNCITRAL Convention on International Settlement Agreements Resulting from Mediation (also known as the Singapore Convention on Mediation).

5.1.1. What are UNCITRAL Model Laws?

According to United Nations (2013), a model law is a 'legislative text that is recommended to States for enactment as part of their national law'.

UN model laws are adaptable instruments that allow enacting governments to make changes to their provisions to make them more relevant to their procedures and legal requirements. As a result, model laws can be implemented with or without amendments by implementing states. However, in order to maintain the basic principles of the law, the enacting states are encouraged to keep the basic principles of the law, enacting states are encouraged to keep the basic principles of the legislation and make as few changes as possible. As a result, these provisions are more likely to be consistent across jurisdictions, increasing clarity and certainty in their application, meaning and implementation.

Model laws are generally directly adopted by UNCITRAL and the most recent are accompanied by a 'guide to enactment' to assist the enacting states, for example, in considering what provisions might be adapted according to the national circumstances, relevant information discussed in the working group on policy options and considerations and matters not addressed in the text that might be relevant to the subject matter of the model law. Alexander and Chong (2019).

5.1.2. What are UNCITRAL Conventions?

A convention is a legislative text that binds legal obligations for the adopting parties to unify the law. The binding element in a convention differentiates it from a model law. Alexander and Chong (2019)

Conventions are often used to achieve a high degree of harmonization of law whiting the adopting parties that assume an international obligation to provide the security that the law in their state is in line with the terms of the convention. Thus, conventions allow little flexibility for

adopting parties. However, a convention might allow reservations or declarations which allow the adopting party 'become a party to the convention without being obliged to comply with the provision to which the reservation or declaration relates'. United Nations (2013).

Signing a convention does not mean that it is immediately bound by it; it is also formally required to deposit a binding instrument of ratification or accession. The period of entry into force of a convention will regularly depend on a minimum amount of ratification instruments. UNCITRAL conventions 'generally do not allow reservations or declarations by States or allow them to do so, to a minimal extent. (United Nations, 2013)

6. Model Law on Mediation

Originally known as "Model Law on International Commercial Conciliation, 2002" [9], then amended and renamed as UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation, 2018[10] (also known as Model Law on Mediation). Addresses procedural aspects of mediation such as:

- commencement and termination of mediation,
- conduct of the mediation communication between the mediator and other parties, confidentiality and admissibility of evidence in other proceedings like appointment of conciliators, as well as,
- post-mediation issues, such as the mediator acting as arbitrator and enforceability of settlement agreements.

It also provides the rules for enforcement of settlement agreements and addresses a party's right to invoke a settlement agreement in a procedure. (United Nations, 2018)

7. The Singapore Convention on Mediation (SCM)

[9] See the document at https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/03-90953_ebook.pdf

[10] See the document at https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/annex_ii.pdf

The United Nations Convention on International Settlement Agreements Resulting from Mediation, also known as the Singapore Convention (from now on Singapore Convention or Convention), was drafted and debated by Working Group II (Dispute Settlement) and adopted on 20 December 2018 by resolution 72/198 during the seventy-third session of the General Assembly of UN and opened for signature 7 August 2019. (United Nations, 2022)

During the opening ceremony for signature, 46 states signed the Convention[11], including countries such as the United States and China, which are the world's largest economies, as well as South Korea and India, which in conjunction with China, are three of the four largest economies in Asia.[12] (Singapore Convention on Mediation, 2021) At the time of writing (May 2022), there are 55 signatories and 9 parties to the Convention.[13]

The convention entered into force on 12 September 2020 according to its article 14 (1), which establishes that the Convention 'shall enter into force six months after the deposit of the third instrument of ratification, acceptance approval or accession.' (Tzevelekou, 2021)

Banoo (2020) explains that the Singapore Convention is a multilateral treaty whose primary purpose is to facilitate the enforcement of iMSAs. However, Alexander and Chong (2019) affirm that the convention has a much more profound objective than the mere facilitation for recognition and enforcement of iMSAs: to provide a legal framework to place mediation alongside arbitration as the primary dispute resolution arena.

Chong (2019) states that there is a hope that the Singapore Convention would do for mediation what the "New York Convention" has achieved for arbitration, aiming to give mediation the status of a relevant player in cross-border disputes. To be recognized as a method of dispute resolution such as arbitration and litigation.

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[11] Carey (2020) states that the Convention has the highest number of first-day signatories than any other United Nations convention to date.

[12] *Ibid.* The author states that many countries have signed the convention on the day of its opening increasing its attractiveness.

[13] See https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXII-4&chapter=22&clang=_en for up-to-day on signatory parties.

7.1. Scope of the Singapore Convention on Mediation

In his article, Rosner (2019) points out that during the discussions of the Working Group II (WGII), the topic of the scope of the convention was controversial regarding whether the convention should apply to judicial settlements and arbitral consent awards or only for private settlement agreements, concluding that the judicial settlements and arbitral awards should be excluded to avoid possible overlaps or gaps with existing and future conventions as the convention should not open the door to give the parties an opportunity to abuse by having two enforcement paths as it could be the case if judicial settlements would be included, parties could seek for enforcement as a judicial settlement and under the convention.

Thus, article 1 establishes that the Convention is applicable for international settlement agreements resulting from mediation and concluded in writing by the parties to resolve a commercial dispute.[14] Article one also defines "international" when: at least two parties to the settlement agreement have their places of business in different States, or the State in which the parties to the settlement agreement have their places of business is different from either: the State in which a substantial part of the obligations under the settlement agreement is performed; or the State with which the subject matter of the settlement agreement is most closely connected.

The convention embraces institutional and ad hoc mediation (Chong, 2019). However, it excludes settlement agreements concluded for "personal, family or household purposes" and settlement agreements relating to family, inheritance or employment law. The convention does not apply to settlement agreements that are enforceable as court judgment or arbitral award. Those scenarios would generally fall under the scope of The Hague Convention in the case of Court Judgements or the New York Convention in the case of arbitral awards. (Tzevelekou, 2021)

Finally, as highlighted by Alexander and Chong (2019), as opposed to arbitration in which, setting up a seat for arbitration is crucial to determine the jurisdiction for enforcement. Under the

[14] Although the term "commercial" is not defined in the convention, it is defined in a footnote in Article 1(1) of the Model Law. (O'Dwyer, 2020)

Singapore Convention, there is not such a conception which reflects that direct enforcement of iMSAs is under the control of the State of enforcement and not of origin.

In summary, to fall within the scope of the Convention, a settlement agreement must comply with different requirements: it must be commercial, international, mediated, and must not be subject to a specific exclusion. (Schnabel, 2019)

A. Enforcement requirements

Once an iMSA fits within the scope of the convention, it can be presented before the competent authority to request relief, as long as the following requirements are fulfilled according to article 4 of the convention, which establishes that the iMSA:

- Must be in writing (includes electronic communication)
- Must be signed by the parties
- Must provide evidence that the iMSA resulted from mediation

However, the competent authority can request any necessary documentation to verify that the convention requirements have been complied with.

The convention does not impose particular rules on execution, and the relevant state's rules of procedure apply. Thus, the convention follows a similar approach to the New York Convention. (Schnabel, 2019)

B. Grounds for refusals

Under article 5 of the Convention the competent authority where the enforcement is sought may refuse to grant enforcement relief if one or more of the following grounds are proved:

- Lack of capacity by a party to the settlement agreement
- If the settlement agreement is null, void, inoperative or incapable of being performed
- Is not binding or is not final according to its terms
- Has been subsequently modified
- The obligations in the iMSA have been performed or

- Are not clear or comprehendible
- Granting the relief would be contrary to the terms of the agreement

The article in analysis also considers grounds for refusal attributed to misconduct of the mediator:

- There was a severe breach of the standards applicable to the mediator, without which breach the party would not have entered into the settlement agreement.
- There was a severe breach of the standards applicable to the mediator, without which breach the party would not have entered into the settlement agreement

Finally, the mentioned article provides that the competent authority may refuse to grant the requested relief if they find that:

- Doing so would be contrary to public policy of that state in which enforcement is sought or;
- The subject matter of the dispute is not capable of settlement by mediation under the law of that party.

C. Reservations

Article 8 of the Convention provides the only two reservations allowed under the convention in which a party to the convention may declare that:

a) "It shall not apply this Convention to settlement agreements to which it is 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.
b) It shall apply this Convention only to the extent that the parties to the settlement agreement have agreed to the application of the Convention. "

The article in question specifies that under the Convention these are the only two reservations permitted. It also establishes when the reservations will take effect:

- Reservations made simultaneously at the time of signature are subject to confirmation (acceptance, approval or ratification) and will be effective at the same time with the entry into force of the Convention.
- Reservations made simultaneously at the time of ratification, acceptance or approval will be effective at the same time with the entry into force of the Convention for the signatory party.
- Reservations made after entry into force of the convention, will be effective six months after the date of the deposit.

The mentioned article provides that any party to the convention that has a reservation can withdraw it at any time and the withdrawal will be effective six months after deposit with the depositary.

Up to date, Belarus, Iran, Saudi Arabia, and Georgia have reservations regarding Article 8 of the Convention.

7.2. Degree of Autonomy of Ireland as State Member of the EU if considering signing the Singapore Convention.

The foundation of the European Union began with the European Atomic Energy Community (EURATOM) and the European Economic Community (EEC), treaties known as The Treaties of Rome signed in 1957 to create a free trade area among their member states. Initially, there were six members, and currently, there are twenty-seven member states of the European Union, including Ireland, which became a member on 1 January 1973.

Member states of the European Union are binding to EU Law and must follow the rules and legislation designed, such as treaties, legislation and directives. These laws have supremacy over the national legislation of the EU member states.

The central institutions of the European Union that are involved in legislation are The Council of the European Union, The European Parliament and the European Commission.

According to United Nations, “an international convention or treaty is an agreement between different countries that is legally binding to the contracting States.”[15] Thus it can be said that the Singapore Convention falls in the range of an agreement.

International agreements are vital for States in preserving international relations. Ireland is a signatory member of the Vienna Convention on the Law of Treaties, which establishes the guidelines governing treaties between states and, in its article 2, defines the term “treaty” as follows:

> “'treaty' means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation;”

On the other hand, article 6, states that “Every State possess capacity to conclude treaties. (United Nations, 1969)

It can be said that Ireland can be part of international treaties according to the referred article 6. However, as a member state of the EU, there are some limitations regarding the country's right to conduct foreign polity -like adopting certain treaties, including conventions- due to its EU membership.

In this context, the Constitution of Ireland on its article 29 (5)(1) establishes that:

> “Every international agreement to which the State becomes a party shall be laid before Dáil Éireann[16].”

On the other hand, article 29 (4) (6) provides:

> “6° No provision of this Constitution invalidates laws enacted, acts done or measures adopted by the State, before, on or after the entry into force of the Treaty of Lisbon, that are necessitated by the obligations of membership of the European Union referred to in subsection 5° of this section or of the European Atomic Energy Community, or prevents laws enacted, acts done or measures adopted by—
>
> i the said European Union or the European Atomic Energy Community, or institutions thereof,

[15] See https://www.un.org/esa/socdev/enable/convinfofaq.htm#:~:text=missing%20out%20on%3F-,What%20is%20an%20international%20convention%3F,%2C%20transport%2C%20and%20human%20rights.
[16] Irish name for “The Lower House” of Oireachtas (The national parliament of Ireland). See Glossary of parliamentary terms – Houses of the Oireachtas

ii the European Communities or European Union existing immediately before the entry into force of the Treaty of Lisbon, or institutions thereof, or

iii bodies competent under the treaties referred to in this section,

from having the force of law in the State."

From the above articles, it can be noted that in terms of Article 29 (5) (1), every international agreement to which Ireland becomes a party has to be laid before Dáil Éireann. However, in terms of article 29 (4) (6), no provisions of the Constitution:

1. Invalidates laws, acts done, or measures adopted by the State that are necessary to comply with the obligations of its membership to the European Union;

2. Prevent the laws enacted, acts, or measures adopted by the mentioned bodies of the European Union from having the power of law in the State.

Thus, essentially in terms of articles 29 (5)(1) and 29 (4)(6), some international agreements to which Ireland wants to become a party might be subject to examination regarding whether or not the international agreement in question affects the country's membership with the European Union.

The previous idea is strengthened by (Hogan, 2019) who states that "the effect of Art. 29.4.6 of the Constitution, is to confer supremacy on EU law over the domestic law and Constitution to the extent that this is necessitated by the obligations of EU membership".

On the other hand, Title V "International Agreements", Article 216 of the Treaty on the Functioning of the European Union, provides:

"1. The Union may conclude an agreement with one or more third countries or international organisations where the Treaties so provide or where the conclusion of an agreement is necessary in order to achieve, within the framework of the Union's policies, one of the objectives referred to in the

Treaties[17], or is provided for in a legally binding Union act or is likely to affect common rules or alter their scope.

2. Agreements concluded by the Union are binding upon the institutions of the Union and on its Member States."

Thus, in terms of Article 216, the EU has the faculty to exercise their competence to conclude an agreement when any of the scenarios listed in the mentioned article are met.

In conclusion, in some areas, the EU has sole authority to make international treaties, such as when the agreement would influence standard EU rules or where it is required to assist the EU in exercising its internal functions. Member states can no longer make agreements with non-EU nations that influence EU laws in areas where the EU has approved standard rules. In these circumstances, the EU has exclusive jurisdiction and acts on behalf of all member states.

The EU can also negotiate international agreements in areas where member states share competence, such as foreign affairs. (Council of the EU, 2017)

7.3. The Impact of Singapore Convention on signatory countries.

The opinions of relevant people in the mediation arena will be reproduced verbatim regarding the impact of signing the Singapore Convention.

A. India

India signed the convention on the open ceremony for signature in 7 August 2019.

"India stands to benefit by ratifying the Convention with respect to the international and constitutional obligations under Article 253 of the Constitution of India. The advantages of the Convention cannot be negated in any degree as it will encourage and incentivise the parties' to enter into mediated settlement with the guarantee of its enforceability. India should ratify it in order to lessen the pressure on other forms of dispute resolution, however, it's a question of time whether it will be done via a new legislation or complete overhaul of the existing Section 89 of the Civil Procedure Code, 1908 vis-à-vis the codification of the Model Law on mediation as an aid to resolve cross-border commercial disputes."

[17] The term "Treaties" refers to the Treaty on the Functioning of the European Union and the Treaty on European Union, which in conjunction constitute the Treaties on which the Union is founded. See Article 2 at: https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12012E/TXT:en:PDF

(Banoo, 2020)

B. Turkey

Turkey signed the convention in the open ceremony for signature. The country has also ratified the convention in 11 October 2021.

"The Article 90/5 of the Constitution of Republic of Turkey reads as: "International agreements duly put into effect bear the force of law. No appeal to the Constitutional Court shall be made with regard to these agreements, on the grounds that they are unconstitutional. "

In line with the Art. 90/5 a Presidential Decree is required to be issued in order for the articles of the Convention to have the effect of a Law in Turkey, which we do not expect it to be delayed as it seems the authorities will remain committed to encouraging the alternative dispute resolutions."

(Cavus & Coskunsu Law Firm, 2021)

D. China

China signed the convention in the open ceremony for signature in 7 August 2019.

"The country's signing of the Singapore Convention on Mediation (SCM) has already created momentum for the development of mediation domestically. For example, there are ongoing discussions about ratification and coordination of China's domestic mediation laws to be on par with international standards and the SCM."

(May Skillen, 2020)

E. Brazil

Brazil signed the convention in 4 June 2021.

"The Convention will help Brazil's international trade & commerce by facilitating flow of goods & services out of and into Brazil in the wide variety of sectors where Brazil plays a prominent role, such as agriculture, mining, finance, aviation, manufacturing, technology, etc. The Convention will reduce/remove commercial disputes as obstacles to trade flows by encouraging companies engaged in international trade to use mediation to resolve them— mediation the results of which will be enforceable across borders. Without the Convention, mediated settlement agreements between parties from different countries are treated as mere domestic contracts which are rarely enforceable across borders."

(Mason, 2020)

F. Honduras

Honduras signed the Convention on the open ceremony for signature in 7 August 2019.

“The Singapore Convention on Mediation facilitates 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.”

(Nincic, 2021)

Chapter 2: RESEARCH METHODOLOGY AND METHODS

Introduction

"Research methodology" is known as the specific procedures or techniques used to identify, process, and access all the information related to any topic, as Snyder (2019) discussed.

In this chapter, the investigation procedure to answer the research question: Which can be the benefits for the Republic of Ireland in ratifying the Singapore Convention on Mediation? will be explained. The reasons for the strategy selected and how the study is progressing, the nature of knowledge (ontology) and how it will be discovered (epistemology) will be detailed.

The research onion model illustrated next will be employed for this research.

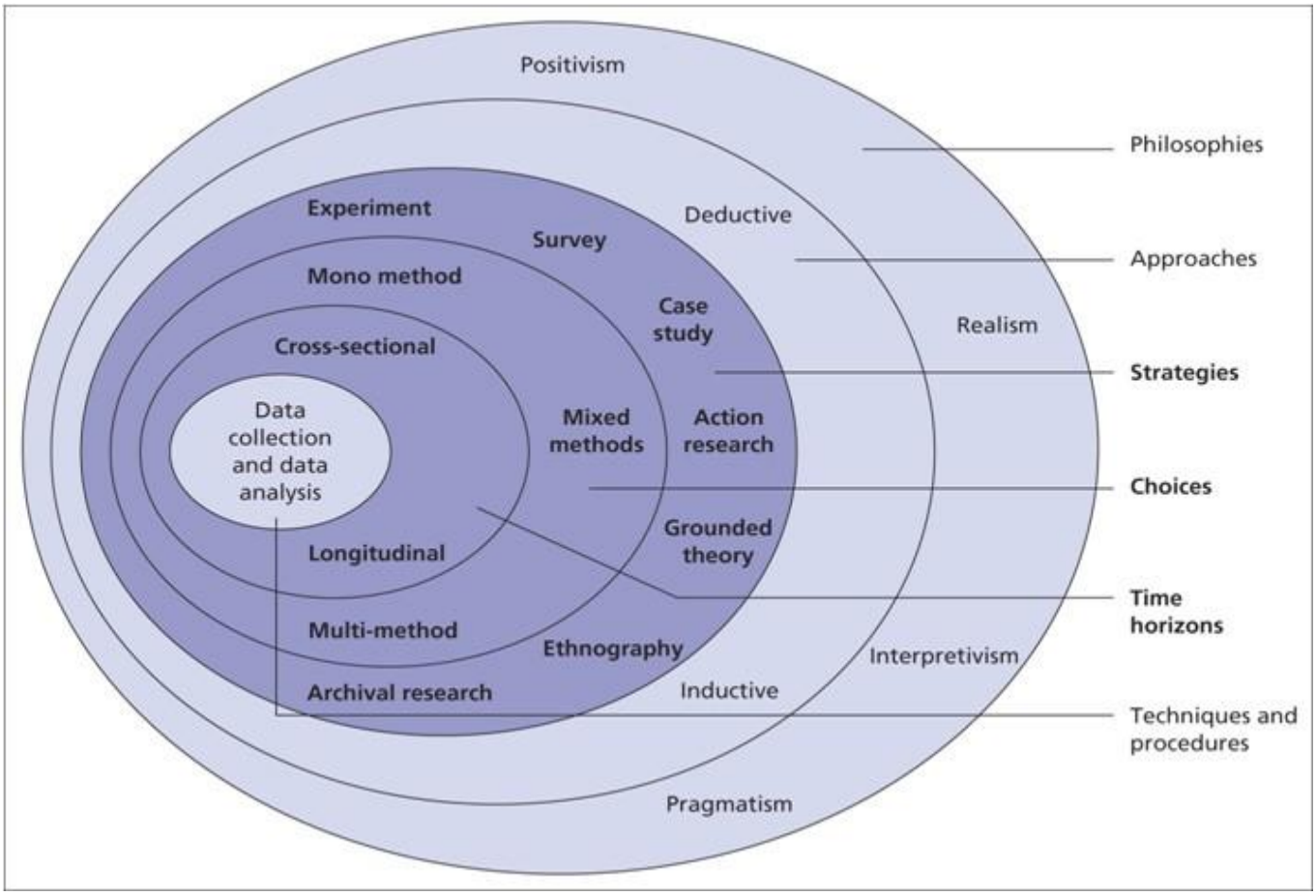

Figure 1: Saunders research onion

1. Philosophies

The philosophical approach of *relativist ontology* is a belief that indicates that reality is not finite subjective experiences, and it claims that nothing exists outside of human thoughts, as agreed by Kusch (2019).

The ontology of relativism will be used for this research because the research question will be answered based on people's perception of the truth that may be influenced based on their experience, knowledge and beliefs.

In this research, people from different countries with experience and knowledge in dispute resolution, specifically mediation and the Singapore Convention, will be interviewed.

Because each participant's answers will be based on their own experience, knowledge and beliefs, *Emic epistemology* is also appropriate to this research. This approach refers to the insider's account or perspective that is conventionally more subjective.

2. Approaches

The inductive approach is the most appropriate due to relativist ontology and emic epistemology in this research.

3. Strategies

The strategy not only provides the proper direction to the study; instead, it has to choose the exact methodology to collect and analyse the data for the research.

In this research, the strategy is mainly focused on twelve interviews to gather data about the participant's interpretation of the possible benefits of the Singapore Convention on Mediation for Ireland.

4. Research Methodology

This research is conducted to understand to what extent a new international convention on mediation can impact Ireland, a country that advocates for ADR, specifically mediation. With a

relatively new Mediation Act (2017) and some discussions regarding the country's autonomy in case that decide to be part of the convention, it was necessary to define the way to approach the research.

Thus, defining that the best approach would be through interviews, it was necessary to define the groups and people to be interviewed and the structure of the questions for the right approach for each group. Once these main steps are done, the next steps could be done to conclude with the analysis of the information gathered.

4.1. Subjects of study

The population is classified into three groups: *"Civil Servants*" who work for the Irish Government in relevant areas if the country decides to become party to the Convention. "*Working Group*" will focus on the professionals involved in the drafting of the Convention and "*Professionals*" in the practice of mediation, also involved in the topic of the Singapore Convention.

A list with thirty possible respondents that fulfilled the necessary characteristics for each group was defined, including the country of the prospect population in "*Working Group*" and "*Professionals"*, to have a good mix of nationalities for this research.

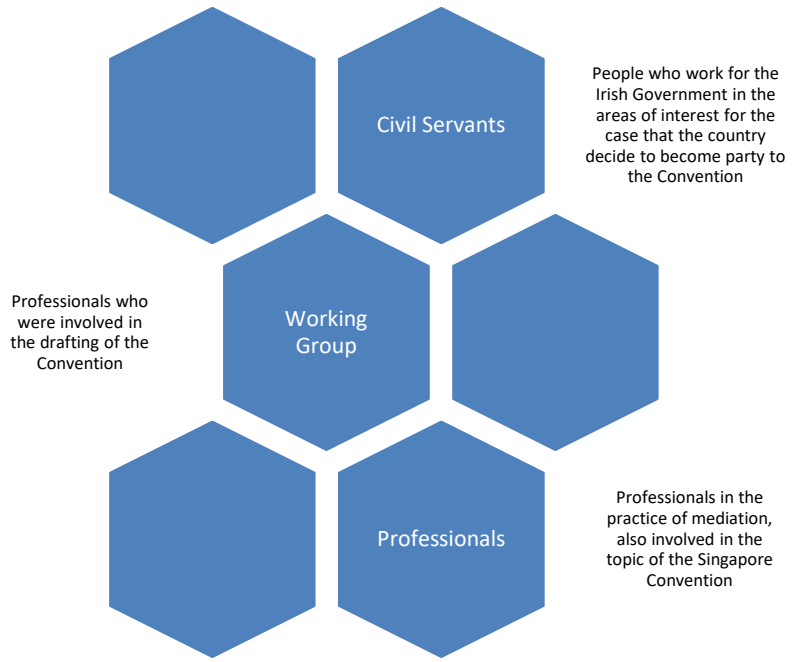

Figure 2. Subjects of study

4.2 Study stages and activities

After contacting and confirming the respondents' participation, the next step was sending a consent form explaining the research purpose, objectives and the research question of the chosen topic. In the same email but in a different document, the interview questions were sent according to the group each participant was allocated.

The interviews were conducted through zoom, and two were conducted via telephone by request of the respondents.

After the transcriptions were done, it was necessary to set codes to facilitate the data analysis.

Thus, the main steps for this research can be summarised as follows:

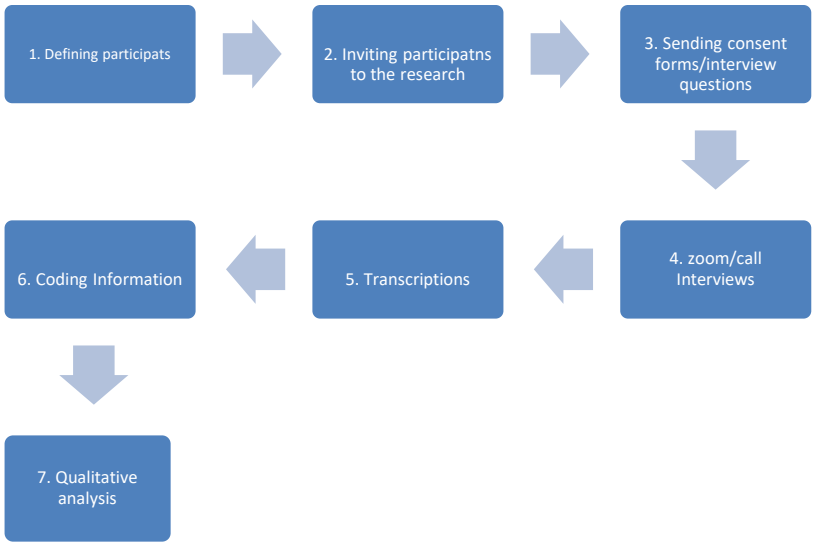

Figure 3. Research Methodology

5. Choices

The choice of the research is based on the distinction between qualitative and quantitative data. Qualitative research is an interdisciplinary field that mainly includes many epistemological viewpoints and interpretive techniques of considerate human experiences. In contrast, quantitative research is regularly based on numbers and can be measured and replicated as agreed by Melnikovas (2018).

This research is qualitative mono method due to is focused on one type of choice: the qualitative interview. Based on the qualitative, the mono method has helped understand the research questions to find out the opinions, experiences, interpretations, and so on.

6. Ethics

For primary data collection research, having a level of confidentiality, the informed consent rules of research, and honesty are essential to maintain credibility to promote debate and knowledge development. Melnikovas (2018)

In this research, ethical approval was required. Also, an informed consent form was filled out and signed for each participant in this research.[18]

7. Time Horizon

The time horizon mainly defines the period within which it is expected that the research will be completed, as told by Melnikovas (2018). There are mainly two types of time horizons, the longitudinal and the cross-sectional. The cross-sectional time section is used when there is a predefined schedule for collecting data. On the other hand, the longitudinal period refers to collecting data for an extended period.

For this research cross-sectional time horizon is chosen as the overall work must be submitted by the 20th of May 2022. This time horizon is considered the most applicable for this research.

8. Data Collection and Analysis

Data collection is the procedure of gathering, measuring, and analysing accurate insights for research utilising authenticated techniques. The data can be collected using primary and secondary methods. Melinkovas (2018)

In this research, qualitative data is collected through semi- structured *interviews*[19] with open-format questions due to respondents have the freedom to answer with their own words and style

[18] See Appendix A
[19] See Appendix H

and base on their answer it may be some follow up questions to make a good understanding of further details and perspectives.

9. Methodology

For this research, the data collection and analysis was developed in five main steps:

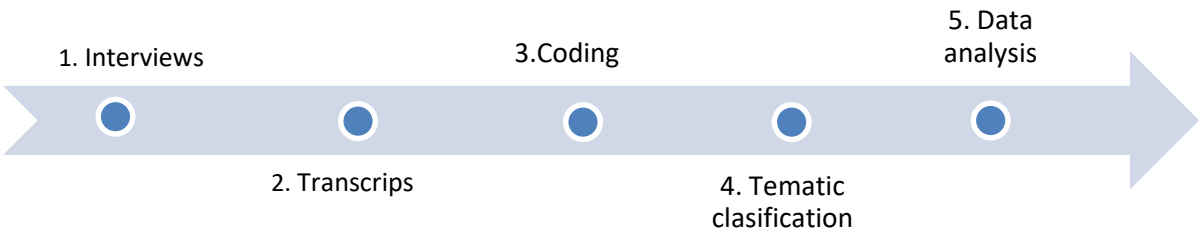

Figure 4. Methodology

9.1. Interviews

Interviews are one of the best approaches for qualitative research ,and it helps to explain better, understand, and explore different subjective opinions, and so on.

The prospects for the research were convened mainly through “LinkedIn” and by email. Having responses from 14 people, 12 were willing to participate, while two of the invitees declined their participation. Interviewing thus a total of 12 people that in conjunction can be named indistinctly as “respondents” *“participants”* or “interviewees” in this work.

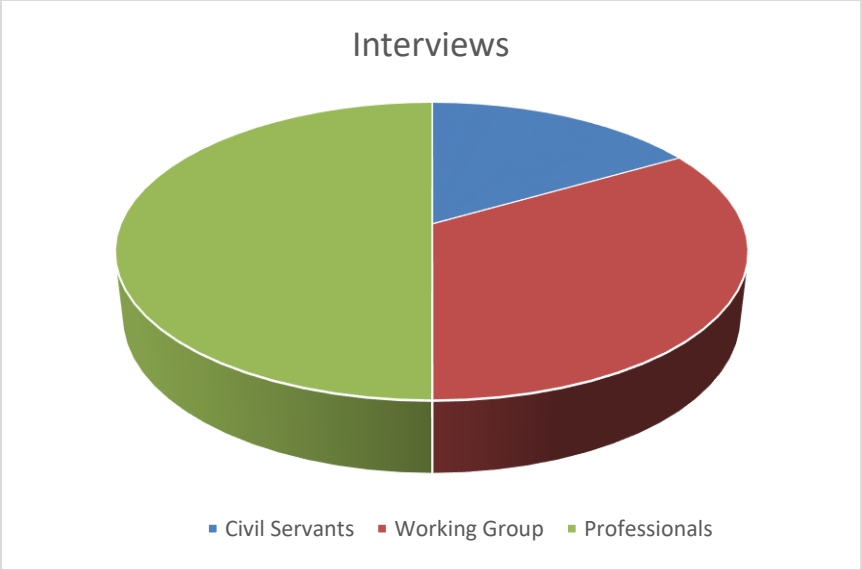

Figure 5. Interviews

9.1.1. Interview resources

Generally, the interviews can be taken online or offline. Due to the different geographical locations of the respondents for this research the interviews were made remotely using the audio and video conferencing tool called *Zoom Meetings*. Two interviews were conducted by phone by petition of the respondents. All the participants of this research agreed that the interview would be recorded for academic purposes by signing the consent form for the interview. However, before starting the interview, they were recalled that the interview would be recorded. The recording was storage in the cloud and downloaded and re-storage in a file in which only the researcher has access.

9.2. Transcription process

All the data obtained from the interviews were transcribed. Using the dictation option in Microsoft Word came in handy during this process and helped to save time. However, the function does not distinguish voices and writes everything in prose and without punctuation, making it necessary to give the formatting to the interview.

Thus, the transcription process was the most time consuming during this research considering the amount of data collected from the interviews. For every 10 minutes of recording, 1.5 hours

was necessary to do the transcript on average. The total duration of all the interviews was 290 minutes, making around 43.5 hours for doing the transcriptions.

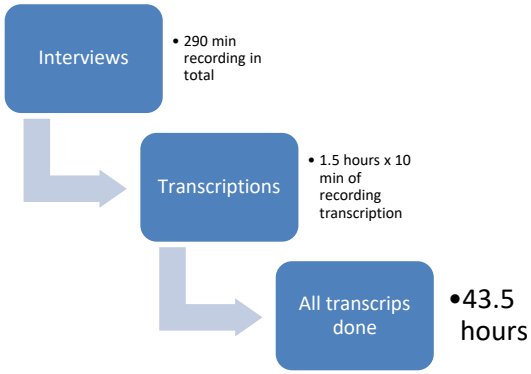

Figure 6. Interview transcriptions

9.3. Coding and classification of information

The Nvivo software was used as a tool to facilitate the coding, classification, and data analysis due to is a software specifically designed to make qualitative data analysis.

Thus, each participant and question was assigned a code to group the data per code. Each question was assigned a code in which the answers of the different interviewees who answered the same question were grouped.

Then, relevant aspects were identified, highlighting the repeated patterns across the data. After that, the case was sorted into different potential themes to find common patterns and contrast the respondents' opinions to get a clear idea of how they can fit together.

Thus, for this research, thematic analysis is considered. Through thematic analysis, the coherent explanation is considered, and it provides the evidence themes with the data to make the Vaismoradi and Snelgrove(2019).

9.4. Data Analysis

Data analysis and interpretation are based on descriptive statistical analysis. For research objectives analysis, reviewing and categorizing the finding data from each question. Numbers

and graphs are used to arrange and summarize the data. These included bar charts, pie charts, and tables, among other things. Researchers can utilize description and categorization to process enormous amounts of data, and it can also help them avoid making conclusions early in the analysis process (Jankowski, 2018).

Producing the report of a thematic analysis with a concise and coherent explanation of what the data indicates, providing sufficient evidence of the themes with the data making an argument about the research question. Chapter 3 of this research shows the report on data analysis.

10. Research Limitations

Every study has its limitations. This research, in particular, has a limited number of responses and could be biased by those who took part. The limitations of this study are described in the following lines:

10.1. Sampling

The non-probabilistic sampling method was chosen for this research. Because it is not possible to study the whole population of *Civil Servants*, *Working Group,* and *Professionals*, it can occur that the people who are selected may not be representative of the broad assumptions.

Also, a non-response sampling error can occur by which the members who are chosen for the research may refuse to cooperate in answering some questions, and it could be a gap in supplying the required information.

10.2. Transcriptions

For transcriptions of some responses, it was essential to listen numerous times to comprehend what the respondents were saying ultimately and make sense of the statement.

There were a few challenges during the transcriptions of the interviews for this dissertation. One of these difficulties was some of the respondents' accents; native speakers employ more connected speech than speakers of other languages, resulting in tying sounds together or missing

sounds that a word would have when pronounced separately, which made the transcription process difficult. It was generally easier to understand speakers of different languages.

10.3. Length of the document.

Another limitation is the length of this work due to the requirement is a length of 20,000 words, and only the data collected on the interviews was three times wider, which resulted in a limitation in the data analysis section.

Chapter 3: PRESENTATION OF THE DATA

Introduction to the data

This chapter will explain the process followed for this research and the method in which primary and secondary data were gathered.

The process of selecting the population groups for the primary data collection and the coding implementation for easier comprehension and processing of primary data will also be explained.

1. Research

1.1. Sources in secondary research

The secondary data was gathered from sources such as books, experts' opinions in articles, round tables, seminars, local and international legislation, specialized journals, and magazines, among other reliable resources. A comparison among the different secondary data sources helped the researcher organize the means to obtain the primary data. While the secondary data was gathered, the list of candidates for the interviews was generated considering the background, experience, and even the speeches of some participants in round tables and webinars were also considered to select the research population taking into account their level of interest, expertise and involvement in relation to the Convention and their nationality to have.

1.2 Sources in primary research

The research focused on three groups/classes of people: *civil servants*, *working group*, and *professionals*. The method through which the results and responses in this research were gotten was through interview sessions.

Once the final version of the list with the names of the people to be interviewed was completed, the next step was to contact the people who were invited, asking them about their availability to participate in the research. The medium through which people were contacted was through their professional profiles on LinkedIn and by email. A total of 20 invitations were sent, having a

response from 13 people. Twelve persons were willing to participate, while two invitees declined the invitation.

The primary data was collected through interviews, while the semi-structured interview model was implemented in this research, allowing the interviewer to ask follow-up questions during the interview. The semi-structured interview model was also selected because some people asked to get the questions in advance of the interview.

Thus, once the people contacted accepted participating in the research, the researcher sent the consent form explaining the research purpose, the objectives and the research question of the chosen topic for the research. In the same email but a different document, the questions for the interviews were sent to the participants. Also, because some of the people interviewed were based in different countries, ten interviews were conducted through zoom, while two were conducted via phone.

The interview questions were designed accordingly to fit each population group (see Appendix B). The perspective of the questions for each group was made to aid the understanding of the research objectives to have elements to answer the research

question at the end of the data analysis. The following paragraphs will focus on the presentation in detail as well as the related data.

1.3. The sampling population

This research has mainly focused on the non-probability quota sampling method as the sampling technique. This sampling method is defined as the non-probability sampling method. The researchers can generate the sample, including the individuals, to represent the population, as Etikan and Bala(2017) discussed. These individuals are chosen based on their traits or qualities.

This sampling method is essential where the data can be collected from a homogenous group. It includes the two-step process where two variables are used to filter the information from the population. The main advantage of this sampling approach is that it is pretty easy to conduct and

administer compared to other research methods. It is also approachable for the research, as the research needs to be completed in a limited time.

Another positive thing is that it saves cost therefore the researcher can finish this research with a limited budget. The representation of the population can be avoided and the participants of the research groups can be selected based on some traits and characteristics. The main disadvantage of this sampling technique, it does not allow the random selection of the participants of the research as discussed by Iliyasu and Etikan (2021).

It also can enhance the chance of having a bias in the research and in some cases the outcomes of this technique might not be reliable. For this reason, in some cases, it is not considered. In this research, this technique is considered as it helps to interview people with having a specific background, geographical locations, and professions. A quoted sample of 12 people is used here.

In order to create a deeper understanding with regards to the impact of ratifying the Singapore Convention on Mediation for Ireland, the interview questions were designed to generate findings in order to have a better comprehension of the research. The classification of the population was can be appreciated in the table below:

Description of the population to be interviewed		
Groups	**Description of the population's profile**	**Question's perspective**
Civil servants	People who work for the Irish Government in the areas of interest (Department of Foreign Affairs, Department of Justice and the Office of the Attorney General) in the case that the country decides to ratify the Convention.	To understand Irelands' position in relation to the Convention as well as to understand what steps Ireland will follow in the case of the Government ratifying the Convention.
Working group	Professionals involved in the process of drafting of the Convention	To determinate why Ireland had no participation in the working group for the drafting of the Convention as well as to explore their points of view in relation to the possibility for Ireland in ratifying the Convention.
Professionals	Professionals from different jurisdictions involved in the practice	To understand what the impact of ratifying the Convention for Ireland from the perspective of their

	of mediation with interest on the topic of the Convention including professionals with knowledge in European Law.	experience, as well as to know what the position of their home countries is in relation to the signature of the Convention and the impact of it.

Table 1. Description of the population to be interviewed

Civil Servants

A legal adviser in the Department of Foreign Affairs and the legal adviser in the Department of Justice were interviewed. The reason for interviewing civil servants of these departments is to understand the position of the Irish Government regarding the Singapore Convention.

Ten questions were asked to the legal adviser in the Department of Foreign Affairs, and seven questions were asked to the legal adviser in the Department of Justice.

For a more straightforward analysis of the data, each question was assigned with a code, as shown in the following table:

Code	Meaning
CSQ1	Civil Servants Question 1
CSQ2	Civil Servants Question 2
CSFQ1	Civil Servants Follow up Question 1
CSQ3	Civil Servants Question 3
CSQ4	Civil Servants Question 4
CSQ5	Civil Servants Question 5
CSQ6	Civil Servants Question 6
CSQ7	Civil Servants Question 7
CSQ8	Civil Servants Question 8

CSFQ2	Civil Servants Follow up Question 5
CSQ9	Civil Servants Question 9
CSQ10	Civil Servants Question 10

Table 2. Coding for questions in civil servants' interview

Working Group

In this group, four people who were part of UNCITRAL Working Group II to draft the Singapore Convention were interviewed. The objective of interviewing people with this background was their degree of knowledge of the Convention.

Seven questions (and five follow-up questions) to understand how, from that particular experience, they assess the impact of the Convention and ask about the situation of their home countries about the Convention. Finally, to explore if there is a reason why Ireland did not have representation in the meetings for the drafting of the Convention. For more straightforward analysis of the data, each question was assigned with a code as shown in the following table:

Code	Meaning
WGQ1	Working Group Question 1
WGFQ1	Working Group Follow up question 1
WGFQ2	Working Group Follow up question 2
WGQ 2	Working Group Question 2
WGQ 3	Working Group Question 3

WGQ 4	Working Group Question 4
WGQ 5	Working Group Question 5
WGFQ3	Working Group Follow up question 3
WGFQ4	Working Group Follow up question 4
WGFQ5	Working Group Follow up question 5
WGQ 6	Working Group Question 6
WGQ 7	Working Group Question 7

Table 3. Coding for questions in working group's interviews

Professionals

In this group, six mediators from different jurisdictions with relevant backgrounds and interests in the topic were interviewed. Ranging from a Council of the European Law Institute to a Co-author of a commented book about the Singapore Convention, the professionals in this group were careful selected

Up to nine questions for the participants in this group were designed. Some follow-up questions were added in some cases to understand the issue of competence in ratifying the Convention for the EU and their member states. To explore their view about the impact of ratifying the Convention for Ireland and examine the position of their home countries about the Convention.

For more accessible analysis of the data, each question was coding as shown in the following table:

Code	Meaning
PQ 1	Professionals Question 1
PFQ1	Professionals Follow up question 1
PFQ2	Professionals Follow up question 2
PFQ3	Professionals Follow up question 3
PFQ4	Professionals Follow up question 4
PFQ5	
PFQ6	Professionals Follow up question 5
PFQ7	Professionals Follow up question 6
PQ 2	Professionals Question 2
PFQ8	Professionals Follow up question 7
PQ 3	Professionals Question 4
PQ 4	Professionals Question 5
PQ5	Professionals Question 6
PQ 6	Professionals Question 7
PFQ9	Professionals Follow up question 8
PFQ10	Professionals Follow up question 9
PFQ11	Professionals Follow up question 10
PFQ12	Professionals Follow up question 11
PFQ13	Professionals Follow up question 12

PQ7	Professionals Question 8
PFQ14	Professionals Follow up question 13
PFQ15	Professionals Follow up question 14

Table 4. Coding for questions in working group's interviews

Finally, the following table shows the codes assigned to the respondents for the purpose of data analysis:

Coding for Interviewees			
Code	**Meaning**	**Group of population**	**Country**
CSR1	Civil Servants respondent 1	Civil Servants	Ireland
CSR1	Civil Servants respondent 2	Civil Servants	Ireland
WGR1	Working Group respondent 1	Working Group	Canada
WGR2	Working Group respondent 2	Working Group	Mexico
WGR2	Working Group respondent 3	Working Group	USA
WGR4	Working Group respondent 4	Working Group	Australia
PR1	Professionals respondent 1	Professionals	Lithuania
PR2	Professionals respondent 2	Professionals	Slovenia
PR3	Professionals respondent 3	Professionals	Netherlands
PR4	Professionals respondent 4	Professionals	United Kingdom
PR5	Professionals respondent 5	Professionals	Singapore
PR6	Professionals respondent 6	Professionals	United Kingdom

Table 5. Coding for Interviewees

1.4. Grouping of questions by topic

Some questions were repeated among the different population groups, the same question with different codes were grouped, and for the thematic analysis, these questions were grouped again according to the topic they fitted for the data analysis, as shown in the following figures:

Theme 1. Ireland and the Singapore Convention

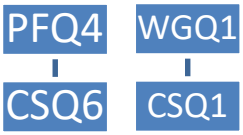

Figure 7. Grouping of question in theme 2

Theme 2. Ireland and its membership to the EU if considering signing the Singapore Convention on Mediation.

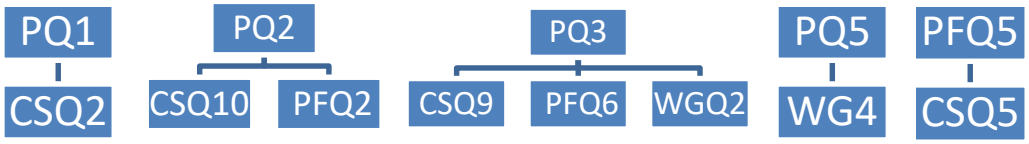

Figure 8.Grouping of questions in theme 1

Theme 3. The Impact of the Singapore Convention

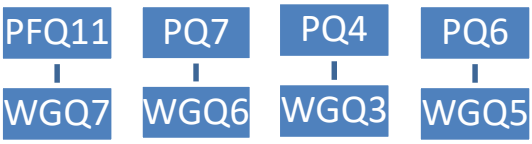

Figure 9. Grouping of questions in theme 3

Chapter 4: DATA ANALYSIS/FINDINGS

Introduction

As mentioned, this research is done based on qualitative analysis because the data was collected through interviews. Thus, content analysis and comparative methods are used, also referred to as a grounded theory approach.

Due to the vast amount of data collected from the interviews and the limitation on the length of this work, general findings will be summarised, and some answers will be transcribed and analysed to find common patterns.

The thematic analysis in this chapter will be based on three main topics: 1) Ireland and the Singapore Convention:

1. Ireland and the Singapore Convention
2. Ireland and its membership to the EU if considering signing the Singapore Convention on Mediation
3. The Impact of the Singapore Convention on Mediation

1. Ireland and the Singapore Convention

Ireland is a member of UNCITRAL, the arm of the United Nations that works with the international trade law area. When UNCITRAL is going into discussions to create a new regulation, they invite all UN members to participate. Some members take the role of chairs in the working group to develop the initial ideas for drafting, and regardless of their level of participation (as observers or formal members of the commission), when they have to make decisions, they prioritize consensus among all the state members that are present.

The creation of the Singapore Convention started by the request of the United States delegation, suggesting the need for an international instrument to enforce settlement agreements. Ireland was not part of the discussions in the convention's drafting with no specific reason for it. And at the moment, there is no intention for the country in becoming a party to the convention:

CSR2:

> "UN members may participate as they wish (or have expertise) in working groups… There is no intention at this time that Ireland should become a party to the convention. Nor are we aware of any EU proposals in that regard… Should Ireland accede to the Singapore Convention, the existing domestic and EU legal frameworks are considered robust."

Another essential point in CSR2 answer is that it confirms that Ireland has a robust legal framework in case of signing the convention, even though, at the moment, the country has no intention of signing the convention.

However, WGRA believes that there was not enough interest or knowledge about the importance of mediation for Ireland to participate.

> "..I'm just suggesting that it might be that it was not enough interest in this country to participate or there was not enough knowledge about the importance of mediation in order to participate...."

In conclusion, Ireland was not part of the discussion in the convention's drafting due to a lack of expertise or interest in the topic. However, at the government level, there is the perception that the legal framework is robust enough if the country eventually joins the convention.

2. Ireland and its membership to the EU if considering signing the Singapore Convention on Mediation.

Before considering the possibility of exploring the possible effects of the Convention for Ireland, the first topic that was drawn to this researcher's attention was the degree of autonomy of the country to sign the convention as a member state of the European Union.

In this regard, CSR1, CSR2, PR1, PR2, and WGR3 answers [20] were relevant for a better understanding.

When asked CSR2 about the degree of autonomy to sign the convention, he answered that it is likely that is the competence of the EU.

CSR2

[20] See appendix H for more context on the respondents' answers

> "As mediation is the subject of an EU Directive, it is likely that the issue of whether the EU had exclusive competence to accede to the Convention if such were to be agreed by the Member States."

Similar answers by CSR1 and PR1 when stating that there are issues to consider to determine if the EU has competence:

CSR1

> "...the EU's view is that there are issues to be considered as to whether or not it has competence… the EU I think has expressed an interest in this convention so the next step would be if the European Union itself wanted to move forward to sign or ratify it would have discussions with the member states."

PR1

> "..European Commission directorate who is responsible for that particular matter they raised certain issues that were some technicalities of correlations between provisions included in the Convention and European Union laws specially the Directive that per certain contradictions they want to settle first before switching on this international recognition mechanism including in Singapore Convention… my answer that it would be better to try to push European Union Institutions to move faster to settle all the issues."

An interesting point raised by PR2 is that the Council of Europe has the position of supporting their member states to sign the convention (which includes EU members), and on the other hand, the EU has not so much positive view about the signing. However, some members of the Council of Europe that are not part of the European Union, like Serbia, Montenegro, Ukraine and Georgia, but are aspirant countries to join the EU, have signed the convention already, so this creates a quite confusing and unclear situation. However, the lack of attempt to resolve this issue remains an obstacle to going ahead with signing the convention.

PR2

> "..there was no a real attempt to develop the position in writing and to start the consultation process between the Commission and the member states. And so, this is somehow a main formal obstacle that neither you nor the member states have signed or acceded to the Convention so far."

On the other hand, the European handbook for mediation law-making, a Council of Europe document, recommends that its member states consider ratifying the Singapore Convention to ensure efficient recognition of international mediation settlements. In this respect, Ireland's

position is that the Mediation Act 2017 and the EU Directive provide for cross border enforcement of settlement agreements.

In conclusion, the issue of competence to sign the Convention from Ireland's position is that it is up to the European Union to define it. They consider that the country has a robust legal framework if Ireland eventually accedes to the Convention.

CSR2

> "We cannot comment on the contentions in the Handbook. Where binding mediation is agreed by the concerned parties, the Mediation Act 2017 and the EU Directive provide for enforcement, including cross-border subject to certain public policy considerations."

At the end, as WGR3 expressed, that the signature of the convention is a process that takes time: "*So you don't expect this to happen overnight it's a process*" and as an example explained that the New York Convention on Arbitration was open for signature in 1958 and yet there are signatories still joining.

In conclusion, due to mediation is subject of an EU Directive, there is a high possibility that the EU has exclusive competence on this matter to accede to the convention, previous consultation with the EU member states. However, that is a not resolved topic yet.

3. The Impact of the Singapore Convention

To assess the impact of the convention, this section is divided into two parts. In the first part, a classification of three different categories, according to the respondent's answers, was made: benefits, disadvantages and criticisms of the convention.

In the second part, a summary of the respondents from "Working Group" and "Professionals" about their countries' positions regarding the convention and the general view of the respondents concerning the possible areas of improvement in the convention.

In general terms, respondents PR1, PR3, PR4, PR5, WGR3, and WGR4 agreed that there are a variety of benefits in being part of the convention

Among the benefits mentioned by the respondents are:

3.1. Benefits

1. The existence of a mechanism for recognition of iMSAs because people have resisted to use mediation with different excuses. Now, the convention completes the infrastructure to support international commercial mediation.
2. The signal that the international commercial mediation is a good option to resolve international disputes in cross border trade or investment.
3. The stakeholders on international trade will have an additional alternative to use mediation with confidence and come up with a settlement agreement that can be compared with a settlement agreement or a court judgment because provides *res judicata* effect to the settlement which means the settlement cannot be litigated in court anymore, thus, parties reach an agreement with a more affordable alternative.
4. It will impact the economy as the industries now will explore platforms with different technologies that can be used for online dispute resolution, and the way that negotiation is regularly done will be change because of the convention.
5. When mediation is being used, people learn new skills and as a consequence the society learns how to talk to each other and the dialogue becomes a way of resolving disputes instead of jump immediately into the court system as soon as a dispute arises. Thus, also the benefit for the judicial system in cutting cases and attending the ones that really need to be there.
6. The demonstration that mediation is a good process to resolve international disputes to foster its use by providing a harmonized approach for the enforcement of iMSAs.

3.2. Disadvantages:

Only respondent PR1 mentioned a possible disadvantage for some countries in adopting the convention. However, as mentioned before, it also agreed that the convention has also benefits.

PR1:

"But let me tell you if you do not have developed a mediation infrastructure mediation offer to the parties and quality of mediation in the Country. What does this Convention do? What kind of value it would create? It would create more problems because agreements resulting in that defective systems."

3.3. The criticisms

Some criticisms directed at the convention,[21] and the respondents expressed their opinions about it. At this point, PR4 and WGR4 have similar opinions because becoming a party to the convention has to come with a compromise. The main reason for this affirmation is that the convention has to be inclusive to fit into all legal systems, and that means that the expectations of some countries will not be fulfilled in full, and that is the point in which they have to assume compromises in order to give all the countries the opportunity to be part to the convention despite their legal system to build a bridge between the incompatible differences in their respective legal systems.

PR4:

"*So from the EU perspective that could be why this author criticised the Singapore Convention, because it juxtaposed the enforcement procedures of arbitration into mediation. This would be an irreconcilable difference because this is how conventions work, a lot of the time conventions have to come to some sort of compromise between both civilian and common law traditions…. So yes, it might be set to borrow and juxtapose the procedures designed for enforcement and recognition of arbitral awards but I do not think it is inappropriate because some compromises are needed to bridge an irreconcilable difference between civilian and common law jurisdictions."*

WGR4:

"…of course there's always there has been criticism about the concept of even of mediation what does it mean you know it is to broad but one has to consider that a lot of countries do not have mediation legislation they do not have standards for accreditation for their mediators so we had again to compromise and try to be inclusive try to understand this country probably has very little experience in mediation so we cannot write a convention that only is going to fulfil the needs of a particular nation or a particular group of nations. It has to be a Convention that satisfies the needs of most of the Countries."

On the other hand, PR3, PR5 and PR6[22] explained that:

[21] See questions PFQ11 and WGQ7
[22] See respondents answer in Appendix H

1. There is no reason to consider that an iMSA is less solid than an arbitral award because in international commercial mediation the parties are regularly assisted by lawyers and for that reason it is unlikely that they will argument they were unduly pressured or so to suggest that an iMSA cannot be legitimate enforceable under the convention.
2. The fact that the parties reach a settlement agreement in mediation does not mean that there would not be some unforeseen reasons to enforce the iMSAs, so the convention is there precisely to give that assurance to the parties that what they signed it is going to be enforceable.
3. The fact that the Singapore Convention is providing in a sense something similar to arbitration because the iMSA is binding, should not be seen as a problem, on the contrary it will encourage the development of international mediation.

According to the previous points in general terms, there is a perception among the respondents that the criticisms directed at the convention are not solid to consider that the convention should not be signed.

3.4. Respondents countries' positions regarding the convention

Some facts mentioned for the Singapore Convention not being a priority in the political agendas are Covid-19 and Brexit. Whereas countries that are part of the EU some are showing a reluctant position towards the convention at the political level, an opposite position is shown from the respondents regarding whether their countries should be parties to the convention. Finally, there is also the tendency to wait for the EU to be the first mover in this matter, as is the case of Ireland.

On the other hand, countries that are already part of the convention, as is the case in Singapore, are working to strengthen their legal framework and promote mediation. Some countries like Mexico are working on the legal framework before committing to sign.

In summary, the position of the countries represented in this research about the Singapore Convention is as follows

:

Country	Position regarding the Singapore Convention
Ireland	The country has no intention to sign at this time nor is aware of any EU proposals in that regard.
Slovenia	The country's position is that it is up to the European Commission to be the first mover.
Netherlands	The country's view about the convention is with much scepticism.
United Kingdom	The country has done a Public consultation[23] to sign the Convention that is in analysis at the moment.
Singapore	The country has ratified the convention and it is increasing the level of mediation education in different sectors.
Canada	The country needs to go into a full consultation process with the provinces before signing the convention which is a long process.
Mexico	The country is working on its internal legal framework in mediation before signing the convention.
United States	The country has signed the convention, however, for different reasons the ratification may take a couple of years.
Australia	The country has singed the convention and there is a good enthusiasm for ratification.

Table 6. Countries' positions regarding the Singapore Convention

For a wide context of the respondent's answers regarding their situation in relation to the Singapore Convention on Mediation, see Appendix H

Slovenia:

PR2

> *"…so I think that the policymakers in Slovenia are aware of the Convention which is good but they don't do anything very proactive in terms of, you know, pushing these topics further internally and externally…"*

Netherlands:

PR3

[23] At the moment of the interview the consultation had not taken place however after the interview on 2 February 2022, the Ministry of Justice launched a consultation on whether the UK should become a party to the Singapore Convention on Mediation Convention. See: Consultation on the United Nations Convention on International Settlement Agreements Resulting from Mediation (New York, 2018) (the "Singapore Convention on Mediation") (publishing.service.gov.uk)

" The Netherlands is not convinced that it will add the value that it will bring. I've heard scepticism from the legal profession when it comes to the basic notion that underlies the Singapore convention that is that private contracts will be enforceable just like a Court judgment basically, and the first question I always get is: what is the justification for giving that much weight to a private contract?"

United Kingdom:

PR4:

"I know that some form of public consultation is about to take place here in the UK. This is like how it is in Australia they would talk about it for a long time but eventually something would happen."

Singapore:

PR5

"…because Singapore is so small the benefit of that is we have the public and private sector has really mobilized to try to make Singapore an example of how international disputes can be resolved using mediation… We have also raised the level of our training for mediators or people who want to be mediators and we have also increased the level of mediation education in our law schools so that lawyers who do it are now familiar with how the mediation process works in and prepared lawyers in the mediation process and not just in a court or arbitration process."

Canada:

WGR1:

"In Canada there's a process where the provinces have to agree to sign a Convention it's a longer process than in many UN states so the pandemic and also we've just had an election last week so unfortunately the Singapore Convention and getting states to sign on is not a priority for government … but we can't just have the federal side we need the provinces to agree and a full consultation process."

Mexico

WGR2:

"the idea would be to have the Model Law on mediation with the Singapore convention so I would say that is what the government and also some business organizations are working towards… we hope we will have it probably; I hope this happens sometime in 2022."

United Sates:

WGR3

"we have in the US similar that in some other countries now is that there are other more pressing matters to sustain the list something called pandemic so make things more complicated and the person

who was handling in the US team department left … at this point my guess now watching it, for at least a couple years."

Australia:

WGR4

"Well, I'm very glad to report that Australia signed the Singapore Convention on Friday, the 10th of September. I think if you make a commitment signing an International Convention I think you also are committed to ratify it, otherwise it really doesn't fulfil the whole benefits of signing or being part of the Convention."

3.5. Areas of improvement in the convention

In general terms, the tendency among the respondents that answered PQ7 and WGQ6 is that it is an early scenario to know if there is any need for amendments to the convention. However, there is also the view that the convention was written well as it is, considering all the discussions, time and effort they mentioned it took writing the convention, due it is the first international instrument of this kind in mediation. A final highlight in this regard is that the convention provides flexibility through specific reservations that states can use if they want to see first how the convention works in practice using the reservations on behalf of the parties.

CHAPTER 5. DISCUSSION

In this chapter, the findings of this research work are presented. The research question is answered based on the analysis carried out from primary and secondary data, accompanied by the researcher's thoughts.

1. First Research Objective.

To examine the degree of autonomy of Ireland as state member of the European Union if considering signing the Singapore Convention on Mediation.

This objective was accomplished with the interviews and literature review.

As a member state of the European Union, Ireland is binding to EU law, which means that the country has to follow its rules and legislation. To this effect, article 216 of the Treaty on the Functioning of the European Union establishes that the EU can conclude an agreement to achieve its objectives.

Thus, it can be said that in areas where the EU has legislated or has standard rules, in these circumstances, the EU has exclusive jurisdiction to act on behalf of all member states. In some cases, that jurisdiction is shared with the member states.

According to Banno (2020), the Singapore Convention is a multilateral treaty to facilitate the enforcement of iMSAs. On the other hand, at the level of the EU, the Mediation Directive 2008/52/EC regulates cross-border disputes and the enforcement of settlement agreements, which in terms of the referred article 216, makes the possibility that the competence to –if decided- sign the Singapore Convention can be a shared or exclusive jurisdiction of the EU.

The previous conclusion was reinforced through the interview in which CSR2 response confirms that because mediation is a subject of an EU Directive, it is likely that the issue of competence has to be agreed

> "As mediation is the subject of an EU Directive, it is likely that the issue of whether the EU had exclusive competence to accede to the Convention if such were to be agreed by the Member States."

In the same line, it can be concluded that CSR1 and PR1 answers helped to conclude that it is up to the EU to determine who has the competence to –if desired- sign the Convention. However, previous analysis is required to determine in the first place if the Convention affects the existing legislation in the EU that regulates the same matter, specifically the already mentioned Mediation Directive.

Further, the interviews helped this researcher explore the country's position towards the Convention and its consideration for an eventual signature. In this regard, it is worth mentioning that Ireland did not participate in the drafting of the Convention due to UN members have the discretion to participate in working groups as they wish (or have expertise), as mentioned by CSR2.

CSR2:

> *"There was no specific reason. UN members may participate as they wish (or have expertise) in working groups… There is no intention at this time that Ireland should become a party to the convention. Nor are we aware of any EU proposals in that regard… Should Ireland accede to the Singapore Convention, the existing domestic and EU legal frameworks are considered robust."*

Considering the statement of CSR2, it can be said that Ireland has missed the opportunity to contribute to the WGII discussion to draft the convention since it is a country that advocates for dispute resolution, specifically mediation.

CSR2 answer also confirmed that, at the moment, Ireland has no intention to sign the convention nor is aware of EU proposals in that regard. This is understandable due to the issue of competence has to be examined before taking further steps. Thus, it is crucial to have a determination from the EU in terms of competence to have a clear panorama for EU member states regarding the jurisdiction to signing the convention.

CSR2 also mentioned that domestic and EU legal frameworks in mediation are considered robust in his response. However, as reported in the literature review chapter, some deficiencies in the Irish internal legal framework in mediation were encountered when assessing the IMA compared to the SMA. Cheevers (2020) states that the lack of a Code of Practice and the inexistence of a

Mediation Council, which are contemplated in the Act, are limitations for its effectiveness.

McFadden (2017), on the other hand, affirms that Singapore has elaborated a commercial mediation ecosystem, affirming that the government of Singapore has strongly supported the establishment of non-profit institutions like SIMI to ensure that mediators' certification meets the required standards, unlike the Mediation Council proposed in Ireland that is not in functions yet, and instead the certification of mediators is delegated to private mediation organizations like MII.

2. **Second Research Objective.**

To critically asses the Singapore Convention on Mediation and the Mediation Act 2017 as complementary laws.

This objective was reached mainly in the literature review; however, instead of doing the assessment comparing the Mediation Act with the Singapore Convention, as initially thought, it was necessary to do the assessment of the Act with another legislation at the same level to effectively, understand the strengths and weaknesses in the IMA.

Thus, the Irish Mediation Act and the Singapore Mediation Act, which interestingly were enacted in the same year of 2017, were compared, arriving to the following conclusions:

- Ireland has worked on its legal framework for mediation by enacting the Mediation Act 2017, which is an excellent step compared to some countries like Mexico that do not have a uniform regulation in mediation.

  However, in the opinion of this researcher, that is not all the job done because to comply in full with the mandates of the IMA, there is still the need to create a Mediation Council and the Code of Practice without leaving those responsibilities to private organizations like the mentioned MII, as stated by Cheevers (2020). Having the risk that because of that, mediation can be seen in this country like a business more than a profession, which in consequence, at the same time, it has the risk of resting it importance and credibility to this practice.

- In comparison with Singapore, whose government has helped to develop a mediation ecosystem to support and promote the use of mediation. Ireland has left the use of mediation more as an alternative rather than the primary approach that is intended in the Act.

On the other hand, it was found that the convention is a complementary law that helps strengthen the parties' framework to facilitate the enforcement of iMSAs.

Singapore has ratified the convention and, in February 2020, enacted the Singapore Convention on Mediation Act 2020 to give effect to the rules of the Singapore Convention on Mediation, as stated by Alexander and Chong (2019).

The enactment of the Singapore Convention on Mediation Act 2020 gave the parties in a commercial mediation process a broader choice to preserve their rights under the SMA and the SCMA if an iMSA falls within the scope of both pieces of legislation.

The above is an example of the commitment of Singapore to advocating for mediation. On the other hand, by missing opportunities like participating in the WGII discussions to draft the convention, Ireland seems to be moving away from the primary approach that is supposed to have for mediation in terms of the IMA.

Another important finding is that along with the Singapore Convention; the Model Law was created to help states with no regulation nor a robust framework for mediation in creating it. Thus, the Model Law addresses procedural aspects of the mediation process as well as post-mediation issues such as enforceability of settlement agreements. (United Nations, 2018)

In this context, it is concluded that as well as the Singapore Convention, the Model Law is an essential piece of work to be inclusive whit the parties that, for different reasons (such as political ones), cannot adopt the Singapore Convention. Thus, they still have the option of adopting the Model Law. In this respect, WGR2 and WGR4 answers were important to understand the previously stated.

WGR2:

> *"I have to say this is very important, not only preparing the convention but modifying and amending the UNCITRAL Model Lawn in conciliation, that is now called Model Law on mediation, was to attend to the needs of the market of ADR and part of that market, part of the users seemed to be looking for a more harmonized approach towards enforcement or settlement agreements."*

WGR4

> *"it was not only that we produce the Singapore Convention on Mediation but also the Model Law on mediation which was previously known as the Model Law on Conciliation, so in that way all member countries were comfortable to continue with the negotiations because they understood that at the end of the day they could take one or the other and again that depends on their political agenda or the economic agenda of each of each country."*

Thus, in conclusion by first assessing the IMA in comparison with the SMA, helped this researcher to have an idea of the countries' position in terms of its mediation framework.

On the other hand, the research helped to understand that the Singapore Convention is a complementary law that facilitates the enforcement of international mediated settlement agreements, that if for different reasons cannot be adopted by the states, it also exists the possibility that the countries can adopt the Model Law without the need of signing an international treaty such as the Singapore Convention.

3. Third Research Objective

To explore the effects on signatory states in applying the Singapore Convention on Mediation.

This objective was met with both interviews and a literature review. Having the opportunity to explore the effect on the signatory states in applying the convention and the overall perception regarding the convention.

In literature review, findings are based on the opinion of professionals or experts in the field of mediation about the impact of the convention in their countries. These findings are presented as follows:

Country	Impact of the Singapore Convention.
India	Singed the Convention in the opening ceremony for signature. And the view is that the country should ratify as the convention will encourage the use of mediation with the assurances of the enforceability of iMSAs.
Turkey	Signed the convention in the opening ceremony for signature. And made amendments to its Constitution with the aim to give effect of Law to the convention in the country, which will be done once a Presidential Decree is issued, which is not expected to be delayed.
China	Signed the convention in the open ceremony for signature. The signature has created a momentum for development of mediation at the local level. There are also discussions about the ratification.
Brazil	Signed the convention the 4 June 2021. The treatment to mediated settlement agreements will be easier due to currently they are treated as mere domestic contracts which are rarely enforceable across borders.
Honduras	Signed the convention in the open ceremony for signature. The convention will facilitate international trade and promotion of mediation as effective method of resolving international commercial disputes.
Canada	The country needs to go into a full consultation process with the provinces before signing the convention which is a long process.

Table 7. Impact of the Singapore Convention

Based on the above opinions, there is a positive perception of the impact of the convention in the countries in general terms. As noted, some countries are making changes in their legislation to give effect to the convention, whereas others will do the ratification to give effect to the convention.

In comparison, from nine respondents that were asked about the position of their countries about the Singapore Convention, it was found the following:

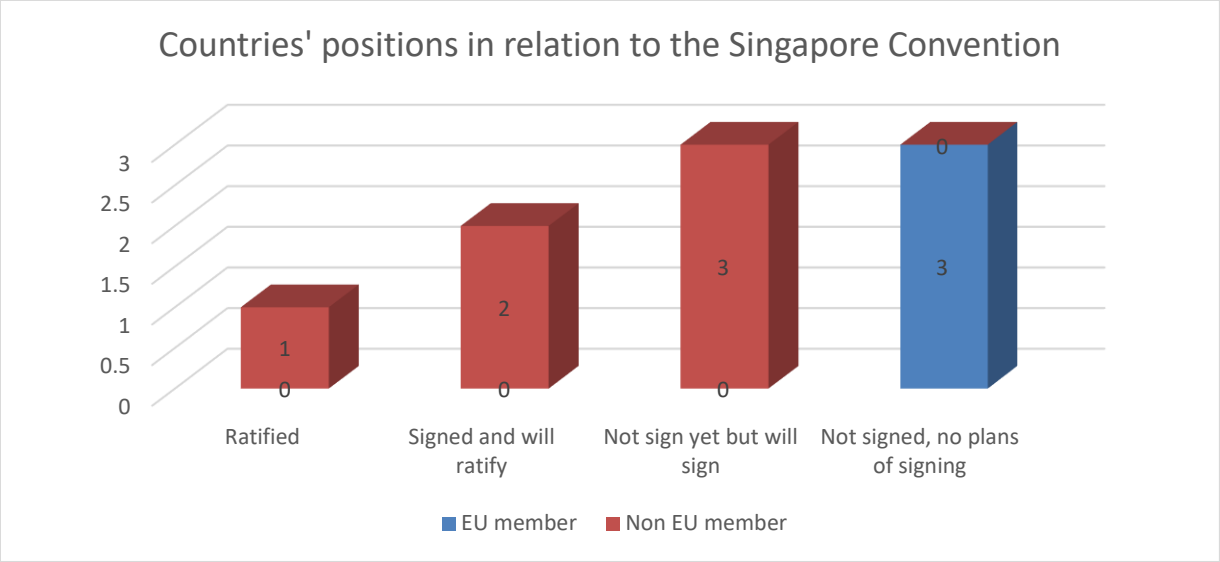

Figure 10. Countries' positions in relation to the Singapore Convention

From the above graphic, it can be noted that three out of nine countries are EU members and have no intentions to sign the convention for now. At this point, it is essential to clarify that these views according to the respondents are at the political level because, in their view signing the convention is ideal.

Whereas the countries that have ratified, signed and will ratify or not sign yet, but will sign the convention, all are non-EU members. This confirms that perhaps EU members are waiting for the EU to resolve the issue of competence.

On the other hand, when assessing the perception of the convention in the interviews, the findings are as follows:

- Six out of six respondents have the perception that the country has benefits
- One out of six respondents also mentioned one possible disadvantage in the sense that is a country does not have a developed mediation infrastructure the convention it would create problems. However as already analysed, in order to prevent hat kind of problems, the Model Law was created to support those countries with limited or null mediation infrastructure.
- In relation to the criticisms directed to the Convention, this researcher has the perception than in three out of five respondents those criticism seems to be no solid. Whereas two

out of the five respondents agreed that the ratification of the convention has to come with a compromise as the expectations of some countries will not be fulfilled in full and the compromise in order to the convention be inclusive to fit into all legal systems.

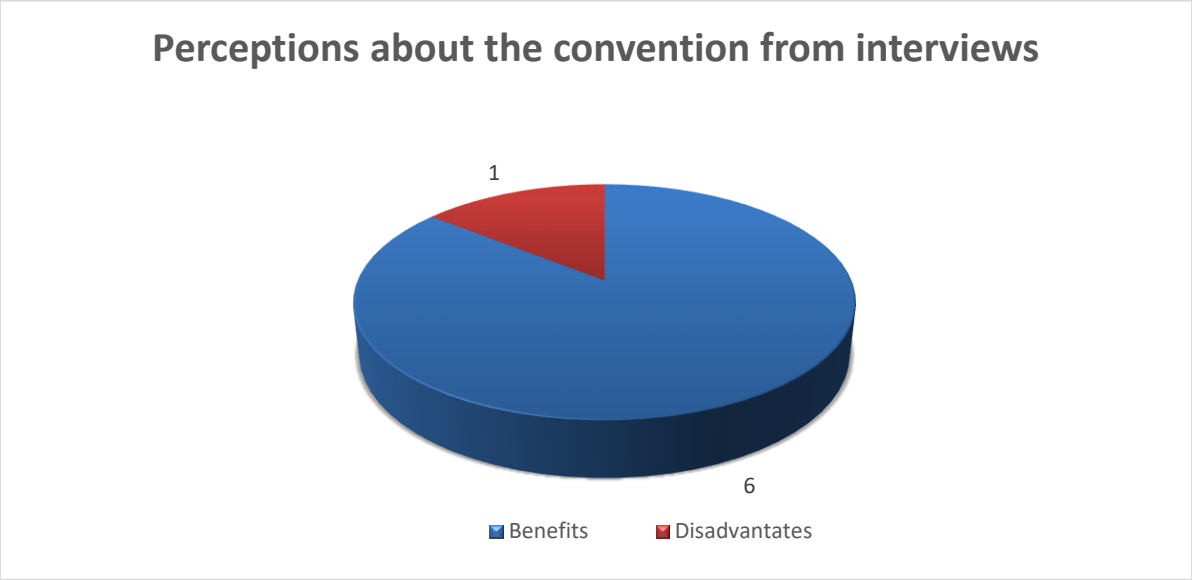

Figure 11. Perceptions about the convention from interviews

Finally, a relevant finding is that due to Brexit, the UK is now in the position to celebrate international treaties autonomously without relying on the EU. Thus, from 2 February to 1 April 2022, the country made a public consultation to seek the views on whether the UK should sign and ratify the Convention. The consultation is now in the process of analysis. However, when submitting this work, the results are not released yet.

From this researcher's perspective, the results of that consultation are relevant due to the UK legal system is similar to the Irish legal system, and perhaps the result of that consultation can be of interest to Ireland.

CONCLUSIONS

In this section, the conclusions based on the objectives, to finally arrive to the research question of this work. Followed by an overall conclusion of this research are presented

Conclusion regarding first research objective

- *To examine the degree of autonomy of Ireland as state Member of the European Union if considering signing the Singapore Convention on Mediation*

The issue of competence to sign the convention seems to be up to the EU; however, the legislation is not clear to determine who has the competence to sign in this case; in consequence, the bureaucratic obstacle is the main barrier for those member states of the EU that are willing to join the convention.

The EU has raised the issue that before deciding on competence to sign the Singapore Convention, the convention and the EU Directive should be analyzed to determine the existence of overlapping or any other related issue between the legislations.

This research also let the researcher know that Ireland is not considering signing the convention; the position in general terms is to let the EU decide about that matter. In light of those facts, this researcher considers that this is a good moment for the country to consider what else could be done to improve the mediation framework at the local level.

For instance, creating a Mediation Council and a Code of Practice can be considered.

On the other hand, while the issue of competence is resolved. The country can assess the Model Law to improve the Mediation Act to harmonize the framework.

As mentioned, the creation of the Model Law was to help those countries that want to implement or improve their mediation framework.

Thus, the opportunity for the country to be at the level of well-developed countries in mediation like Singapore can be a good opportunity for Ireland to become a hub for mediation in the EU,

considering that now it is the only country in the EU whit English as the mother tongue. One of the most used in business.

Conclusion regarding second research objective

- *To critically asses, the Singapore Convention on Mediation and the Mediation Act 2017 as complementary laws.*

In comparison with other countries like Mexico, Ireland has implemented legislation such as the Mediation Act 2017 to regulate the mediation process in the country.

However, in comparing the Irish Mediation Act and the Singapore Mediation Act, this researcher concluded that the Irish legal framework has some opportunities for improvement. Perhaps if the government were supportive of developing the so-called mediation ecosystem that Singapore has created, mediation in Ireland would be seen more as a profession which people can trust rather than a mere business.

Conclusion regarding third research objective

- *To explore the effects on the signatory states in applying the Singapore Convention on Mediation.*

This researcher believes that there is a positive perception of the effects on the signatory countries in general terms.

From assessing the benefits and disadvantages among the participants, only one person considered a possible disadvantage, but it also considered that the convention has advantages.

On the other hand, the countries that have already signed the convention believe that the convention will bring benefits to their respective countries.

Further, on the opening day for the signature of the convention, there were 46 signatory countries, and that is one of the highest numbers of signatory countries on an international instrument of the United Nations. So many countries cannot be wrong.

Finally, in relation to the research question:

Which can be the effects for Ireland in ratifying the Singapore Convention on Mediation?

This research has proven that many countries are signing and ratifying the convention, despite the signature opening day being in the middle of a pandemic. There is no doubt to this researcher that the signature of the Singapore Convention can be beneficial for Ireland.

Independently of the competence for signing the convention, Ireland can reinforce its mediation framework by adopting the Model Law.

For future research based on the present, it is recommended to follow up on the results of the public consultation that the UK has done, as they will be complementary to the present.

REFLECTIONS

Learnings

The learning process along this research and the knowledge gained was important to develop in the topics for each objective. During the interviews, the knowledge obtained was useful to find out the best approach for the next interview.

During the interviews, it was interesting to see how when people feels confident talking about a specific topic, it is easy to go deep in the topic which is also beneficial for research purpose.

Sample

This study is focused in people from different countries, inside and outside the EU, which allowed the researched to make a comparison about the perception of the convention in all those countries, which reflected that, the level of scepticism, is consistent mainly in the EU. Probably is the sampling population were different the results would be different.

Transcriptions

Making the people to feel comfortable and letting them to express freely resulted in long conversations, in some cases, longer than expected which impacted importantly at the moment of making the transcripts and the amount of time invested was longer than expected.

Personal reflection

In a final and very personal reflection, I have to say that it has caused a huge impact on me that something that I have learned during my Masters but I had not acknowledged until doing this work has reinforced my desire to pursue my career in the mediation field.

Yes, when I heard the following words from one of the respondents everything suddenly changed and made sense.

> *"I've seen it in many, many countries in Latin America in Africa in Asia that when you start using mediation and people start learning the skills of mediation what you create is a society that learns how to talk to each other. There is a dialogue and there is a way of resolving disputes instead of jumping*

into the court system as soon as you have a dispute.

So this has additional advantages than just cutting court cases in the judicial system. I think mediation helps societies to become a more inclined to learn how to talk to each other a society that talks and resolves disputes amicably through dialogue. It's probably one of the best advantages that we can we can have from mediation."

When I was practicing as lawyer back in my home country. I always had the feeling that when one of the parties wins and the other loses, when probably both have a bit or reason on their arguments where the justice was? Why does one party have to lose and the other win?

With that, I am not telling that the judicial system is wrong or should not be use. On the contrary, there are some specific cases that have no other option but to be resolved but in court.

Now, I understand that unconsciously my thinking was that It should be another way to resolve these cases without the need to be in court to make the parties happier with the result and to make a more functional society.

Now I understand that mediation is the answer. When I came across with this Masters I was so enthusiastic without imagine that it would be the missing piece on my career.

Now I know what I want to do: help people to resolve their disputes in an affordable, amicable and efficient way through mediation.

I am thrilled. I still cannot believe that back in time. Three years and three months ago, I was arriving in this country with the main intention of learning a new language. To be able to communicate with people in different countries and cultures, I had the vague idea in mind of doing a Master's Degree here, but honestly, at some point, I thought I would not be able to do it, and here I am.

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APPENDICES

A. Informed Consent Form

Informed Consent Form for
Research Project / Dissertation

Research Study Title: Are there weaknesses in the current legislation which may lead to an employee who identifies as LGBT facing conflicts in the workplace?

Purpose of Research: To detect the awareness that LGBT employees have regarding the options available to face conflicts in the workplace.

Dear enter name of participant here.,

You are being invited to take part in this research study as you have had experience in the Irish workplace as a worker who is part of the LGBT community. This research study aims to gain an understanding of what leads to LGBT employees facing conflicts in the workplace.

This research is being carried out by Ricardo Javier Alexis Cofré Pinto as part of a MA in Dispute Resolution at Independent College Dublin.

Type of participant:

- I enter name here. voluntarily agree to participate in this research study.
- I understand that even if I agree to participate now, I can withdraw at any time or refuse to answer any question without any consequences of any kind.
- I understand that I can withdraw permission to use data from my interview within two weeks after the interview, in which case the material will be deleted.
- I have had the purpose and nature of the study explained to me in writing and I have had the opportunity to ask questions about the study.
- I understand that participation involves be part of a focus group.
- I understand that I will not benefit directly from participating in this research.
- I agree to my interview being audio-recorded
- I understand that all information I provide for this study will be treated confidentially.
- I understand that in any report on the results of this research my identity will remain anonymous.
- This will be done by changing my name and disguising any details of my interview which may reveal my identity or the identity of people I speak about.
- I understand that disguised extracts from my interview may be quoted in my research project
- I understand that if I inform the researcher that myself or someone else is at risk of harm, they may have to report this to the relevant authorities. They may discuss this with me first but may be required to report with or without my permission.
- I understand that signed consent forms and original audio recordings will be retained in possession of the supervisor of this research Orla Tuohy, securely until November 2021.
- I understand that a transcript of my interview (in which all identifying information has been removed) will be retained for a period of two years.

- I understand that under freedom of information legalisation I am entitled to access the information I have provided at any time while it is in storage as specified above.
- I understand that I am free to contact any of the people involved in the research to seek further clarification and information.

Below to be completed by research participant

☐By checking this box, I confirm that I have read all of the above information and that I agree to participate in this research.

Signature of research participant
Enter your name here.

Date
Click or tap to enter a date.

B. Interview Questions and Coding

Coding for questions in civil servants interviews		
Code	**Meaning**	**Question**
CSQ1	Civil Servants Question 1	Ireland is a country that advocates for ADR, especially mediation, but it was not part of the working group to draft the Singapore Convention even though it has representation in the UN. Do you know if there is a specific reason for it?
CSQ2	Civil Servants Question 2	Considering that, the Singapore Convention is an UN instrument, is the accession to the Convention an exclusive jurisdiction of the EU or do the member states have autonomy to sign individually?
CSFQ1	Civil Servants Follow up Question 1	In summary, even though it may be a competence for the member states of the EU in signing this convention individually it is more likely they will make a consultation with the EU anyway?
CSQ3	Civil Servants Question 3	Do you know if there is any position of the Government of Ireland in relation to ratifying the Singapore Convention?
CSQ4	Civil Servants Question 4	Do you think that Ireland has a robust legal framework in mediation to implement such a Convention like the Singapore Convention?
CSQ5	Civil Servants Question 5	The European Handbook for Mediation Law making establishes that member states of the EU are obliged by the Mediation Directive to have a mechanism for the enforcement of cross-border disputes in place such as the Singapore Convention. It also mentions considering ratifying the Singapore Convention to ensure efficient recognition of international mediation settlements. Can this be a good motivation for Ireland to consider signing the Convention?
CSQ6	Civil Servants Question 6	Do you know if there is any position of the Council of Europe in relation to signing the Singapore Convention?

CSQ7	Civil Servants Question 7	What role would the Department of Foreign Affairs/Justice play if Ireland were to become a signatory state of the Singapore Convention?
CSQ8	Civil Servants Question 8	What role would the Department of Foreign Affairs/Justice play if Ireland were to ratify the Singapore Convention?
CSFQ2	Civil Servants Follow up Question 5	So in summary I can say that before ratifying any convention the internal legal framework has to be adequate to be in harmony with the with the international treaties isn't it?
CSQ9	Civil Servants Question 9	Considering that at this point none of the EU members has signed the Singapore Convention, do you think that there would be any advantage for Ireland being the first signatory member of the EU?
CSQ10	Civil Servants Question 10	What do you think is stopping the EU or its member states from signing the Singapore Convention on Mediation?

Coding for questions in working group interviews		
Code	**Meaning**	**Question**
WGQ1	Working Group Question 1	Ireland is a country that advocates for ADR, especially mediation, but it was not part of the working group to draft the Singapore Convention even though it has representation in the United Nations. Do you know if there is a specific reason for it?
WGFQ1	Working Group Follow up question 1	Do you know if there were some member states from the European Union in this convention?
WGFQ2	Working Group Follow up question 2	The states that you mentioned like Germany, UK, France and Italy where they observers as well or they did actively participate in the convention?
WGQ 2	Working Group Question 2	Considering that at this point none of the EU members have signed the Singapore Convention, do you think that there would be any advantage for Ireland being the first signatory member of the EU?
WGQ 3	Working Group Question 3	To what extent do you think the Singapore Convention would benefit Ireland?
WGQ 4	Working Group Question 4	What do you consider a tangible benefit for the Countries that are already a part of the Singapore Convention?
WGQ 5	Working Group Question 5	What is the current situation in your country in relation to the Singapore Convention?
WGFQ3	Working Group Follow up question 3	So, basically you are adjusting the legal framework in mediation first, before signing the Convention right?

WGFQ4	Working Group Follow up question 4	So do you think that will make a country more attractive for business, if the country sign the convention?
WGFQ5	Working Group Follow up question 5	In many countries, the judicial systems are collapsing. Do you think that mediation will help to rely a little bit on agreements through mediation rather than going to litigation and reduce the amount of cases in courts?
WGQ 6	Working Group Question 6	Do you think the Singapore Convention can be improve in any way?
WGQ 7	Working Group Question 7	There are some positions to the effect that the Convention confuses arbitration, which concludes with an award, and mediation, where the goal is settlement by mutual agreement, and it borrows inappropriately the procedures designed for recognition and enforcement of awards. What are your comments related to this?

Coding for questions in professionals group interviews		
Code	**Meaning**	**Question**
PQ 1	Professionals Question 1	Considering that, the Singapore Convention is an UN instrument, is the accession to the Convention an exclusive jurisdiction of the EU or do the member states have autonomy to sign individually?
PFQ1	Professionals Follow up question 1	So in summary, there is no clear definition if this is an exclusive jurisdiction to the EU or to the state members individually, is it?
PFQ2	Professionals Follow up question 2	So, what do you think is stopping the EU or its member states from signing the Singapore Convention on Mediation?
PFQ3	Professionals Follow up question 3	There is a Mediation Directive in the EU have they given their position in relation to the Singapore Convention?
PFQ4	Professionals Follow up question 4	Do you know if there is any position of the Council of Europe in relation to signing the Singapore Convention?
PFQ5		The European handbook for mediation law making and that handbook establishes that member states of the EU are obliged to Invite a mediation directive to have a mechanism for the enforcement of cross border disputes in place such as the Singapore Convention. It also mentions that considering ratifying the Singapore Convention to ensure efficient recognition of international mediation settlements. Do you think this can be a good motivation for the EU or their state members to sign the convention?
PFQ6	Professionals Follow up question 5	Considering that at this point none of the EU members have signed the Singapore convention. Do you think that there will be any advantage for Ireland being the first signatory member of the EU?
PFQ7	Professionals Follow up question 6	To what extend do you consider the Singapore Convention will benefit the EU members?
PQ 2	Professionals Question 2	What do you think is stopping the EU or its member states from signing the Singapore Convention on Mediation?

PFQ8	Professionals Follow up question 7	So, do you think the legal system can be an important thing to consider in relation to the countries that may sign or not the Singapore Convention?
PQ 3	Professionals Question 4	Considering that at this point none of the EU members has signed the Singapore Convention, do you think that there would be any advantage for Ireland being the first signatory member of the EU?
PQ 4	Professionals Question 5	To what extent do you think the Singapore Convention would benefit Ireland?
PQ5	Professionals Question 6	What do you consider a tangible benefit for the Countries that are already a part of the Singapore Convention?
PQ 6	Professionals Question 7	What is the current situation in your country in relation to the Singapore Convention?
PFQ9	Professionals Follow up question 8	I know that after ratifying the Singapore convention you amended the mediation act isn't it?
PFQ10	Professionals Follow up question 9	As you know, at this point, none of the EU members has signed the Singapore Convention; do you think that there would be any advantage for Ireland being the first signatory member of the EU?
PFQ11	Professionals Follow up question 10	There are some positions to the effect that the Convention confuses arbitration, which concludes with an award, and mediation, where the goal is settlement by mutual agreement, and it borrows inappropriately the procedures designed for recognition and enforcement of awards. What are your comments related to this?
PFQ12	Professionals Follow up question 11	Would you say that the Singapore Convention was adapted to make the enforcement of mediation settlement agreements for both, common law and civil law jurisdictions?
PFQ13	Professionals Follow up question 12	Do you think that Ireland can be a positive influence to the EU members if Ireland signs first?
PQ7	Professionals Question 8	Do you think the Singapore Convention can be improve in any way?
PFQ14	Professionals Follow up question 13	Do you think there are any technical issues that the European Union can face in relation to the provisions in the Convention and the existent laws of the European Union in relation to mediation?

PFQ15	Professionals Follow up question 14	There is this law called the European Handbook for Mediation Law Making. It establishes that member states of the EU are obliged by mediation directive to have a mechanism for the enforcement of cross border disputes in place such as the Singapore Convention and it also mentions considering ratifying the Singapore Convention to ensure the efficient recognition of international mediation settlements. So with that in mind, would you say that if there is a recommendation by this handbook to sign the first question of whether the EU member states have autonomy to sing individually?

C. Signatory Countries to 21 May 20222

4. United Nations Convention on International Settlement Agreements Resulting from Mediation

New York, 20 December 2018

ENTRY INTO FORCE: 12 September 2020, in accordance with article 14(1) , the Convention shall enter int force six months after deposit of the third instrument of ratification, acceptance, approva or accession.

REGISTRATION: 12 September 2020, No. 56376.

STATUS: Signatories: 55. Parties: 9.

TEXT: C.N.154.2019.TREATIES-XXII.4 of 8 May 2019 (Issuance of Certified True Copies and C.N.155.2019.TREATIES-XXII.4 of 8 May 2019 (Opening for signature)

Note: The Convention was adopted on 20 December 2018 by resolution 73/198 during the seventy-third session of th General Assembly of the United Nations. The Convention shall be open for signature by all States in Singapore, on 7 Augus 2019, and thereafter at United Nations Headquarters in New York.

Participant	*Signature*	*Ratification, Acceptance(A), Approval(AA), Accession(a)*
Afghanistan	7 Aug 2019	
Armenia	26 Sep 2019	
Australia	10 Sep 2021	
Belarus	7 Aug 2019	15 Jul 2020 AA
Benin	7 Aug 2019	
Brazil	4 Jun 2021	
Brunei Darussalam	7 Aug 2019	
Chad	26 Sep 2019	
Chile	7 Aug 2019	
China	7 Aug 2019	
Colombia	7 Aug 2019	
Congo	7 Aug 2019	
Democratic Republic of the Congo	7 Aug 2019	
Ecuador	25 Sep 2019	9 Sep 2020
Eswatini	7 Aug 2019	
Fiji	7 Aug 2019	25 Feb 2020
Gabon	25 Sep 2019	
Georgia	7 Aug 2019	29 Dec 2021
Ghana	22 Jul 2020	
Grenada	7 Aug 2019	
Guinea-Bissau	26 Sep 2019	
Haiti	7 Aug 2019	
Honduras	7 Aug 2019	2 Sep 2021
India	7 Aug 2019	
Iran (Islamic Republic of)	7 Aug 2019	
Israel	7 Aug 2019	
Jamaica	7 Aug 2019	
Jordan	7 Aug 2019	
Kazakhstan	7 Aug 2019	
Lao People's Democratic Republic	7 Aug 2019	
Malaysia	7 Aug 2019	
Maldives	7 Aug 2019	
Mauritius	7 Aug 2019	
Montenegro	7 Aug 2019	
Nigeria	7 Aug 2019	
North Macedonia	7 Aug 2019	
Palau	7 Aug 2019	
Paraguay	7 Aug 2019	
Philippines	7 Aug 2019	
Qatar	7 Aug 2019	12 Mar 2020
Republic of Korea	7 Aug 2019	
Rwanda	28 Jan 2020	
Samoa	7 Aug 2019	
Saudi Arabia	7 Aug 2019	5 May 2020
Serbia	7 Aug 2019	
Sierra Leone	7 Aug 2019	
Singapore	7 Aug 2019	25 Feb 2020
Sri Lanka	7 Aug 2019	
Timor-Leste	7 Aug 2019	
Turkey	7 Aug 2019	11 Oct 2021

Participant	*Signature*	*Ratification, Acceptance(A), Approval(AA), Accession(a)*
Uganda	7 Aug 2019	
Ukraine	7 Aug 2019	
United States of America	7 Aug 2019	
Uruguay	7 Aug 2019	
Venezuela (Bolivarian Republic of)	7 Aug 2019	

Declarations and Reservations

(Unless otherwise indicated, the declarations and reservations were made upon ratification, accession or succession.)

BELARUS

"In accordance with the article 8 of the Convention the Republic of Belarus shall not apply this Convention to settlement agreements to which it is a party, or to which any governmental agencies or any person acting on behalf of a governmental agency is a party."

GEORGIA

"The following reservations shall be taken into consideration upon ratification of the United Nations Convention on International Settlement Agreements Resulting from Mediation:

a) Georgia declares that this Convention shall not apply to settlement agreements to which it is a party, or to which any governmental agencies or any person acting on behalf of governmental agency is a party;

b) Georgia hereby declares that this Convention shall apply only to the extent that the parties to the settlement agreement have agreed to the application of the Convention."

IRAN (ISLAMIC REPUBLIC OF)

"The Government of the Islamic Republic of Iran seizes the opportunity at this moment of signing 'the United Nations Convention on International Settlement Agreements Resulting from Mediation', to place on the record its 'understanding' in relation to provisions of the Convention, bearing in mind that the main objective for submitting this declaration is the avoidance of eventual future interpretation of the following articles in a manner incompatible with the original intention and previous positions or in disharmony with national laws and regulations of the Islamic Republic of Iran.

It is the understanding of the Islamic Republic of Iran as well as reservations that:

- the Islamic Republic of Iran has no obligation to apply this Convention to settlement agreements to which it is 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;
- The Islamic Republic of Iran will apply this Convention only to the extent that the parties to the settlement agreement have agreed to the application of the Convention;
- The Islamic Republic of Iran may have the choice to make reservations upon ratification;
- The Islamic Republic of Iran, in accordance with the relevant provisions of the Convention, reserves the right to adopt laws and regulations to co-operate with the States."

SAUDI ARABIA

The Kingdom of Saudi Arabia hereby declares that the Convention shall not apply to settlement agreements to which it or any of its governmental agencies is a party, or any person acting on behalf of those governmental agencies.

Source: United Nations Treaty Collection XXII-4.en.pdf (un.org)

D. Singapore Convention on Mediation

United Nations Convention on International Settlement Agreements Resulting from Mediation

UNITED NATIONS

Further information may be obtained from:
UNCITRAL secretariat, Vienna International Centre P.O. Box 500, 1400 Vienna, Austria
Telephone: (+43-1) 26060-4060 Telefax: (+43-1) 26060-5813 Internet: www.uncitral.org Email: uncitral@uncitral.org
UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW

United Nations Convention on International Settlement Agreements Resulting from Mediation

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Contents

Resolution adopted by the General Assembly on 20 December 2018

[on the report of the Sixth Committee (A/73/496)]

73/198. United Nations Convention on International Settlement Agreements Resulting from Mediation

The General Assembly,

Recalling its resolution 2205 (XXI) of 17 December 1966, by which it established the United Nations Commission on International Trade Law with a mandate to further the progressive harmonization and unification of the law of international trade and in that respect to bear in mind the interests of all peoples, in particular those of developing countries, in the extensive development of international trade,

Recalling also its resolution 57/18 of 19 November 2002, in which it noted the adoption by the Commission of the Model Law on International Commercial Conciliation[1] and expressed the conviction that the Model Law, together with the Conciliation Rules of the Commission2 recommended in its resolution 35/52 of 4 December 1980, contributes significantly to the establishment of a harmonized legal framework for the fair and efficient settlement of disputes arising in international commercial relations,

Recognizing the value of mediation as a method of amicably settling disputes arising in the context of international commercial relations,

Convinced that the adoption of a convention on international settlement agreements resulting

from mediation that is acceptable to States with different legal, social and economic systems would complement the existing legal framework on international mediation and contribute to the development of harmonious international economic relations,

Noting that the decision of the Commission to concurrently prepare a convention on international settlement agreements resulting

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Resolution 57/18, annex.

Official Records of the General Assembly, Thirty-fifth Session, Supplement No. 17 (A/35/17), para. 106; see also *Yearbook of the United Nations Commission on International Trade Law*, vol. XI: 1980, part three, annex II.

from mediation and an amendment to the Model Law on International Commercial Conciliation was intended to accommodate the different levels of experience with mediation in different jurisdictions and to provide States with consistent standards on the cross-border enforcement of international settlement agreements resulting from mediation, without creating any expectation that interested States may adopt either instrument,[1]

Noting with satisfaction that the preparation of the draft convention was the subject of due deliberation and that the draft convention benefited from consultations with Governments as well as intergovernmental and non-governmental organizations,

Taking note of the decision of the Commission at its fifty-first session to submit the draft

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[1] *Official Records of the General Assembly, Seventy-second Session, Supplement No. 17* (A/72/17), paras. 238–239; see also A/CN.9/901, para. 52.

convention to the General Assembly for its consideration,[1]

Taking note with satisfaction of the draft convention approved by the Commission,[2]

Expressing its appreciation to the Government of Singapore for its offer to host a signing ceremony for the Convention in Singapore,

Commends the United Nations Commission on Interna-

tional Trade Law for preparing the draft convention on international settlement agreements resulting from mediation;

Adopts the United Nations Convention on International Settlement Agreements Resulting from Mediation, contained in the annex to the present resolution;

Authorizes a ceremony for the opening for signature of the Convention to be held in Singapore on 7 August 2019, and recommends that the Convention be known as the "Singapore Convention on Mediation";

Calls upon those Governments and regional economic integration organizations that wish to strengthen the legal framework on international dispute settlement to consider becoming a party to the Convention.

62nd plenary meeting 20 December 2018

[1] *Official Records of the General Assembly, Seventy-third Session, Supplement No. 17* (A/73/17), para. 49.

[2] Ibid., annex I.

United Nations Convention on International Settlement Agreements Resulting from Mediation

Preamble

The Parties to this Convention,

Recognizing the value for international trade of mediation as a method for settling commercial disputes in which the parties in dispute request a third person or persons to assist them in their attempt to settle the dispute amicably,

Noting that mediation is increasingly used in international and domestic commercial practice as an alternative to litigation,

Considering that the use of mediation results in significant benefits, such as reducing the instances where a dispute leads to the termination of a commercial relationship, facilitating the administration of international transactions by commercial parties and producing savings in the administration of justice by States,

Convinced that the establishment of a framework for international settlement agreements resulting from mediation that is acceptable to States with different legal, social and economic systems would contribute to the development of harmonious international economic relations,

Have agreed as follows:

Article 1. Scope of application

This Convention applies to an agreement resulting from mediation and concluded in writing by parties to resolve a commercial dispute (“settlement agreement”) which, at the time of its conclusion, is international in that:

At least two parties to the settlement agreement have their places of business in different States; or

The State in which the parties to the settlement agreement have their places of business is different from either:

The State in which a substantial part of the obligations under the settlement agreement is performed; or

The State with which the subject matter of the settlement agreement is most closely connected.

This Convention does not apply to settlement agreements:

Concluded to resolve a dispute arising from transactions engaged in by one of the parties (a consumer) for personal, family or household purposes;

Relating to family, inheritance or employment law.

This Convention does not apply to:

Settlement agreements:

That have been approved by a court or concluded in the course of proceedings before a court; and

That are enforceable as a judgment in the State of that court;

Settlement agreements that have been recorded and are enforceable as an arbitral award.

Article 2. Definitions

For the purposes of article 1, paragraph 1:

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;

If a party does not have a place of business, reference is to be made to the party's habitual residence.

A settlement agreement is "in writing" if its content is recorded in any form. The requirement that a settlement agreement be in writing is met by an electronic communication if the information contained therein is accessible so as to be useable for subsequent reference.

"Mediation" means 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 3. General principles

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.

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 that the matter has already been resolved.

Article 4. Requirements for reliance on settlement agreements

A party relying on a settlement agreement under this Convention shall supply to the competent authority of the Party to the Convention where relief is sought:

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 (i), (ii) or (iii), any other evidence acceptable to the competent authority.

The requirement that a settlement agreement shall be signed by the parties or, where applicable, the mediator is met in relation to an electronic communication if:

A method is used to identify the parties or the mediator and to indicate the parties' or

mediator's intention in respect of the information contained in the electronic communication; and

(b) The method used is either:

As reliable as appropriate for the purpose for which the electronic communication was generated or communicated, in the light of all the circumstances, including any relevant agreement; or

Proven in fact to have fulfilled the functions described in subparagraph *(a)* above, by itself or together with further evidence.

If the settlement agreement is not in an official language of the Party to the Convention where relief is sought, the competent authority may request a translation thereof into such language.

The competent authority may require any necessary document in order to verify that the requirements of the Convention have been complied with.

When considering the request for relief, the competent authority shall act expeditiously.

Article 5. Grounds for refusing to grant relief

The competent authority of the Party to the Convention where relief is sought under article 4 may refuse to grant relief at the request of the party against whom the relief is sought only if that party furnishes to the competent authority proof that:

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 of the Party to the Convention where

relief is sought under article 4;

Is not binding, or is not final, according to its terms; or

Has been subsequently modified;

The obligations in the settlement agreement:

(i) Have been performed; or

(ii) 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 competent authority of the Party to the Convention where relief is sought under article 4 may also refuse to grant relief if it finds that:

Granting relief would be contrary to the public policy of that Party; or

The subject matter of the dispute is not capable of settlement by mediation under the law of that Party.

Article 6. Parallel applications or claims

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.

Article 7. Other laws or treaties

This Convention shall not deprive any interested party of any right it may have to avail itself of a settlement agreement in the manner and to the extent allowed by the law or the treaties of the Party to the Convention where such settlement agreement is sought to be relied upon.

Article 8. Reservations

A Party to the Convention may declare that:

It shall not apply this Convention to settlement agreements to which it is 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;

It shall apply this Convention only to the extent that the parties to the settlement agreement have agreed to the application of the Convention.

No reservations are permitted except those expressly authorized in this article.

Reservations may be made by a Party to the Convention at any time. Reservations made at the time of signature shall be subject to confirmation upon ratification, acceptance or approval. Such reservations shall take effect simultaneously with the entry into force of this Convention in respect of the Party to the Convention concerned. Reservations made at the time of ratification, acceptance or approval of this Convention or accession thereto, or at the time of making a declaration under article 13 shall take effect simultaneously with the entry into force of this Convention in respect of the Party to the Convention concerned. Reservations deposited after the entry into force of the Convention for that Party to the Convention shall take effect six months after the date of the deposit.

Reservations and their confirmations shall be deposited with the depositary.

Any Party to the Convention that makes a reservation under this Convention may withdraw it at any time. Such withdrawals are to be deposited with the depositary, and shall take effect six months after deposit.

Article 9. Effect on settlement agreements

The Convention and any reservation or withdrawal thereof shall apply only to settlement agreements concluded after the date when the Convention, reservation or withdrawal thereof enters into force for the Party to the Convention concerned.

Article 10. Depositary

The Secretary-General of the United Nations is hereby designated as the depositary of this Convention.

Article 11. Signature, ratification, acceptance, approval,

accession

This Convention is open for signature by all States in Singapore, on 7 August 2019, and thereafter at United Nations Headquarters in New York.

This Convention is subject to ratification, acceptance or approval by the signatories.

This Convention is open for accession by all States that are not signatories as from the date it is open for signature.

Instruments of ratification, acceptance, approval or accession are to be deposited with the depositary.

Article 12. Participation by regional economic integration

organizations

A regional economic integration organization that is constituted by sovereign States and has competence over certain matters governed by

this Convention may similarly sign, ratify, accept, approve or accede to this Convention. The regional economic integration organization shall in that case have the rights and obligations of a Party to the Convention, to the extent that that organization has competence over matters governed by this Convention. Where the number of Parties to the Convention is relevant in this Convention, the regional economic integration organization shall not count as a Party to the Convention in addition to its member States that are Parties to the Convention.

The regional economic integration organization shall, at the time of signature, ratification, acceptance, approval or accession, make a declaration to the depositary specifying the matters governed by this Convention in respect of which competence has been transferred to that organization by its member States. The regional economic integration organization shall promptly notify the depositary of any changes to the distribution of competence, including new transfers of competence, specified in the declaration under this paragraph.

Any reference to a "Party to the Convention", "Parties to the Convention", a "State" or "States" in this Convention applies equally to a regional economic integration organization where the context so requires.

This Convention shall not prevail over conflicting rules of a regional economic integration organization, whether such rules were adopted or entered into force before or after this Convention: *(a)* if, under article 4, relief is sought in a State that is member of such an organization and all the States relevant under

article 1, paragraph 1, are members of such an organization; or *(b)* as concerns the recognition or enforcement of judgments between member States of such an organization.

Article 13. Non-unified legal systems

If a Party to the Convention has two or more territorial units in which different systems of law are applicable in relation to the matters dealt with in this Convention, it may, at the time of signature, ratification, acceptance, approval or accession, declare that this Convention is to extend to all its territorial units or only to one or more of them, and may amend its declaration by submitting another declaration at any time.

These declarations are to be notified to the depositary and are to state expressly the territorial units to which the Convention extends.

If a Party to the Convention has two or more territorial units in which different systems of law are applicable in relation to the matters dealt with in this Convention:

Any reference to the law or rule of procedure of a State shall be construed as referring, where appropriate, to the law or rule of procedure in force in the relevant territorial unit;

Any reference to the place of business in a State shall be construed as referring, where appropriate, to the place of business in the relevant territorial unit;

Any reference to the competent authority of the State shall be construed as referring, where appropriate, to the competent authority in the relevant territorial unit.

If a Party to the Convention makes no declaration under paragraph 1 of this article, the Convention is to extend to all territorial units of that State.

Article 14. Entry into force

This Convention shall enter into force six months after deposit of the third instrument of ratification, acceptance, approval or accession.

When a State ratifies, accepts, approves or accedes to this Convention after the deposit of the third instrument of ratification, acceptance, approval or accession, this Convention shall enter into force in respect of that State six months after the date of the deposit of its instrument of ratification, acceptance, approval or accession. The Convention shall enter into force for a territorial unit to which this Convention has been extended in accordance with article 13 six months after the notification of the declaration referred to in that article.

Article 15. Amendment

Any Party to the Convention may propose an amendment to the present Convention by submitting it to the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the Parties to the Convention with a request that they indicate whether they favour a conference of Parties to the Convention for the purpose of considering and voting upon the proposal. In the event that within four months from the date of such communication at least one third of the Parties to the Convention favour such a conference, the Secretary-General shall

convene the conference under the auspices of the United Nations.

The conference of Parties to the Convention shall make every effort to achieve consensus on each amendment. If all efforts at consensus are exhausted and no consensus is reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the Parties to the Convention present and voting at the conference.

An adopted amendment shall be submitted by the depositary to all the Parties to the Convention for ratification, acceptance or approval.

An adopted amendment shall enter into force six months after the date of deposit of the third instrument of ratification, acceptance or approval. When an amendment enters into force, it shall be binding on those Parties to the Convention that have expressed consent to be bound by it.

When a Party to the Convention ratifies, accepts or approves an amendment following the deposit of the third instrument of ratification, acceptance or approval, the amendment shall enter into force in respect of that Party to the Convention six months after the date of the deposit of its instrument of ratification, acceptance or approval.

Article 16. Denunciations

A Party to the Convention may denounce this Convention by a formal notification in writing addressed to the depositary. The denunciation may be limited to certain territorial units of a

nonunified legal system to which this Convention applies.

The denunciation shall take effect 12 months after the notification is received by the depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation shall take effect upon the expiration of such longer period after the notification is received by the depositary. The Convention shall continue to apply to settlement agreements concluded before the denunciation takes effect.

DONE in a single original, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic.

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E. Model Law

UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation, 2018 (amending the UNCITRAL Model Law on International Commercial Conciliation, 2002)

Section 1 — General provisions

Article 1. Scope of application of the Law and definitions

This Law applies to international commercial[1] mediation[2] and to international settlement agreements.

For the purposes of this Law, "mediator" means a sole mediator or two or more mediators, as the case may be.

For the purposes of this Law, "mediation" means a process, whether referred to by the expression mediation, conciliation or an expression of similar import, whereby parties request a third person or persons ("the mediator") to assist them in their attempt to reach an amicable settlement of their dispute arising out of or relating to a contractual or other legal relationship. The mediator does not have the authority to impose upon the parties a solution to the dispute.

Article 2. Interpretation

In the interpretation of this Law, regard is to be had to its international origin and to the need to promote uniformity in its application and the observance of good faith.

Questions concerning matters governed by this Law which are not expressly settled in it are to be settled in conformity with the general principles on which this Law is based.

Section 2 — International commercial mediation Article 3. Scope of application of the section and definitions

1. This section applies to international[3] commercial mediation.

The term "commercial" should be given a wide interpretation so as to cover matters arising from all relationships of a commercial nature, whether contractual or not. Relationships of a commercial nature include, but are not limited to, the following transactions: any trade transaction for the supply or exchange of goods or services; distribution agreement; commercial representation or agency; factoring; leasing; construction of works; consulting; engineering; licensing; investment; financing; banking; insurance; exploitation agreement or concession; joint venture and other forms of industrial or business cooperation; and carriage of goods or passengers by air, sea, rail or road.

In its previously adopted texts and relevant documents, UNCITRAL used the term "conciliation" with the understanding that the terms "conciliation" and "mediation" were interchangeable. In preparing this Model Law, the Commission decided to use the term "mediation"

instead in an effort to adapt to the actual and practical use of the terms and with the expectation that this change will facilitate the promotion and heighten the visibility of the Model Law. This change in terminology does not have any substantive or conceptual implications.

States wishing to enact this section to apply to domestic as well as international mediation may wish to consider the following changes to the text:

Delete the word "international" in paragraph 1 of articles 1 and 3; and

Delete paragraphs 2, 3 and 4 of article 3, and modify references to paragraphs accordingly.

A mediation is "international" if:

The parties to an agreement to mediate have, at the time of the conclusion of that agreement, their places of business in different States; or

The State in which the parties have their places of business is different from either:

The State in which a substantial part of the obligations of the commercial relationship is to be performed; or

The State with which the subject matter of the dispute is most closely connected.

For the purposes of paragraph 2:

If a party has more than one place of business, the place of business is that which has the closest relationship to the agreement to mediate;

If a party does not have a place of business, reference is to be made to the party's habitual residence.

This section also applies to commercial mediation when the parties agree that the mediation is international or agree to the applicability of this section. 5. The parties are free to agree to exclude the applicability of this section.

6. Subject to the provisions of paragraph 7 of this article, this section applies irrespective of the basis upon which the mediation is carried out, including agreement between the parties whether reached before or after a dispute has arisen, an obligation established by law, or a direction or suggestion of a court, arbitral tribunal or competent governmental entity. 7. This section does not apply to:

Cases where a judge or an arbitrator, in the course of judicial or arbitral proceedings, attempts to facilitate a settlement; and

[…].

Article 4. Variation by agreement

Except for the provisions of article 7, paragraph 3, the parties may agree to exclude or vary any of the provisions of this section.

Article 5. Commencement of mediation proceedings[4]

Mediation proceedings in respect of a dispute that has arisen commence on the day on which the parties to that dispute agree to engage in mediation proceedings.

If a party that invited another party to mediate does not receive an acceptance of the invitation within 30 days from the day on which the invitation was sent, or within such other period of

time as specified in the invitation, the party may elect to treat this as a rejection of the invitation to mediate.

Article 6. Number and appointment of mediators

1. There shall be one mediator, unless the parties agree that there shall be two or more mediators.

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[4] The following text is suggested for States that might wish to adopt a provision on the suspension of the limitation period:

Article X. Suspension of limitation period

When the mediation proceedings commence, the running of the limitation period regarding the claim that is the subject matter of the mediation is suspended.

Where the mediation proceedings have terminated without a settlement agreement, the limitation period resumes running from the time the mediation ended without a settlement agreement.

The parties shall endeavour to reach agreement on a mediator or mediators, unless a different procedure for their appointment has been agreed upon.

Parties may seek the assistance of an institution or person in connection with the appointment of mediators. In particular:

A party may request such an institution or person to recommend suitable persons to act as mediator; or

The parties may agree that the appointment of one or more mediators be made directly by such an institution or person.

In recommending or appointing individuals to act as mediator, the institution or person shall have regard to such considerations as are likely to secure the appointment of an independent and impartial mediator and, where appropriate, shall take into account the advisability of appointing a mediator of a nationality other than the nationalities of the parties.

When a person is approached in connection with his or her possible appointment as mediator, he or she shall disclose any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence. A mediator, from the time of his or her appointment and throughout the mediation proceedings, shall without delay disclose any such circumstances to the parties unless they have already been informed of them by him or her.

Article 7. Conduct of mediation

The parties are free to agree, by reference to a set of rules or otherwise, on the manner in which the mediation is to be conducted.

Failing agreement on the manner in which the mediation is to be conducted, the mediator may conduct the mediation proceedings in such a manner as the mediator considers appropriate, taking into account the circumstances of the case, any wishes that the parties may express and the need for a speedy settlement of the dispute.

In any case, in conducting the proceedings, the mediator shall seek to maintain fair treatment of the parties and, in so doing, shall take into account the circumstances of the case.

The mediator may, at any stage of the mediation proceedings, make proposals for a settlement of the dispute.

Article 8. Communication between mediator and parties

The mediator may meet or communicate with the parties together or with each of them separately.

Article 9. Disclosure of information

When the mediator receives information concerning the dispute from a party, the mediator may disclose the substance of that information to any other party to the mediation. However, when a party gives any information to the mediator, subject to a specific condition that it be kept confidential, that information shall not be disclosed to any other party to the mediation.

Article 10. Confidentiality

Unless otherwise agreed by the parties, all information relating to the mediation proceedings shall be kept confidential, except where disclosure is required under the law or for the purposes of implementation or enforcement of a settlement agreement.

Article 11. Admissibility of evidence in other proceedings

A party to the mediation proceedings, the mediator and any third person, including those involved in the administration of the mediation proceedings, shall not in arbitral, judicial or similar proceedings rely on, introduce as evidence or give testimony or evidence regarding any of the following:

An invitation by a party to engage in mediation proceedings or the fact that a party was willing to participate in mediation proceedings;

Views expressed or suggestions made by a party in the mediation in respect of a possible settlement of the dispute;

Statements or admissions made by a party in the course of the mediation proceedings;

Proposals made by the mediator;

The fact that a party had indicated its willingness to accept a proposal for settlement made by the mediator;

A document prepared solely for purposes of the mediation proceedings.

Paragraph 1 of this article applies irrespective of the form of the information or evidence referred to therein.

The disclosure of the information referred to in paragraph 1 of this article shall not be ordered by an arbitral tribunal, court or other competent governmental authority and, if such information is offered as evidence in contravention of paragraph 1 of this article, that evidence shall be treated as inadmissible. Nevertheless, such information may be disclosed or admitted in evidence to the extent required under the law or for the purposes of implementation or enforcement of a settlement agreement.

The provisions of paragraphs 1, 2 and 3 of this article apply whether or not the arbitral, judicial or similar proceedings relate to the dispute that is or was the subject matter of the mediation proceedings.

Subject to the limitations of paragraph 1 of this article, evidence that is otherwise admissible in arbitral or judicial or similar proceedings does not become inadmissible as a consequence of having been used in a mediation.

Article 12. Termination of mediation proceedings The mediation proceedings are terminated:

By the conclusion of a settlement agreement by the parties, on the date of the agreement;

By a declaration of the mediator, after consultation with the parties, to the effect that further efforts at mediation are no longer justified, on the date of the declaration;

By a declaration of the parties addressed to the mediator to the effect that the mediation proceedings are terminated, on the date of the declaration; or

By a declaration of a party to the other party or parties and the mediator, if appointed, to the effect that the mediation proceedings are terminated, on the date of the declaration.

Article 13. Mediator acting as arbitrator

Unless otherwise agreed by the parties, the mediator shall not act as an arbitrator in respect of a dispute that was or is the subject of the mediation proceedings or in respect of another dispute that has arisen from the same contract or legal relationship or any related contract or legal relationship.

Article 14. Resort to arbitral or judicial proceedings

Where the parties have agreed to mediate and have expressly undertaken not to initiate during a specified period of time or until a specified event has occurred arbitral or judicial proceedings with respect to an existing or future dispute, such an undertaking shall be given effect by the arbitral tribunal or the court until the terms of the undertaking have been complied with, except to the extent necessary for a party, in its opinion, to preserve its rights. Initiation of such proceedings is not of itself to be regarded as a waiver of the agreement to mediate or as a termination of the mediation proceedings.

Article 15. Binding and enforceable nature of settlement agreements

If the parties conclude an agreement settling a dispute, that settlement agreement is binding and enforceable.

Section 3 — International settlement agreements[5]

Article 16. Scope of application of the section and definitions

This section applies to international agreements resulting from mediation and concluded in writing by parties to resolve a commercial dispute ("settlement agreements").[6]

This section does not apply to settlement agreements:

Concluded to resolve a dispute arising from transactions engaged in by one of the parties (a consumer) for personal, family or household purposes; (b) Relating to family, inheritance or employment law.

This section does not apply to:

Settlement agreements:

That have been approved by a court or concluded in the course of proceedings before a court; and

That are enforceable as a judgment in the State of that court;

Settlement agreements that have been recorded and are enforceable as an arbitral award.

A settlement agreement is "international" if, at the time of the conclusion of the settlement agreement:[7]

At least two parties to the settlement agreement have their places of business in different States; or

The State in which the parties to the settlement agreement have their places of business is different from either:

The State in which a substantial part of the obligations under the settlement agreement is to be performed; or

The State with which the subject matter of the settlement agreement is most closely connected.

For the purposes of paragraph 4:

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

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A State may consider enacting this section to apply to agreements settling a dispute, irrespective of whether they resulted from mediation. Adjustments would then have to be made to relevant articles.

A State may consider enacting this section to apply only where the parties to the settlement agreement agreed to its application.

A State may consider broadening the definition of "international" settlement agreement by adding the following subparagraph to paragraph 4: "A settlement agreement is also 'international' if it results from international mediation as defined in article 3, paragraphs 2, 3 and 4."

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.

6. A settlement agreement is "in writing" if its content is recorded in any form. The requirement that a settlement agreement be in writing is met by an electronic communication if the information contained therein is accessible so as to be useable for subsequent reference.

Article 17. General principles

A settlement agreement shall be enforced in accordance with the rules of procedure of this State, and under the conditions laid down in this section.

If a dispute arises concerning a matter that a party claims was already resolved by a settlement agreement, the party may invoke the settlement agreement in accordance with the rules of procedure of this State, and under the conditions laid down in this section, in order to prove that the matter has already been resolved.

Article 18. Requirements for reliance on settlement agreements

A party relying on a settlement agreement under this section shall supply to the competent authority of this State:

The settlement agreement signed by the parties;

Evidence that the settlement agreement resulted from mediation, such as: (i) 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 (i), (ii) or (iii), any other evidence acceptable to the competent authority.

The requirement that a settlement agreement shall be signed by the parties or, where applicable, the mediator, is met in relation to an electronic communication if:

A method is used to identify the parties or the mediator and to indicate the parties' or mediator's intention in respect of the information contained in the electronic communication; and

The method used is either:

As reliable as appropriate for the purpose for which the electronic communication was generated or communicated, in the light of all the circumstances, including any relevant agreement; or

Proven in fact to have fulfilled the functions described in subparagraph (a) above, by itself or together with further evidence.

If the settlement agreement is not in an official language of this State, the competent authority may request a translation thereof into such language.

The competent authority may require any necessary document in order to verify that the requirements of this section have been complied with.

When considering the request for relief, the competent authority shall act expeditiously.

Article 19. Grounds for refusing to grant relief

1. The competent authority of this State may refuse to grant relief at the request of the party against whom the relief is sought only if that party furnishes to the competent authority proof that:

(a) A party to the settlement agreement was under some incapacity; (b) 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;

Is not binding, or is not final, according to its terms; or

Has been subsequently modified;

(c) 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.

2. The competent authority of this State may also refuse to grant relief if it finds that:

Granting relief would be contrary to the public policy of this State; or

The subject matter of the dispute is not capable of settlement by mediation under the law of this State.

Article 20. Parallel applications or claims

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 18, the competent authority of this State 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.

F. Mediation Act 2017 (Ireland)

Number 27 *of* 2017

Mediation Act 2017

*Number*27 *of* 2017

MEDIATION ACT 2017

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Family Law (Divorce) Act 1996 (No. 33)

Family Law (Maintenance of Spouses and Children) Act 1976 (No. 11)

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Finance (Tax Appeals) Act 2015 (No. 59)

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Guardianship of Infants Act 1964 (No. 7)

Judicial Separation and Family Law Reform Act 1989 (No. 6)

Legal Services Regulation Act 2015 (No. 65)

Maintenance Act 1994 (No. 28)

Property Values (Arbitrations and Appeals) Act 1960 (No. 45)

Protection of Children (Hague Convention) Act 2000 (No. 37)

Status of Children Act 1987 (No. 26)

Succession Act 1965 (No. 27)

Taxes Consolidation Act 1997 (No. 39)

Workplace Relations Act 2015 (No. 16)

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*Number*27 *of* 2017

MEDIATION ACT 2017

An Act to facilitate the settlement of disputes by mediation, to specify the principles applicable to mediation, to specify arrangements for mediation as an alternative to the institution of civil proceedings or to the continuation of civil proceedings that have been instituted; to provide for codes of practice to which mediators may subscribe; to provide for the recognition of a body as the Mediation Council of Ireland for the purposes of this Act and to require that Council to make reports to the Minister for Justice and Equality as regards mediation in the State; to provide, by means of a scheme, an opportunity for parties to family law proceedings or proceedings under section 67A(3) or 117 of the Succession Act 1965 to attend mediation information sessions; to amend the Guardianship of Infants Act 1964, the Judicial Separation and Family Law Reform Act 1989 and the Family Law (Divorce) Act 1996; and to provide for related matters.

[2*nd October*, 2017]

Be it enacted by the Oireachtas as follows:

PART 1

PRELIMINARY AND GENERAL

Short title and commencement

1. (1) This Act may be cited as the Mediation Act 2017.

(2) This Act shall come into operation on such day or days as the Minister may by order or orders appoint either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

Interpretation

2. (1) In this Act—

"agreement to mediate" has the meaning assigned to it by *section 7*;

"Council" has the meaning assigned to it by *section 12(1)*;

"dispute" includes a complaint;

"family law proceedings" means proceedings before a court of competent jurisdiction under any of the following enactments:

section 8 of the Enforcement of Court Orders Act 1940 in so far as that section relates to the enforcement of maintenance orders;

the Guardianship of Infants Act 1964;

the Family Home Protection Act 1976;

the Family Law (Maintenance of Spouses and Children) Act 1976;

the Family Law Act 1981;

the Status of Children Act 1987;

the Judicial Separation and Family Law Reform Act 1989;

the Child Abduction and Enforcement of Custody Orders Act 1991;

the Maintenance Act 1994;

the Family Law Act 1995;

the Family Law (Divorce) Act 1996;

the Protection of Children (Hague Convention) Act 2000;

the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010;

the Children and Family Relationships Act 2015;

subject to *subsection (2)*, any other enactment which may be prescribed for the purposes of this definition;

"mediation" means a confidential, facilitative and voluntary process in which parties to a dispute, with the assistance of a mediator, attempt to reach a mutually acceptable agreement to resolve the dispute;

"mediation information session" has the meaning assigned to it by *section 23(1)*;

"mediation settlement" means an agreement in writing reached by the parties to a dispute during the course of a mediation and signed by the parties and the mediator;

"mediator" means a person appointed under an agreement to mediate to assist the parties to the agreement to reach a mutually acceptable agreement to resolve the dispute the subject of the agreement;

"Minister" means Minister for Justice and Equality;

"party" means a party to a mediation;

"practising barrister" has the same meaning as it has in section 2 of the Legal Services Regulation Act 2015;

"practising solicitor" has the same meaning as it has in section 2 of the Legal Services Regulation Act 2015;

"prescribed" means prescribed by regulations made under *section 4*;

"proceedings" means civil proceedings that may be instituted before a court.

(2) In prescribing an enactment for the purposes of the definition of "family law proceedings", the Minister shall have regard to—

the desirability of resolving, in so far as is practicable, disputes, within a family, that the enactment relates to in a manner that is non-adversarial, and

the need for the expeditious resolution of such disputes in a manner that minimises the costs of resolving those disputes for the parties concerned.

Scope

3. (1) This Act shall not apply to:

an arbitration within the meaning of the Arbitration Act 2010;

a dispute that falls under the functions of, or is being investigated by, the Workplace Relations Commission, including a dispute being dealt with under Part 4 of the Workplace Relations Act 2015, whether by a mediation officer appointed under section 38 of that Act or otherwise; (c) a matter that may be determined by—

an Appeal Commissioner appointed under section 8 of the Finance (Tax Appeals) Act 2015,

the High Court under section 949AR of the Taxes Consolidation Act 1997, or

a property arbitrator appointed under section 2 of the Property Values (Arbitrations and Appeals) Act 1960 in relation to a decision of the Revenue Commissioners as to the market value of any real property;

(d) an application under section 901, 902A, 907, 907A, 908, 908B or 1077B of the Taxes Consolidation Act 1997; (e) proceedings under—

sections 960I, 960M, 960N, 1061, 1062 or 1077D of the Taxes Consolidation Act 1997,

section 20 of the Customs Act 2015, or

section 127 of the Finance Act 2001;

proceedings in the High Court by way of judicial review or of seeking leave to apply for judicial review;

proceedings against the State in respect of alleged infringements of the fundamental rights and freedoms of a person;

proceedings under the Domestic Violence Acts 1996 to 2011;

proceedings under the Child Care Acts 1991 to 2015;

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subject to *subsection (3)*, any other dispute or proceedings relating to a dispute which may be prescribed for the purposes of this subsection.

(2) Nothing in this Act shall be construed as replacing a mediation or other dispute resolution process provided for in any—

(a) other enactment or instrument made under any other enactment, or (b) contract or agreement.

(3) In prescribing, under *paragraph (j)* of *subsection (1)*, a dispute or proceedings relating to a dispute for the purposes of that subsection, the Minister shall have regard to—

the unsuitability of mediation as a means of resolving the dispute or proceedings relating to a dispute,

the availability and suitability of means, other than mediation, of resolving the dispute or proceedings relating to a dispute, and

the rights (if any) of the parties to the dispute or proceedings relating to a dispute to engage in proceedings before a court to resolve the dispute or proceedings relating to a dispute.

Regulations

4. (1) The Minister may by regulations provide for any matter referred to in this Act as prescribed or to be prescribed.

Without prejudice to any provision of this Act, regulations under this section may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient for the purposes of the regulations.

Every regulation under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House sits after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

Expenses

5. The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Public Expenditure and Reform, be paid out of moneys provided by the Oireachtas.

MEDIATION IN GENERAL

Mediation

6. (1) The parties to a dispute may engage in mediation as a means of attempting to resolve the dispute.

Participation in mediation shall be voluntary at all times.

The fact that proceedings have been issued in relation to the dispute shall not prevent the parties engaging in mediation at any time prior to the resolution of the dispute.

A party may—

withdraw from the mediation at any time during the mediation,

be accompanied to the mediation, and assisted by, a person (including a legal advisor) who is not a party, or

obtain independent legal advice at any time during the mediation.

Subject to *subsection (4)(a)*, the mediator and the parties shall, having regard to the nature of the dispute, make every reasonable effort to conclude the mediation in an expeditious manner which is likely to minimise costs.

Subject to *subsections (7)* and *(8)* and subject to the confidentiality of the mediation, the mediator may withdraw from the mediation at any time during the mediation by notice in writing given to the parties stating the mediator's general reasons for the withdrawal.

A withdrawal under *subsection (6)* by the mediator from the mediation shall not of itself prevent the mediator from again becoming the mediator in that mediation.

Where the mediator withdraws from the mediation under *subsection (6)*, the mediator shall return the fees and costs paid in respect of that portion of time during which the mediator was paid to act as the mediator and for which he or she will no longer act as the mediator.

It is for the parties to determine the outcome of the mediation.

The fees and costs of the mediation shall not be contingent on its outcome.

Agreement to mediate

7. Prior to the commencement of the mediation, the parties and the proposed mediator shall prepare and sign a document (in this Act referred to as an "agreement to mediate") appointing the mediator and containing the following information:

the manner in which the mediation is to be conducted;

the manner in which the fees and costs of the mediation will be paid;

the place and time at which the mediation is to be conducted;

the fact that the mediation is to be conducted in a confidential manner;

the right of each of the parties to seek legal advice;

subject to *section 6(6)*, the manner in which the mediation may be terminated;

such other terms (if any) as may be agreed between the parties and the mediator.

Role of mediator

8. (1) The mediator shall, prior to the commencement of the mediation—

(a) (i) make such enquiry as is reasonable in the circumstances to determine whether he or she may have any actual or potential conflict of interest, and

(ii) not act as mediator in that mediation if, following such enquiry, he or she determines that such conflict exists,

(b) furnish to the parties the following details of the mediator that are relevant to mediation in general or that particular mediation:

qualifications;

training and experience;

continuing professional development training, and

(c) furnish to the parties a copy of any code of practice published or approved under *section 9* to which he or she subscribes in so far as mediation is concerned.

The mediator shall—

during the course of the mediation, declare to the parties any actual or potential conflict of interest of which he or she becomes aware or ought reasonably to be aware as such conflict arises and, having so declared, shall, unless the parties agree to him or her continuing to act as the mediator, cease to act as the mediator,

act with impartiality and integrity and treat the parties fairly,

complete the mediation as expeditiously as is practicable having regard to the nature of the dispute and the need for the parties to have sufficient time to consider the issues, and

ensure that the parties are aware of their rights to each obtain independent advice (including legal advice) prior to signing any mediation settlement.

Subject to *subsection (4)*, the outcome of the mediation shall be determined by the mutual agreement of the parties and the mediator shall not make proposals to the parties to resolve the dispute.

The mediator may, at the request of all the parties, make proposals to resolve the dispute, but it shall be for the parties to determine whether to accept such proposals.

Codes of practice

9. (1) The Minister shall, as soon as practicable after the coming into operation of this section and having had regard to the matters specified in *subsection (2)*—

prepare and publish a code or codes of practice to set standards for the conduct of mediations, or

approve a code or codes of practice prepared by a person other than the Minister which purports to set standards for the conduct of mediations.

A code of practice referred to in *subsection (1)* may include provisions in relation to any of the following:

continuing professional development training requirements for mediators;

procedures to be followed by mediators in the conduct of a mediation;

procedures to be followed by mediators in the conduct of a mediation requiring consultation, by a mediator, with a child;

ethical standards to be observed by mediators during a mediation;

confidentiality of a mediation;

procedures to be followed by a party for redress in the event of dissatisfaction with the conduct of a mediation;

determination of the fees and costs of a mediation;

any other matters relevant to the conduct of mediation.

Before publishing or approving a code of practice under this section, the Minister shall—

publish a notice on the website of the Department of Justice and Equality and in at least one daily newspaper circulating generally in the State—

indicating that he or she proposes to publish or approve a code under this section,

indicating that a draft of the code is available for inspection on that website for a period specified in the notice (being not less than 30 days from the date of the publication of the notice in the newspaper), and

stating that submissions in relation to the draft code may be made in writing to the Minister before a date specified in the notice (which shall be not less than 30 days after the end of the period referred to in *subparagraph (ii)*),

and

have regard to any submissions received pursuant to *paragraph (a)(iii)*.

Where the Minister prepares or approves a code of practice under this section, he or she shall cause a notice of the preparation or approval to be published in *Iris Oifigiúil* and the notice shall specify the date from which the code shall come into operation.

Subject to *subsection (6)*, the Minister may—

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amend or revoke a code of practice prepared or approved under this section, or

withdraw approval in respect of any code of practice previously approved under this section.

The requirements of *subsections (3)* and *(4)* shall, with all necessary modifications, apply to a code of practice that the Minister intends to amend or revoke or in relation to which the Minister intends to withdraw his or her approval.

Where the Minister amends or revokes, or withdraws his or her approval in respect of, a code of practice under this section, he or she shall cause a notice to that effect to be published in *Iris Oifigiúil* specifying—

the code to which the amendment, revocation or withdrawal of approval, as the case may be, relates,

whether the code is to be amended or revoked or whether approval in relation to the code is to be withdrawn,

if the code is to be amended, particulars of the amendment, and

the date from which the amendment, revocation or withdrawal of approval, as the case may be, shall come into operation.

In this section "code of practice" includes part of a code of practice.

Confidentiality

10. (1) Subject to *subsection (2)* and *section 17*, all communications (including oral statements) and all records and notes relating to the mediation shall be confidential and shall not be disclosed in any proceedings before a court or otherwise.

Subsection (1) shall not apply to a communication or records or notes, or both, where disclosure—

is necessary in order to implement or enforce a mediation settlement,

is necessary to prevent physical or psychological injury to a party, (c) is required by law,

is necessary in the interests of preventing or revealing—

the commission of a crime (including an attempt to commit a crime),

the concealment of a crime, or

a threat to a party, or

is sought or offered to prove or disprove a civil claim concerning the negligence or misconduct of the mediator occurring during the mediation or a complaint to a professional body concerning such negligence or misconduct.

Evidence introduced into or used in mediation that is otherwise admissible or subject to discovery in proceedings shall not be or become inadmissible or protected by

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privilege in such proceedings solely because it was introduced into or used in mediation.

Enforceability of mediation settlements

11. (1) The parties shall determine—

(a) if and when a mediation settlement has been reached between them, and (b) whether the mediation settlement is to be enforceable between them.

Notwithstanding *subsection (1)* and subject to *subsection (3)*, a mediation settlement shall have effect as a contract between the parties to the settlement except where it is expressly stated to have no legal force until it is incorporated into a formal legal agreement or contract to be signed by the parties.

Without prejudice to sections 8 and 8A (inserted by section 20 of the Status of Children Act 1987) of the Family Law (Maintenance of Spouses and Children) Act 1976 and subject to *subsection (4)*, a court may, on the application of one or more parties to a mediation settlement, enforce its terms except where the court is satisfied that—

the mediation settlement—

does not adequately protect the rights and entitlements of the parties and their dependents (if any),

is not based on full and mutual disclosure of assets, or

is otherwise contrary to public policy, or

a party to the mediation settlement has been overborne or unduly influenced by any other party in reaching the mediation settlement.

Where a mediation settlement relates to a child, a court, in determining any application with regard to the mediation settlement, shall be bound by section 3 (amended by section 45 of the Children and Family Relationships Act 2015) of the Guardianship of Infants Act 1964.

Council

12. (1) Subject to *subsections (2)* to *(4)* and *(7)*, the Minister may, by order, declare that such body as is specified in the order shall be recognised for the purposes of this Act, and a body standing so recognised for the time being shall be known as the Mediation Council of Ireland (in this Act referred to as the "Council").

Not more than one body shall stand recognised under this section for the time being.

Before making an order under *subsection (1)*, the Minister shall—

publish a notice on the website of the Department of Justice and Equality and in at least one daily newspaper circulating generally in the State—

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indicating that he or she intends to make an order under *subsection (1)*,

indicating that a draft of the order is available for inspection on that website for a period specified in the notice (being not less than 30 days from the date of the publication of the notice in the newspaper), and

stating that submissions in relation to the draft order may be made in writing to the Minister before a date specified in the notice (which shall be not less than 30 days after the end of the period referred to in *subparagraph (ii)*),

and

have regard to any submissions received pursuant to *paragraph (a)(iii)*.

The Minister shall not make an order under *subsection (1)* unless he or she is satisfied that the body in respect of which he or she proposes to make the order— (a) complies with the minimum requirements specified in the *Schedule*, and

(b) is sufficiently representative of mediation interests involved in the mediation sector.

Subject to *subsection (7)*, if the Minister is of the opinion that the body for the time being standing recognised by order under *subsection (1)* no longer complies with the minimum requirements specified in the *Schedule*, he or she may, by order, revoke that order.

The Minister shall, before revoking an order under *subsection (5)*, allow the body for the time being standing recognised under this section to make representations to him or her.

Whenever an order is proposed to be made under this section, a draft of the order shall be laid before each House of the Oireachtas and the order shall not be made unless a resolution approving of the draft has been passed by each such House.

No person, other than a body that stands recognised under this section for the time being, may be known, or describe itself, as the Mediation Council of Ireland (including any variant of that name).

Reports of Council

13. (1) The Council shall, not later than 30 June in each year, make a report to the Minister on the performance of its functions under this Act and on its activities during the preceding year.

The Minister shall cause copies of the report referred to in *subsection (1)* to be laid before each House of the Oireachtas.

The report referred to in *subsection (1)* shall be in such form and include information regarding such matters as the Council considers appropriate or as the Minister may from time to time direct, including such information as the Minister may require relating to—

any matter concerning the policies and activities of the Council, or

PT.2 S.13

any specific document or account prepared by the Council.

The Council may from time to time make other reports to the Minister on the performance of its functions.

PART 3

OBLIGATIONS OF PRACTISING SOLICITORS AND BARRISTERS AS REGARDS MEDIATION

Practising solicitor and mediation

14. (1) A practising solicitor shall, prior to issuing proceedings on behalf of a client—

advise the client to consider mediation as a means of attempting to resolve the dispute the subject of the proposed proceedings,

provide the client with information in respect of mediation services, including the names and addresses of persons who provide mediation services, (c) provide the client with information about—

the advantages of resolving the dispute otherwise than by way of the proposed proceedings, and

the benefits of mediation,

advise the client that mediation is voluntary and may not be an appropriate means of resolving the dispute where the safety of the client and/or their children is at risk, and

inform the client of the matters referred to in *subsections (2)* and *(3)* and *sections 10* and *11*.

If a practising solicitor is acting on behalf of a client who intends to institute proceedings, the originating document by which proceedings are instituted shall be accompanied by a statutory declaration made by the solicitor evidencing (if such be the case) that the solicitor has performed the obligations imposed on him or her under *subsection (1)* in relation to the client and the proceedings to which the declaration relates.

If the originating document referred to in *subsection (2)* is not accompanied by a statutory declaration made in accordance with that subsection, the court concerned shall adjourn the proceedings for such period as it considers reasonable in the circumstances to enable the practising solicitor concerned to comply with *subsection (1)* and provide the court with such declaration or, if the solicitor has already complied with *subsection (1)*, provide the court with such declaration.

(4) This section shall not apply to any proceedings, including any application, under—

section 6A, 11 or 11B of the Guardianship of Infants Act 1964,

section 2 of the Judicial Separation and Family Law Reform Act 1989, or

P_T.3 S.14

section 5 of the Family Law (Divorce) Act 1996.

Practising barrister and mediation

15. (1) *Subsection (2)* applies where, under another enactment or instrument made under another enactment, it is lawful for a practising barrister to issue proceedings on behalf of a client who is not represented by a practising solicitor.

Subject to *subsections (3)* and *(4)*, obligations analogous to those imposed under *section 14* on a practising solicitor in relation to a client of the solicitor may be prescribed, subject to such modifications as may be specified in the regulations concerned, to be performed by a practising barrister in relation to a client of the barrister.

In prescribing, under *subsection (2)*, obligations referred to in that subsection to be performed by a practising barrister in relation to a client of the barrister, the Minister shall have regard to any report under section 34(1) of the Legal Services Regulation Act 2015 to the extent that the report relates to the unification of the solicitors' profession and the barristers' profession.

The Minister shall not prescribe, under *subsection (2)*, obligations referred to in that subsection to be performed by a practising barrister in relation to a client of the barrister except after consultation with the Law Society of Ireland and the General Council of the Bar of Ireland.

PART 4

Role of Court in Mediation, etc.

Court inviting parties to consider mediation

16. (1) A court may, on the application of a party involved in proceedings, or of its own motion where it considers it appropriate having regard to all the circumstances of the case:

invite the parties to the proceedings to consider mediation as a means of attempting to resolve the dispute the subject of the proceedings;

provide the parties to the proceedings with information about the benefits of mediation to settle the dispute the subject of the proceedings.

Where, following an invitation by the court under *subsection (1)*, the parties decide to engage in mediation, the court may—

adjourn the proceedings,

make an order extending the time for compliance by a party with rules of court or with any order of the court in the proceedings, or

make such other order or give such direction as the court considers necessary to facilitate the effective use of mediation.

P_T.4 S.16

This Act shall apply to any mediation arising from an invitation under *subsection (1)*.

An application by a party under *subsection (1)* shall be made by motion to the court on notice to all other parties to the proceedings not later than 14 days before the date on which the proceedings are first listed for hearing and shall, unless the court otherwise orders, be grounded upon an affidavit sworn by or on behalf of the party.

The power conferred by *subsection (1)* is without prejudice to any other discretionary power which the court may exercise at any time during the course of proceedings with a view to facilitating the resolution of a dispute.

Mediator report to court

17. (1) Where, following an invitation by the court under *section 16(1)*, the parties to the proceedings concerned engage in mediation and subsequently apply to the court to reenter the proceedings, the mediator shall prepare and submit to the court a written report which shall set out—

where the mediation did not take place, a statement of the reasons as to why it did not take place, or

where the mediation took place—

a statement as to whether or not a mediation settlement has been reached between the parties in respect of the dispute the subject of the proceedings, and

if a mediation settlement has been reached on all, or some only of the, matters concerning that dispute, a statement of the terms of the mediation settlement.

(2) Except where otherwise agreed or directed by the court, a copy of a report prepared under *subsection (1)* shall be given to the parties at least 7 days prior to its submission to the court.

Effect of mediation on limitation and prescription periods

18. (1) In reckoning a period of time for the purposes of a limitation period specified by the Statutes of Limitations, the period beginning on the day on which an agreement to mediate is signed and ending on the day which is 30 days after either—

a mediation settlement is signed by the parties and the mediator, or

the mediation is terminated, whichever first occurs, shall be disregarded.

(2) The mediator in a mediation shall inform the parties in writing of the date on which the mediation ends.

Adjourning court proceedings to facilitate mediation

19. (1) Where—

parties have entered into an agreement to mediate, and

one or more of the parties referred to in *paragraph (a)* commences proceedings in respect of the dispute the subject of the agreement to mediate,

a party to the proceedings may, at any time after an appearance has been entered and before delivering any pleadings or taking any other steps in the proceedings, apply to the court to adjourn the proceedings.

On application to it being made under *subsection (1)*, the court shall make an order adjourning such proceedings if it is satisfied that—

there is not sufficient reason why the dispute in respect of which the proceedings have been commenced should not be dealt with in accordance with the agreement to mediate, and

the applicant party was at the time when the proceedings were commenced, and still remains, ready and willing to do all things necessary for the proper implementation of the agreement to mediate.

This section is in addition to and not in substitution for any power of a court to adjourn proceedings before it.

Fees and costs

20. (1) Unless ordered by a court or otherwise agreed between the parties, the parties shall—

(a) pay to the mediator the fees and costs agreed in the agreement to mediate, or (b) share equally the fees and costs of the mediation.

(2) The fees and costs of a mediation shall be reasonable and proportionate to the importance and complexity of the issues at stake and to the amount of work carried out by the mediator.

Factors to be considered by court in awarding costs

21. In awarding costs in respect of proceedings referred to in *section 16*, a court may, where it considers it just, have regard to—

any unreasonable refusal or failure by a party to the proceedings to consider using mediation, and

any unreasonable refusal or failure by a party to the proceedings to attend mediation,

following an invitation to do so under *section 16(1)*.

Amendment of Civil Liability and Courts Act 2004

22. Section 15(1) of the Civil Liability and Courts Act 2004 is amended by the insertion of “or upon its own initiative” after “party to a personal injuries action”.

PART 5

MEDIATION INFORMATION SESSIONS

Mediation information sessions in family law and succession proceedings

23. (1) The Minister may, for the purposes of ensuring that information sessions concerning mediation are available (in this Act referred to as a "mediation information session"), at a reasonable cost and in suitable locations, to parties to relevant proceedings and having had regard to the matters specified in *subsection (2)*— (a) prepare and publish a scheme for the delivery of such sessions, or

(b) approve a scheme for the delivery of such sessions prepared by a person other than the Minister.

(2) A scheme referred to in *subsection (1)* may include provisions in relation to any of the following:

the nature and operation of mediation in respect of a relevant dispute;

the role of the mediator in a mediation in respect of a relevant dispute;

the types of mediation settlements available in a mediation in respect of a relevant dispute;

the benefits of mediation over court-based resolutions in respect of a relevant dispute;

the costs of mediation;

a statement that legal advice may be sought by the parties at any time during the mediation.

(3) Before publishing or approving a scheme under this section, the Minister shall—

publish a notice on the website of the Department of Justice and Equality and in at least one daily newspaper circulating generally in the State—

indicating that he or she intends to publish or approve a scheme under this section,

indicating that a draft of the scheme is available for inspection on that website for a period specified in the notice (being not less than 30 days from the date of the publication of the notice in the newspaper), and

stating that submissions in relation to the draft scheme may be made in writing to the Minister before a date specified in the notice (which shall be not less than 30 days after the end of the period referred to in *subparagraph*

(ii)),

and

have regard to any submissions received pursuant to *paragraph (a)(iii).*

Where the Minister prepares or approves a scheme under this section, he or she shall cause a notice of the preparation or approval to be published in *Iris Oifigiúil* and the notice shall specify the date from which the scheme shall come into operation.

Subject to *subsection (6)*, the Minister may—

amend or revoke a scheme prepared or approved under this section, or

withdraw approval in respect of any scheme previously approved under this section.

The requirements of *subsections (3)* and *(4)* shall, with all necessary modifications, apply to a scheme that the Minister intends to amend or revoke or in relation to which the Minister intends to withdraw his or her approval.

Where the Minister amends or revokes, or withdraws his or her approval in respect of, a scheme under this section, he or she shall cause a notice to that effect to be published in *Iris Oifigiúil* specifying—

the scheme to which the amendment, revocation or withdrawal of approval, as the case may be, relates,

whether the scheme is to be amended or revoked or whether approval in relation to the scheme is to be withdrawn,

if the scheme is to be amended, particulars of the amendment, and

the date from which the amendment, revocation or withdrawal of approval, as the case may be, shall come into operation.

In this section—

"relevant dispute" means a dispute the subject of relevant proceedings;

"relevant proceedings" means—

family law proceedings, or

proceedings under section 67A(3) or 117 of the Succession Act 1965.

PART 6

AMENDMENT OF OTHER ACTS

Amendment of Guardianship of Infants Act 1964

24. The Guardianship of Infants Act 1964 is amended— (a) in section 20—

in subsection (2)(b), by the substitution of "give to the applicant the names and addresses of persons who provide a mediation service and inform the applicant of the matters referred to in *sections 10* and *11* of the *Mediation* [*No*. **27.**]

Act 2017" for "and give to the applicant the name and addresses of persons qualified to provide an appropriate mediation service",

in subsection (3)(a), by the substitution of "statutory declaration made by the solicitor" for "certificate signed by the solicitor", and

in subsections (3)(b) and (4), by the substitution of "statutory declaration" for "certificate" in each place, (b) in section 21—

in subsection (2)(b), by the substitution of ", give to the respondent the names and addresses of persons who provide a mediation service and inform the respondent of the matters referred to in *sections 10* and *11* of the *Mediation Act 2017*" for "and where appropriate give to the respondent the name and addresses of persons qualified to provide an appropriate mediation service",

in subsection (3)(a), by the substitution of "statutory declaration made by the solicitor" for "certificate signed by the solicitor", and

in subsections (3)(b) and (4), by the substitution of "statutory declaration" for "certificate" in each place, and

(c) in section 29, by the deletion of "mediation or".

Amendment of Judicial Separation and Family Law Reform Act 1989

25. The Judicial Separation and Family Law Reform Act 1989 is amended: (a) in section 5—

(i) in subsection (1)(b), by the substitution of ", give to the applicant the names and addresses of persons who provide a mediation service and inform the applicant of the matters referred to in *sections 10* and *11* of the *Mediation Act 2017*" for "and give to him the names and addresses of persons and organisations qualified to provide a mediation service", (ii) in subsection (2), by—

the substitution of "statutory declaration made by the solicitor" for

"certificate signed by the solicitor", and

the substitution of "not so declare," for "not so certify,", and

(iii) by the deletion of subsection (3), and

(b) in section 6—

(i) in subsection (1)(b), by the substitution of ", give to the respondent the names and addresses of persons who provide a mediation service and inform the respondent of the matters referred to in *sections 10* and *11* of the *Mediation Act 2017*" for "and give to him the names and addresses of persons and organisations qualified to provide a mediation service", (ii) in subsection (2), by—

the substitution of "statutory declaration made by the solicitor" for

"certificate signed by the solicitor", and

the substitution of "not so declare," for "not so certify,", and

(iii) by the deletion of subsection (3).

Amendment of Family Law (Divorce) Act 1996

26. The Family Law (Divorce) Act 1996 is amended— (a) in section 6—

in subsection (2)(b), by the substitution of ", give to the applicant the names and addresses of persons who provide a mediation service for spouses who have become estranged and inform the applicant of the matters referred to in *sections 10* and *11* of the *Mediation Act 2017*" for "and give to the applicant the names and addresses of persons qualified to provide a mediation service for spouses who have become estranged",

in subsection (4)(a), by the substitution of "statutory declaration made by the solicitor" for "certificate signed by the solicitor",

in subsection (4)(b), by the substitution of "statutory declaration" for "certificate", and

by the deletion of subsection (5), (b) in section 7—

in subsection (2)(b), by the substitution of ", give to the respondent the names and addresses of persons who provide a mediation service for spouses who have become estranged and inform the respondent of the matters referred to in *sections 10* and *11* of the *Mediation Act 2017*" for "and give to the respondent the names and addresses of persons qualified to provide a mediation service for spouses who have become estranged",

in subsection (4)(a), by the substitution of "statutory declaration made by the solicitor" for "certificate signed by the solicitor",

in subsection (4)(b), by the substitution of "statutory declaration" for "certificate", and

by the deletion of subsection (5),

and

(c) in section 43, by the deletion of "mediation services or".

SCHEDULE *Section 12(4)*

MINIMUM REQUIREMENTS IN RELATION TO COUNCIL

The general functions of the Council shall be to do the following:

promote public awareness of, and provide information to the public, on the availability and operation of mediation in the State;

maintain and develop standards in the provision of mediation, including the establishment of a system of continuing professional development training;

prepare codes of practice for mediators for approval by the Minister under *section 9* and oversee the implementation of any code of practice published or approved under that section;

establish and maintain a register of mediators who have subscribed to a code of practice published or approved under *section 9*;

advise the Minister on the preparation or approval of a scheme under *section 23* and on the delivery of mediation information sessions in family law cases.

The Council shall be independent in the performance of its functions.

The Council shall consist of not less than 11 members, of whom—

5 shall be members who are representative of bodies promoting mediation services or representing the interests of mediators, and

6 shall be members who represent the public interest (in this Schedule referred to as "public interest members").

(1) The Council may regulate, by standing orders or otherwise— (a) the term of office and re-appointment of members of the Council,

(b) the procedures to be followed at meetings of the Council, and (c) any other business of the Council.

One of the public interest members of the Council shall be appointed as chairperson.

(1) The public interest members shall—

be persons who are independent of the interests of mediators, and

be selected for appointment as members in accordance with a selection process that is advertised to members of the public in a manner that the Minister considers to be sufficient.

The criteria for selecting persons for appointment as public interest members shall be published in such manner as will enable them to be inspected by members of the public.

The Council shall be funded from fees calculated in accordance with such rules as it shall make for that purpose.

G. Mediation Act 2017 (Singapore)

MEDIATION ACT 2017

(No. 1 of 2017)

ARRANGEMENT OF SECTIONS

Section

An Act to promote, encourage and facilitate the resolution of disputes by mediation and for connected purposes, and to make consequential and related amendments to certain other Acts.

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

Short title and commencement

1. This Act is the Mediation Act 2017 and comes into operation on a date that the Minister appoints by notification in the Gazette.

General interpretation

2.—(1) In this Act, unless the context otherwise requires —

"approved certification scheme" means an accreditation or a certification scheme designated as an approved certification scheme under section 7;

"certified mediator" means a mediator who is certified under an approved certification scheme;

"designated mediation service provider" means a mediation service provider designated under section 7;

"mediated settlement agreement", in relation to a mediation, means an agreement by some or all of the parties to the mediation settling the whole or part of the dispute to which the mediation relates;

"mediation agreement" means a mediation agreement described in section 4;

"mediation communication", in relation to a mediation, means —

(a) anything said or done;

(b) any document prepared; or

(c) any information provided, for the purposes of or in the course of the mediation, and includes a mediation agreement or mediated settlement agreement;

"mediation institution" means a body or an organisation that administers an accreditation or a certification scheme for mediators;

"mediation service provider" means a body or an organisation that provides services for the conduct of mediation and has in place procedures or rules to govern the conduct of mediation; "mediator" means an individual who is appointed to be a mediator for a mediation;

"party to a mediation" means any party to the whole or part of a dispute that is referred for mediation, but does not include any mediator conducting the mediation;

"third party", in relation to a mediation, means a person who is —

(a) not a party to the mediation; (b) not a mediator for the mediation; and (c) not a mediation service provider.

(2) Where more than one mediator is appointed for a mediation, a reference to a mediator under this Act is a reference to all the mediators for the mediation.

Meaning of "mediation"

3.—(1) In this Act, "mediation" means a process comprising one or more sessions in which one or more mediators assist the parties to a dispute to do all or any of the following with a view to facilitating the resolution of the whole or part of the dispute:

(a) identify the issues in dispute;

(b) explore and generate options;

(c) communicate with one another; (d) voluntarily reach an agreement.

(2) For the purposes of subsection (1), a session is a meeting between the mediator, or one or more mediators (where more than one mediator is appointed for a mediation), and one or more of the parties to the dispute, and includes any activity undertaken (whether by a mediator, a party to the dispute or some other person) —

(a) to arrange or prepare for such a meeting, whether or not the meeting takes place; and

(b) to follow up on any matter or issue raised in such a meeting.

(3) For the purposes of subsection (2), a meeting includes a meeting conducted by electronic communication, video conferencing or other electronic means.

(4) In this section —

"data message" means information generated, sent, received or stored by electronic, magnetic, optical or similar means, including, but not limited to, electronic data interchange (EDI), electronic mail, telegram, telex or telecopy;

"electronic communication" means any communication that is made by means of data messages.

Meaning and form of "mediation agreement"

4.—(1) In this Act, "mediation agreement" means an agreement by 2 or more persons to refer the whole or part of a dispute which has arisen, or which may arise, between them for mediation.

(2) A mediation agreement may be in the form of a clause in a contract or in the form of a separate agreement.

(3) A mediation agreement must be in writing.

(4) A mediation agreement is in writing if its content is recorded in any form, whether or not the mediation agreement has been concluded orally, by conduct or by other means.

(5) A reference in a contract to any document containing a mediation clause constitutes a mediation agreement in writing if the reference is such as to make that clause part of the contract.

(6) A reference in a bill of lading to a charterparty or any other document containing a mediation clause constitutes a mediation agreement in writing if the reference is such as to make that clause part of the bill of lading.

Act binds Government

5. This Act binds the Government.

Application of Act

6.—(1) Subject to subsections (2), (3) and (4), this Act applies to, or in relation to, any mediation conducted under a mediation agreement where —

(a) the mediation is wholly or partly conducted in Singapore; or

(b) the agreement provides that this Act or the law of Singapore is to apply to the mediation.

(2) This Act does not apply to, or in relation to, the following:

(a) any mediation or conciliation proceeding, process, scheme or framework conducted under, or provided by or under, any written law;

(b) unless otherwise provided in an order under subsection (3), any mediation conducted by, or under a direction by, a court;

(c) subject to subsection (4), any mediation or conciliation proceeding, process, scheme or framework, or any class of mediation or conciliation proceedings, processes, schemes or frameworks, not falling under paragraph (a) or (b), which is excluded in an order under that subsection.

(3) The Minister may, after consulting the Chief Justice, by order in the Gazette, extend all or any of the provisions of this Act to apply to, or in relation to, any mediation described in subsection (2)(b), and in the order make such saving or transitional provisions consequent on the extension as may be necessary or expedient.

(4) The Minister may, by order in the Gazette, exclude from the application of all or any of the provisions of this Act —

(a) the whole or any part of any mediation or conciliation proceeding, process, scheme or framework described in subsection (2)(c); or

(b) any class of mediation or conciliation proceedings, processes, schemes or frameworks described in subsection (2)(c).

(5) All orders made under subsections (3) and (4) are to be presented to Parliament as soon as possible after publication in the Gazette.

Designation of mediation service provider and approved certification scheme

7.—(1) The Minister may, subject to such terms and conditions as the Minister thinks fit to impose —

(a) designate any mediation service provider to be a designated mediation service provider for the purposes of this Act; and

(b) designate any accreditation or certification scheme administered by a mediation institution to be an approved certification scheme for the purposes of this Act.

(2) Notice of every designation must be published in the Gazette.

Stay of court proceedings

8.—(1) Where any party to a mediation agreement institutes any proceedings before a court against any other party to that agreement in respect of any matter which is the subject of that agreement, any party to that agreement may apply to that court to stay the proceedings so far as the proceedings relate to that matter.

(2) The court hearing the application may make an order, upon such terms or conditions as the court thinks fit, staying the proceedings so far as the proceedings relate to the matter.

(3) The court may, in making an order under subsection (2), make such interim or supplementary orders as the court thinks fit for the purpose of preserving the rights of the parties.

(4) For the purposes of this section, a reference to a party includes a reference to any person claiming through or under such party.

Restrictions on disclosure

9.—(1) Subject to subsections (2) and (3), a person must not disclose any mediation communication relating to a mediation to any third party to the mediation.

(2) A person may disclose a mediation communication to a third party to the mediation if —

(a) the disclosure is made with the consent of —

(i) all the parties to the mediation; and

(ii) for a mediation communication that is made by aperson other than a party to the mediation, the maker of the mediation communication;

(b) the content of the mediation communication is information that has already been made available to the public at the time of its disclosure, other than information that is only in the public domain due to an unlawful disclosure;

(c) there are reasonable grounds to believe that the disclosure is necessary to prevent or minimise — (i) the danger of injury to any person; or

(ii) the abuse, neglect, abandonment or exploitation of any child or young person (within the meaning of the Children and Young Persons Act (Cap. 38));

(d) the disclosure is made for research, evaluation or educational purposes without revealing, or being likely to reveal, whether directly or indirectly, the identity of the maker of the mediation communication or any person to whom the mediation communication relates;

(e) the disclosure is made for the purpose of seeking legal advice;

(f) the person disclosing the mediation communication is an arbitrator acting as a mediator under section 63(1) of the Arbitration Act (Cap. 10) or an arbitrator or umpire acting as a conciliator under section 17(1) of the International Arbitration Act (Cap. 143A) and the disclosure is made in accordance with section 63(2) or (3) of the Arbitration Act or section 17(2) or (3) of the International Arbitration Act (as the case may be);

(g) the disclosure is required by an order of court, or required or authorised by or under any written law;

(h) the disclosure is made to assist a law enforcement agency in the investigation of any offence under any written law;

(i) the disclosure is in compliance with a request or requirement imposed by a regulatory authority and is necessary to enable the regulatory authority to perform its duties or discharge its functions; or

(j) the mediation communication relates to the commission of any offence under any written law or was made in furtherance of any illegal purpose.

(3) Despite subsection (2), a person may, with leave of a court or an arbitral tribunal under section 11, disclose a mediation communication to a third party to the mediation —

(a) for the purpose of enforcing or disputing a mediated settlement agreement;

(b) for the purpose of establishing or disputing an allegation or a complaint of professional misconduct against a mediator or any other person who participated in the mediation in a professional capacity;

(c) for the purpose of discovery or other similar procedures in any court proceedings or arbitral proceedings (as the case may be) which have been instituted, where the person who is a party to those proceedings is required to disclose documents in the person's possession, custody or power; or

(d) for any other purpose that the court or arbitral tribunal (as the case may be) considers justifiable in the circumstances of the case.

(4) In this section —

"disclosure", in relation to information, includes permitting access to the information;

"law enforcement agency" means any authority or person charged with the duty of investigating offences or charging offenders under any written law;

"regulatory authority" means any body or organisation in Singapore charged with the public function of regulating entities or individuals, whether under any written law or otherwise.

Admissibility of mediation communication in evidence

10. A mediation communication is not to be admitted in evidence in any court, arbitral or disciplinary proceedings except with the leave of a court or an arbitral tribunal under section 11.

Leave of court or arbitral tribunal for disclosure or admission in evidence

11.—(1) A court or an arbitral tribunal may, on application by any person, grant leave for a mediation communication to be disclosed under section 9(3) or admitted in evidence under section 10.

(2) For the purposes of subsection (1), the court or arbitral tribunal (as the case may be) must take into account all of the following matters in deciding whether to grant leave:

(a) whether the mediation communication may be or has been disclosed under section 9(2);

(b) whether it is in the public interest or the interests of the administration of justice for the mediation communication to be disclosed or admitted in evidence;

(c) any other circumstances or matters that the court or arbitral tribunal (as the case may be) considers relevant.

(3) Where the mediation communication is sought to be disclosed or admitted in evidence in proceedings —

(a) before a court, the application must be made to the court before which the proceedings are heard;

(b) before an arbitral tribunal, the application must be made to the arbitral tribunal before which the proceedings are heard; and

(c) in any other case, the application must be made to the High Court.

Recording of mediated settlement agreement as order of court

12.—(1) Where a mediated settlement agreement has been made in a mediation in relation to a dispute for which no proceedings have been commenced in a court, any party to the agreement may, with the consent of all the other parties to that agreement, apply to a court to record the agreement as an order of court.

(2) The application must be made within —

(a) 8 weeks after the mediated settlement agreement is made; or

(b) such longer period as the court may allow.

(3) Subject to subsection (4), a court may record a mediated settlement agreement as an order of court if —

(a) the mediation is administered by a designated mediation service provider or conducted by a certified mediator;

(b) the agreement is in writing and signed by or on behalf of all the parties to the agreement; and

(c) the agreement contains such information as may be prescribed.

(4) The court may refuse to record a mediated settlement agreement as an order of court if —

(a) the agreement is void or voidable because of incapacity, fraud, misrepresentation, duress, coercion, mistake or any other ground for invalidating a contract;

(b) the subject matter of the agreement is not capable of settlement;

(c) any term of the agreement is not capable of enforcement as an order of court;

(d) where the subject matter of the dispute to which the agreement relates involves the welfare or custody of a child, one or more of the terms of the agreement is not in the best interest of the child; or

(e) the recording of the agreement as an order of court is contrary to public policy.

(5) A mediated settlement agreement that is recorded under this section as an order of court may be enforced in the same manner as a judgment given or an order made by a court.

(6) For the purposes of this section —

(a) where the subject matter of the dispute to which a mediated settlement agreement relates is within the jurisdiction of a Family Justice Court, a reference to a mediated settlement agreement is a reference to a mediated settlement agreement falling within one or more of the classes of mediated settlement agreements prescribed in the Family Justice Rules made under section 14 that may be recorded as orders of that court; and

(b) where the subject matter of the dispute to which a mediated settlement agreement relates is within the jurisdiction of a State Court, a Family Justice Court or the High Court, a reference to a court is a reference to a State Court, a Family Justice Court or the High Court, respectively.

Rules of Court

13.—(1) The Rules Committee constituted under section 80(3) of the Supreme Court of Judicature Act (Cap. 322) may make Rules of Court regulating the practice and procedure of the Court of Appeal, the High Court and the State Courts in respect of any matter under this Act.

(2) All Rules of Court made under this section are to be presented to Parliament as soon as possible after publication in the Gazette.

Family Justice Rules

14.—(1) The Family Justice Rules Committee constituted under section 46(1) of the Family Justice Act 2014 (Act 27 of 2014) may make Family Justice Rules —

(a) prescribing the classes of mediated settlement agreements that may be recorded as orders of the Family Justice Courts under section 12; and

(b) regulating the practice and procedure of the Family Justice Courts in respect of any matter under this Act.

(2) All Family Justice Rules made under this section are to be presented to Parliament as soon as possible after publication in the Gazette.

Rules

15.—(1) The Minister may make rules prescribing matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) The power conferred by subsection (1) does not extend to any matter for which Rules of Court or Family Justice Rules mentioned in section 13 or 14 (as the case may be) may be made.

Consequential amendment to Family Justice Act 2014

16. Section 22(1) of the Family Justice Act 2014 (Act 27 of 2014) is amended by deleting the words "17(a), (d), (e) and (f)" in paragraph (a) and substituting the words "17(1)(a), (d), (e), (f) and (g)".

Related amendment to Legal Profession Act

17. The Legal Profession Act (Cap. 161, 2009 Ed.) is amended by inserting, immediately after section 35A, the following section:

"Sections 32 and 33 not to extend to mediation

35B.—(1) Sections 32 and 33 do not extend to —

(a) any certified mediator conducting any mediation;

(b) any mediator conducting any mediation which is administered by a designated mediation service provider;

(c) any foreign lawyer representing any party in any mediation that —

(i) is conducted by a certified mediator or administered by a designated mediation service provider; and

(ii) relates to a dispute involving a cross- border agreement where Singapore is the venue for the mediation; or

(d) any foreign lawyer registered under section 36P and representing any party in any mediation that relates to a dispute in respect of which an action has commenced in the Singapore International Commercial Court.

(2) In this section —

"certified mediator", "designated mediation service provider", "mediation" and "mediator" have the same meanings as in the Mediation Act 2017;

"cross- border agreement" means an agreement in respect of which any one or more of the following circumstances exist:

(a) at least one party to the agreement is incorporated, resident or has its place of business outside Singapore;

(b) the subject matter of the agreement —

(i) is most closely connected to a placelocated outside Singapore; or

(ii) has no physical connection to Singapore;

(c) the obligations under the agreement are to be performed entirely outside Singapore.

(3) This section applies in relation to any mediation conducted on or after the date of commencement of the Mediation Act 2017, whether the mediation commences before, on or after that date.

(4) For the purposes of subsection (3), a mediation to resolve the whole or part of a dispute commences on the day on which all the parties agree to refer any part of that dispute for mediation.".

Consequential and related amendments to Supreme Court of Judicature Act

18. The Supreme Court of Judicature Act (Cap. 322, 2007 Ed.) is amended —

(a) by deleting the word "and" at the end of section 17(e);

(b) by deleting the full- stop at the end of paragraph (f) of section 17 and substituting the word "; and", and by inserting immediately thereafter the following paragraph:

"(g) jurisdiction under the Mediation Act 2017 to record a mediated settlement agreement made in a mediation, in relation to a dispute for which no proceedings have been commenced in a court, as an order of court.";

(c) by renumbering section 17 as subsection (1) of that section, and by inserting immediately thereafter the following subsection:

"(2) In this section, "mediated settlement agreement" and "mediation" have the same meanings as in the Mediation Act 2017."; and

(d) by deleting the words "section 17(b) or (c)" in section 28A(2)(a)(ii) and substituting the words
"section 17(1)(b) or (c)".

Transitional provisions

19.—(1) Except as provided in subsection (2), this Act does not apply to, or in relation to, any mediation which commences before the appointed day.

(2) This Act or any provision of this Act may apply to, or in relation to, a mediation which commences before the appointed day if —

(a) that mediation is not completed or terminated, and no mediated settlement agreement is made, as at that day; and

(b) all the parties to that mediation agree that this Act or the provision is to apply to, or in relation to, that mediation.

(3) For the purposes of subsections (1) and (2), a mediation to resolve the whole or part of a dispute commences on the day on which all the parties agree to refer any part of that dispute for mediation.

(4) For a period of 2 years after the appointed day, the Minister may, by rules, prescribe such additional provisions of a transitional nature consequent on the enactment of this Act as the Minister may consider necessary or expedient.

(5) In this section, "appointed day" means the date of commencement of this Act.

H. Extended version of the respondent's answers

1. Ireland and the Singapore Convention

CSR2:

"There was no specific reason. UN members may participate as they wish (or have expertise) in working groups… There is no intention at this time that Ireland should become a party to the convention. Nor are we aware of any EU proposals in that regard… Should Ireland accede to the Singapore Convention, the existing domestic and EU legal frameworks are considered robust."

WGR4:

"So, as to why Ireland did not participate in these meetings... So I'm just suggesting that it might be that it was not enough interest in this country to participate or there was not enough knowledge about the importance of mediation in order to participate and I think probably this the latter is a reason why a lot of countries did not participate initially but as the sessions progressed we had more delegations participating so that that's an interesting story."

2. The Impact of the Singapore Convention

- Benefits

PR1

"Well we have this mechanism in place of mutual recognition of international mediation settlement agreements so that's the tangible advantage.

So definitely, the advantage is that if you have these type of mechanisms already in place you'll receive more clearance more clarity, and more clarity gives additional impetus of development of mediation at this resolution mechanism in the specific country."

PR3:

"I think the main purpose and the main benefits that the Singapore convention will bring, will be as a way to signal that international commercial mediation is a good way to resolve your disputes if you're an enterprise operating cross border, or engage in cross border trade or investment."

PR4:

"I think most importantly the Singapore Convention provides stakeholders in a cross border type commercial disputes with … additional option to proceed to mediation with confidence ... it provides parties with an opportunity to go to mediation and come up with a settlement agreement, a settlement agreement is essentially another contract right, and with that settlement agreement you would enjoy the benefits of something which is as good as an arbitration award or a court judgment because… the Singapore Convention provides extra procedural recognition that this special kind of contract which is a settlement agreement between parties at an inner commercial dispute would attract 'res judicata'. That means,

whatever disputants resolved, that settlement agreement cannot go to Court. It cannot be litigated in Court anymore, because it is res judicata, done...so that's the tangible benefit … the most important tangible benefit would be to provide commercial parties with an alternative forum for dispute resolution with a cheaper alternative with a more dependable alternative."

PR5

"…just from the rules perspective under it has also had wider impacts on the economy so far as there is no new industries looking at the infrastructure to support this experience and the rules and so it's created a people who are exploring more platforms for online communication online dispute resolution while looking at different kinds of technology and devices that can be used. You are even discovering deeper research into behavioural science because how we negotiate is going to be changed because of the convention … just from the rules perspective under it has also had wider impacts on the economy so far as there is no new industries looking at the infrastructure to support this experience and the rules and so it's created a people who are exploring more platforms for online communication online dispute resolution while looking at different kinds of technology and devices that can be used. You are even discovering deeper research into behavioural science because how we negotiate is going to be changed because of the convention."

WGR3

"The big advantage of the convention is not that'll be used is that exist because people have resisted to the use of mediation. All kind of excuses to not use it, the well excuse is that they're worry about enforcement across borders. So I think what the convention does is that completes building the infrastructure to support international commercial mediation…"

WGR4:

"I would say again that there's actually only benefits in signing the Singapore convention because to understand the advantages of signing the Singapore convention one has to understand first the philosophy of mediation so mediation it is a dispute resolution process that relies on the autonomy of the parties the third party which facilitates the mediation the mediator does not impose a resolution which is completely opposite to what an arbitration processes is.

…the main objective of the working group was to create an environment where parties believe that agreements will be enforced and that will encourage parties to mediate when there are international disputes and abide by their agreements when they reach agreements at mediation we actually discussed that in an ideal world this Convention would be perfect if it were never used because they were never used that would mean that people are abiding by their agreements and there's no requirement to enforce so how would countries benefit from signing on the Singapore Convention you would demonstrate that mediation is a good process to resolve international disputes and that you want people to abide by their agreements that they reach in mediation that's what a country is saying by signing the Convention.

I've seen it in many, many countries in Latin America in Africa in Asia that when you start using mediation and people start learning the skills of mediation what you create is a society that learns how to talk to each other. There's a dialogue and there is a way of resolving disputes instead of jumping into the court system as soon as you have a dispute.

So this has additional advantages than just cutting court cases in the judicial system. I think mediation helps societies to become a more inclined to learn how to talk to each other a society that talks and resolves disputes amicably through dialogue. It's probably one of the best advantages that we can we can have from mediation."

- **Disadvantages:**

PR1

"But let me tell you if you do not have developed a mediation infrastructure mediation offer to the parties and quality of mediation in the Country. What does this Convention do? What kind of value it would create? It would create more problems because agreements resulting in that defective systems."

- **The criticisms**

PR4:

"I suspect that a person who criticised mediation or rather the Singapore Convention being very similar to arbitration could have the idea of investor state conciliation in mind. So you have to discern between pure commercial disputes and disputes of it investor state nature. I think it will help you to better understand why these criticisms exist… the criticism might be directed at ah giving ordinary contracts extra protection. It could be the case because if we think in terms of civilian law thinking, contracts don't bring res judicata you simply cannot, res judicata only comes about when there's a decision maker telling you this is how the case should be, this is what the outcome is, and it is the end of the matter. But when it comes to contracts, contracts can be disputed, so, as a result the civilian traditions exclude res judicata for settlement agreements generally. So, the Singapore Convention provides extra procedural recognition that this special kind of contract which is a settlement agreement between parties at an inner commercial dispute would attract res judicata. That means, whatever disputants resolved, that settlement agreement cannot go to Court. It cannot be litigated in Court anymore, because it is res judicata, done. You cannot litigate the settlement agreement. So I think that could be a possible angle at this criticism. So what is my response looking at it in this way. In the common law this is perfectly normal, because settlement agreements have always been able to attract res judicata. The concept of res judicata in common law is much broader because res judicata would set in if parties are found to be abusing the courts process… So from the EU perspective that could be why this author criticised the Singapore Convention, because it juxtaposed the enforcement procedures of arbitration into mediation. This would be an irreconcilable difference because this is how conventions work, a lot of the time conventions have to come to some sort of compromise between both civilian and common law traditions… So, it happens all the time even if it's not compatible with your law, conventions have to bridge that gap as a matter of compromise. So

yes, it might be set to borrow and juxtapose the procedures designed for enforcement and recognition of arbitral awards but I do not think it is inappropriate because some compromises are needed to bridge an irreconcilable difference between civilian and common law jurisdictions."

WGR4:

"I know there are a lot of criticisms about the Convention but you know there's no perfect law … Yet, there are probably some articles that might not make completely sense but that's the compromise that we had to reach, a compromise and make everybody in every single jurisdiction, 60 plus countries, happy with every sentence an article a clause so that is the complexity of writing an International Convention… I think in general the Singapore Convention is a very well written document. Obviously within UNCITRAL countries have still the possibility of request changes. Of course is not an easy task but if the majority of countries believe that there's some areas that need to be changed of course it can be changed. But I think the fact that, I was just telling you how complex the writing of a Convention is, you have to take it in that light and saying look what is the spirit of this Convention. There is room for improvement, of course there's always there has been criticism about the concept of even of mediation what does it mean you know it is to broad but one has to consider that a lot of countries do not have mediation legislation they do not have standards for accreditation for their mediators so we had again to compromise and try to be inclusive try to understand this country probably has very little experience in mediation so we cannot write a convention that only is going to fulfil the needs of a particular nation or a particular group of nations. It has to be a Convention that satisfies the needs of most of the Countries."

PR3

"…an arbitral procedure is better regulated so for that reason the outcome of that procedure we have more of an objective reason to believe to have confidence that an arbitral award has earned sort of the legitimacy of being enforceable as it is. Whereas mediation is of course it's not transparent, nobody knows what happens behind the closed doors of the of the mediation and it is confidential so you can't properly check what happens during the mediation itself so maybe one of the parties was unduly pressured or so. But I think that's not a proper argument because for in this particular case we're talking about international commercial mediations where there's always lawyers involved so I think that the risks of one of the parties being unduly pressured into an agreement that they don't actually want to take it's not a real risk basically you can safely assume that the parties know what they're doing because they're engaged in international business so they know they should be it may be presumed that they know what they are doing and they are represented by lawyers so they may be presumed that they know what kind of agreement that they entered into, for that reason I don't think there's much reason to bay shore doubts and those arguments that the fact that it's for that reason to see it as less solid as an arbitral award."

PR5

“There is no doubt at all that the way that the convention structure clearly borrows heavily on the New York Convention. Was that correct? no I personally don’t think that it is correct to borrow so heavily from an arbitration convention but is it completely wrong I don’t think it’s completely wrong either, so it comes back to the to the very first point that I was making that those who say that it is too close to arbitration where the outcome is an award basically arguing from the philosophy that because is an award the chances that someone will challenge it is higher, the chances that the losing party will challenge it is higher whereas because it's a settlement agreement by right no one should be challenging it because they wouldn't sign it if they were not happy with it right... we need the convention because there will be some instances where people are unhappy they have doubts about whether the process by which it was arrived at was legitimate and you can’t foresee where this doubts will come from and it’s the same for a settlement agreement… we need the convention because there will be some instances where people are unhappy they have doubts about whether the process by which it was arrived at was legitimate and you can’t foresee where this doubts will come from and it’s the same for a settlement agreement. If the process was fair and everything was done in a way which people are happy about, we probably don’t need to use the Singapore convention but is it a case where you absolutely don’t need to provide this assurance will it help to provide parties this assurance that if you signed it, this is going to be enforceable.”

PR6

“So, the mediation convention in a sense, is providing for something very similar. It's saying “ok” the two parties, with the aid of a mediator, have arrived at a settlement agreement that both of them agreed should be fully binding and one of the parties is not respecting that agreement that deserves to be drawn up as a judgment and enforced. I don’t see any problem in principle with that. And the great advantage is that it will encourage the development of international mediation.

- **Signatory Parties to the Convention**

Slovenia:

PR2

“…we initiated the parliamentary question with the Minister of Justice about the Singapore Convention and the position of our ministry, the minister replied that he's aware of this convention but that the ministry believes that it is first to the European Commission to come with their position with respect to jurisdiction you know whether this is exclusive jurisdiction of the EU or shared competence of EU end member states and afterwards, the ministry would start the process of internal considerations so that was the reply… so I think that the policymakers in Slovenia are aware of the Convention which is good but they don't do anything very proactive in terms of, you know, pushing these topics further internally and externally… I hope maybe France will do it after Slovenia but France as I mentioned might have even more reluctant position towards the Singapore Convention and this is not good chance for a serious consideration within the EU unless the group of EU member states as I already mentioned would jointly initiate this discussion.”

Netherlands:

PR3

"It's viewed with much scepticism and I think they're not convinced. The Netherlands is not convinced that it will add the value that it will bring. I've heard scepticism from the legal profession when it comes to the basic notion that underlies the Singapore convention that is that private contracts will be enforceable just like a Court judgment basically, and the first question I always get is: what is the justification for giving that much weight to a private contract?"

United Kingdom:

PR4:

"…sometime in May the Lord Chancellor in his annual speech in the UK, suggested that in light of Brexit the UK is inclined to consider the possibility of signing out the Singapore Convention so it has proposed to embark on a public consultation… I know that some form of public consultation is about to take place here in the UK. This is like how it is in Australia they would talk about it for a long time but eventually something would happen."

PR6:

"Right, to be frank I am not exactly sure. I believe that the government here has had its hands full with Brexit, you know leaving the EU and then with Covid-19, so I think this has been on the back burner, I mean I hope it's now being looked at by the Ministry of Justice and I hope that they will conclude that we should ratify this Convention because after all I think London is probably the most popular jurisdiction internationally for the resolution of international disputes and it would be crazy really if we didn't ratify such a convention"

Singapore:

PR5

"…for Singapore we have been extremely excited to have the convention named after us and we feel a huge responsibility… I'm happy that we feel this responsibility, the truth is that just because the New York Convention is named after New York, has not made New York the ultimate centre of arbitration but certainly for mediation we do we do feel this responsibility… because Singapore is so small the benefit of that is we have the public and private sector has really mobilized to try to make Singapore an example of how international disputes can be resolved using mediation. What has happened is that we have generally shied from making mediation mandatory but we have been very active both in terms of court procedures as well as in the media to educate residents and Singaporeans to make mediation the first step. We have also raised the level of our training for mediators or people who want to be mediators and we have also increased the level of mediation education in our law schools so that lawyers who do it are now familiar with how

the mediation process works in and prepared lawyers in the mediation process and not just in a court or arbitration process."

Canada:

WGR1:

"In Canada there's a process where the provinces have to agree to sign a Convention it's a longer process than in many UN states so the pandemic and also we've just had an election last week so unfortunately the Singapore Convention and getting states to sign on is not a priority for government and I suspect that once we get past the seriousness of the pandemic and things are getting closer to being back to normal then we'll focus on things like that but we can't just have the federal side we need the provinces to agree and a full consultation process."

Mexico

WGR2:

"Mexico has been very active during the discussions of the convention and therefore the expectations of the government and the business community in Mexico, and I have to say the mediator community in Mexico has been -"let's be a party to the convention already what are we waiting for"- you know and that's understandable of course but at the same time the truth is even when Mexico has been historically friendly towards ADR at least during the last 30 years, we have a long way to go yet, and one of those pending matters is to enact a law that is similar to the Model Law… the idea would be to have the Model Law on mediation with the Singapore convention so I would say that is what the government and also some business organizations are working towards… we hope we will have it probably, I hope this happens sometime in 2022."

United Sates:

WGR3

"we have in the US similar that in some other countries now is that there are other more pressing matters to sustain the list something called pandemic so make things more complicated and the person who was handling in the US team department left … so we don't have someone inside the state department who handles at the US who is aggressive advocating. So …at this point my guess now watching it, for at least a couple years."

Australia:

WGR4

"Well, I'm very glad to report that Australia signed the Singapore Convention on Friday, the 10th of September. It has been a big teamwork, a lot of organizations and people like myself working with the government and presented submissions basically trying to convince our government of the advantages of signing the Singapore Convention and I think that it was a great decision that

they have realize that this is something that will only enhance the commercial relations that we have with other countries in the region and I think that is something that countries in considering signing the Singapore Convention have to take into account… well it would not make sense for a country to sign it and not ratified. I think if you make a commitment signing an International Convention I think you also are committed to ratify it, otherwise it really doesn't fulfil the whole benefits of signing or being part of the Convention."

3. Ireland and its membership to the EU

CSR1

"… this Convention was on the EU radar when it was being negotiated so it's fair to say that the EU as an organization knows that the Convention is out there and the EU member states know that the EU is aware … the EU's view is that there are issues to be considered as to whether or not it has competence… the EU I think has expressed an interest in this convention so the next step would be if the European Union itself wanted to move forward to sign or ratify it would have discussions with the member states.

I guess at this stage if any EU member state was interested in signing or ratifying the Convention I think they probably would know that they should consult with the EU partners."

CSR2

"As mediation is the subject of an EU Directive, it is likely that the issue of whether the EU had exclusive competence to accede to the Convention if such were to be agreed by the Member States."

PR1

"I had a chance to participate in one forum a couple of months ago when a person from European Union Commission, European Commission directorate who is responsible for that particular matter they raised certain issues that were some technicalities of correlations between provisions included in the Convention and European Union laws specially the Directive that per certain contradictions they want to settle first before switching on this international recognition mechanism including in Singapore Convention… I have a different opinion that there are not contradictions but still what I could point out is that might be certain differences in these two mechanisms European Union already mechanism in place in relation to the mediated settlement agreements and this Singapore Convention mechanisms totally correlate to each other without any changes needed at European Union level.. my answer that it would be better to try to push European Union Institutions to move faster to settle all the issues faster in order to have accession to that particular document by the European Union as a whole because not joining can delay of joining a that particular convention might create specific tensions and some delays in public development of mediation systems at the European Union level.

…in the very Convention we have article 12, and this article 12 it is already provided that specific rights and specific mechanism of accession of these international economic organizations formed

by southern states. So by way if you will open up to the Convention you will see that this was specifically included for the European Union purposes on their request.

I was one of the experts who also took part in drafting this European handbook for mediation law making and in my understanding at least Council of Europe documents completely correlate to what is stated in this Singapore Convention but no amendments are needed and in our understanding as well even European Union documents are completely compatible with the Singapore Convention, so no changes are needed. It is only a question how do you understand and implement it so that's the question, not of changing anything but the question of interpretation, construction and application and this particular application issues can be decided, shall be decided not at the law making level but at the level of implementation so that's a different question of the different bodies."

PR2

"the European Commission probably will insist on the exclusive jurisdiction on behalf of the EU while member states might have different views. What's is important here is that so far there was no a real attempt to develop the position in writing and to start the consultation process between the Commission and the member states. And so, this is somehow a main formal obstacle that neither you nor de member states have signed or acceded to the Convention so far…

Council of Europe is very clear about it, and supports member states of the Council of Europe to sign the convention. This was also confirmed by the chairman of the mediation expert group at the Council of Europe. The guys from Lithuania, they specifically addressed the issue of Singapore Convention in one of their documents which is available at the page of the Council of Europe it is called, so-called mediation toolkit this is the just expert group which works with the CEPEJ, CEPEJ is the Commission for efficiency of justice and the Council of Europe so you could find this document there. They supported member states, I mean, they invited member states to sing the convention, they also explained why. So, we have here now an interesting situation but on one side we have a very positive a position on the Council of Europe and not so much positive position of the European Union on the same matter and since all European Union member states are also the member states of the Council of Europe, the situation is somehow unclear you know? And that's why you see now that's uh for the time being, those Council of Europe member states who are not members of the European Union, some of them already started to sign the convention like Serbia, Montenegro, Ukraine Georgia and they're all aspirant countries for ding in the EU so in this point the aspirant countries are faster than the old member states this also interesting process somehow."

CSR2

"We cannot comment on the contentions in the Handbook. Where binding mediation is agreed by the concerned parties, the Mediation Act 2017 and the EU Directive provide for enforcement, including cross-border subject to certain public policy considerations."

WGR3

“Now are you familiar with the New York convention on arbitration? -yes- you are, it was open for signature in the 1958 and after years and years there are still signatories. So you don’t expect this to happen overnight it's a process.”