

[To be published in two parts]

Recent Amendments to the Arbitration Act and the New Mediation Law concerning the Enforcement of International Mediation – Part II¹



Kazuhiro Kobayashi
kazuhiro.kobayashi@ohebash.com

I. New Mediation Law on the Enforcement of International Mediation

1. The Singapore Convention

In December 2018, the United Nations General Assembly adopted the United Nations Convention on International Settlement Agreements Resulting from Mediation (the “**Singapore Convention**”) and authorized its signing ceremony in Singapore on August 7, 2019. This convention offers a uniform and efficient framework for the enforcement and invocation of international settlement agreements resulting from mediation. Forty-six (46) countries signed it and it entered into force on September 12, 2020 when the third instrument of ratification was deposited on March 12, 2020. As of November 8, 2023, fifty-six (56) countries have signed the Singapore Convention and twelve (12) of those countries, including Japan, have ratified it.

On June 9, 2023, the Diet of Japan approved the conclusion of the Singapore Convention and on October 1, 2023, Japan acceded to it, subject to the reservation that Japan would only apply the convention to the extent that the parties to the settlement

agreement have agreed to its application under Article 8 of the Singapore Convention as explained further below in part 2(2) of this article. The Singapore Convention will take effect in Japan on April 1, 2024,² six (6) months after the date of the deposit of Japan’s instrument of accession.³

2. New Act Implementing the Singapore Convention

(1) To implement the Singapore Convention, the Cabinet of Japan submitted Act No. 16 of 2023 (Act for Implementation of United Nations Convention on International Settlement Agreements Resulting from Mediation) (the “**Act Implementing the Singapore Convention**”) to the Diet, which passed it on April 21, 2023. This new law will also take effect on April 1, 2024, the day the Singapore Convention takes effect in Japan.⁴

(2) Consistent with Japan’s reservation under the Singapore Convention, Article 3 of the Act Implementing the Singapore Convention limits the scope of application of the Singapore Convention to cases where the parties to the settlement agreement have agreed that it can be enforced through civil execution based on the Singapore

1. Part I of this article is available at https://www.ohebash.com/jp/newsletter/NL_en_2023autumn_Kobayashi.pdf.

2. Status: United Nations Convention on International Settlement Agreements Resulting from Mediation, available at: https://uncitral.un.org/en/texts/mediation/conventions/international_settlement_agreements/status.

3. The Singapore Convention, art. 14(2).

4. Supplementary Provisions of the Act Implementing the Singapore Convention, art. 1.



Convention or laws and regulations implementing the said convention, including the Act Implementing the Singapore Convention itself. Thus, if a non-Japanese company would like to enforce a settlement agreement with a Japanese company, it should stipulate therein that the parties may enforce it under the Singapore Convention.

- (3) The Act Implementing the Singapore Convention, however, provides for a broader scope of application than the Singapore Convention. The Singapore Convention applies to settlement agreements where: (i) some or all of the parties have their addresses, offices or places of business in different States,⁵ and (ii) the State in which some or all of the parties have their addresses, offices or places of business is different from the State in which either the place where a substantial part of the obligations under the agreement is performed, or the place with which the subject matter of the agreement is most closely connected.⁶ The Act Implementing the Singapore Convention, however, will apply even to settlement agreements where some or all of the parties are persons with an address, main office or place of business outside of Japan.⁷ Therefore, a settlement agreement between parties who have their places of business in the same country or in countries other than Japan would still be enforceable in Japan.

Further, the Act Implementing the Singapore Convention would apply to a settlement agreement where more than fifty percent (50%) of the issued voting shares, etc., in some or all of the parties are held by persons with an address, main office or place of business outside Japan. Accordingly, a

subsidiary of a non-Japanese company in Japan may enforce a settlement agreement with a Japanese company in Japan under the Act Implementing the Singapore Convention. The presence of such foreign element would also make this an international mediation case under Article 2 (xiv) of the Act on the Handling of Legal Services by Foreign Lawyers (Act No. 66 of 1986), which now permits party representation in international mediation cases by registered foreign lawyers in Japan and foreign lawyers based abroad.

- (4) The Act Implementing the Singapore Convention also excludes the application of the Singapore Convention to international settlement agreements involving the following:
- (i) disputes relating to a civil contract or transaction where some or all of the parties are individuals (except those who became parties to the contract or transaction as a business or for business purposes);⁸
 - (ii) individual labor-related disputes;⁹
 - (iii) disputes concerning personal status and family affairs;¹⁰
 - (iv) international settlement agreements that are approved by the courts of a foreign country or concluded in the course of proceedings before the Japanese courts or courts of a foreign country and are enforceable in the State of such courts;¹¹ and
 - (v) international settlement agreements that have the effect of an arbitral award and are enforceable.¹²
- (5) To enforce an international settlement agreement, a party must petition the court for an execution order allowing civil execution based on such

5. The Act Implementing the Singapore Convention, art. 2(3)(ii) (which corresponds to the Singapore Convention, art. 1(1)(a)).

6. *Id.*, art. 2(3)(iii) (which corresponds to the Singapore Convention, art. 1(1)(b)).

7. *Id.*, art. 2(3)(i).

8. *Id.*, art. 4(i) (which corresponds to the Singapore Convention, art. 1(2)(a)).

9. *Id.*, art. 4(ii) (which corresponds to the Singapore Convention, art. 1(2)(b)).

10. *Id.*, art. 4(iii) (which corresponds to the Singapore Convention, art. 1(2)(a) and (b)).

11. *Id.*, art. 4(iv) (which corresponds to the Singapore Convention, art. 1(3)(a)).

12. *Id.*, art. 4(v) (which corresponds to the Singapore Convention, art. 1(3)(b)).



international settlement agreement (the “**Execution Order**”), and indicate therein the obligor as the respondent.¹³ The court shall issue the Execution Order, unless it decides instead to dismiss the petition on one of the grounds refusing execution set forth in the Act Implementing the Singapore Convention¹⁴ as mentioned below in part (6) of this article.

The petitioner must submit (i) a document prepared by the parties containing the content of the international settlement agreement and (ii) a document prepared by the mediator or any other person who prepared, preserved and performed any other managerial work concerning the records, to certify that the international settlement agreement resulted from mediation. Alternatively, the petitioner may submit a recording medium of an electronic or magnetic record recording the content that is required for such documents. If the subject document or recording medium is prepared in a foreign language, the petitioner must also submit a Japanese translation thereof;¹⁵ provided that if the court finds it appropriate, after hearing the opinion of the respondent, the court may decide not to require such translation. The Act Implementing the Singapore Convention also grants to the Tokyo District Court and the Osaka District Court jurisdiction over such petitions in addition to other competent courts.¹⁶ Compared to other regular courts, the judges of the Tokyo District Court and the Osaka District Court who would be in charge of such petitions would presumably be familiar with English documents, so, the parties would not be required to submit a

Japanese translation of such documents.

The court may suspend the proceedings concerning the petition if another petition relating to the international settlement agreement is filed, and in such case, upon the petition of the petitioner, the court may order the respondent to provide security.¹⁷

- (6) The following are grounds for refusing civil execution of an international settlement agreement:
- (i) that the international settlement agreement is not valid due to a limitation on the legal capacity of a party;¹⁸
 - (ii) that the international settlement agreement is not valid on grounds other than a limitation on the legal capacity of a party pursuant to the laws and regulations designated by the agreement of the parties to apply to the international settlement agreement (if no designation has been made, the laws and regulations determined to be applicable to the international settlement agreement by the court);¹⁹
 - (iii) that the details of the obligations in the international settlement agreement cannot be specified;²⁰
 - (iv) that the obligations in the international settlement agreement have been extinguished in their entirety due to performance or any other reason;²¹
 - (v) that the mediator has breached the laws, regulations or any other rules applicable to the mediator or the mediation conducted by the mediator pursuant to an agreement

13. *Id.*, art. 5(1).

14. *Id.*, art. 5(11).

15. *Id.*, art. 5(2)-(4) (which correspond to the Singapore Convention, art. 4(1)-(3)).

16. *Id.*, art. 5(6).

17. *Id.*, art. 5(5). This corresponds to the parallel application or claim under Article 6 of the Singapore Convention.

18. *Id.*, art. 5(12)(i) (which correspond to the Singapore Convention, art. 5(1)(a)).

19. *Id.*, art. 5(12)(ii) (which corresponds to the Singapore Convention, art. 5(1)(b)(i)).

20. *Id.*, art. 5(12)(iii) (which corresponds to the Singapore Convention, art. 5(1)(c)(ii)).

21. *Id.*, art. 5(12)(iv) (which corresponds to the Singapore Convention, art. 5(1)(c)(i)).

between the parties (limited to breaches that are not related to public order), and that the fact constituting the breach is serious and affects the conclusion of the international settlement agreement;²²

- (vi) that the mediator failed to disclose to the parties a fact that may raise doubts as to the mediator's impartiality or independence, and that the fact is serious and affects the conclusion of the international settlement agreement;²³
- (vii) that the subject matter of the international settlement agreement concerns a dispute that may not be subject to a settlement agreement pursuant to the provisions of Japanese laws and regulations;²⁴ and
- (viii) a civil execution based on the international settlement agreement would be contrary to a public policy in Japan.²⁵

3. Amendments to the Current ADR Act

In addition to making international settlement agreements enforceable through the Act Implementing the Singapore Convention, Japan amended the Act on Promotion of Use of Alternative Dispute Resolution (Act No. 151 of 2004) (as amended, the “**ADR Act**”) on April 21, 2023 to make certain domestic settlement agreements enforceable. The ADR Act was passed on April 28, 2023 and will take effect on April 1, 2024, the same day as the amended Arbitration Act.

Under the ADR Act, upon application, the Minister of Justice may certify private dispute

resolution services if the Minister is satisfied that such services meet the certification standards and the applicant has the necessary knowledge and skills as well as the financial base to carry out the services.²⁶ The ADR Act provides special rules on the use of the private dispute resolution procedures to be carried out for such certified services (the “**Certified Dispute Resolution Procedures**”), such as suspension of the prescriptive period, and at the court's discretion, suspension of the related legal proceedings as well.²⁷ The ADR Act also makes enforceable certain settlement agreements resulting from such Certified Dispute Resolution Procedures if the parties have agreed that they could be enforced through civil execution.²⁸

The following settlement agreements, however, are unenforceable:

- (i) those made between consumers and enterprises;
- (ii) those involving individual labor-related disputes;
- (iii) those involving disputes concerning personal status and family affairs, except claims for periodic payments that relate to an obligation to support, etc.; and
- (iv) international settlement agreements under the Act Implementing the Singapore Convention.²⁹

As mentioned earlier in part 2(4), the Act Implementing the Singapore Convention shall not apply to international settlement

22. *Id.*, art. 5(12)(v) (which corresponds to the Singapore Convention, art. 5(1)(e)).

23. *Id.*, art. 5(12)(vi) (which corresponds to the Singapore Convention, art. 5(1)(f)).

24. *Id.*, art. 5(12)(vii) (which corresponds to the Singapore Convention, art. 5(2)(b)).

25. *Id.*, art. 5(12)(viii) (which corresponds to the Singapore Convention, art. 5(2)(a)).

26. The ADR Act, arts. 5 and 6.

27. *Id.*, Chapter III.

28. *Id.*, art. 2(v). This corresponds to Article 3 of the Act Implementing the Singapore Convention and the reservation made by Japan under the Singapore Convention.

29. *Id.*, art. 27-3.



agreements on disputes involving civil contracts or transactions, where some or all of the parties to the agreement are individuals. The ADR Act, however, makes enforceable not only certain commercial settlement agreements but also certain civil ones.

Further, under the ADR Act, non-Japanese individuals may enforce their settlement agreements with Japanese individuals. Although most settlement agreements involving disputes concerning personal status and family affairs are unenforceable, those involving claims for periodic payments relating to an obligation to support, etc., may be enforceable by non-Japanese individuals against Japanese individuals.

As discussed in Parts I and II of this article, the amended Arbitration Act, the Act Implementing the Singapore Convention and the amended ADR Act will take effect in Japan on April 1, 2024. Parties interested in the arbitration and mediation practice in Japan should be aware of these recent developments taking effect next year.