

VIOLETION OF MEDIATORS' DUTIES AS A GROUND OF NON-ENFORCEMENT UNDER THE SINGAPORE CONVENTION

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ABSTRACT

In 2018, the United Nations General Assembly adopted, by consensus, the United Nations Convention on International Settlement Agreements Resulting from Mediation (hereinafter "Singapore Convention"). Article 5(1)(e) and article 5(1)(f) of the Singapore Convention primarily focus on the violation of mediators' duties as a ground of non-enforcement. Article 5(1)(e) focuses on regulating the misconduct of the mediators while article 5(1)(f) focuses on the disclosure of mediators' conflict of interest. However, article 5(1)(e) adds the elements of "serious breach" and "causal link" and article 5(1)(f) adds the elements of "material impact or undue influence on a party" and causal link.

This article intends to identify the proper interpretation and standard for these additional elements. While, traditionally, the enforceability of the mediation settlement agreements (hereinafter "MSAs") is considered to be an issue governed by contract law, this article argues that in interpreting the additional elements, the traditional contract law doctrine is not enough to reflect the purpose of safeguarding procedural fairness of the mediation under article 5(1)(e) and article 5(1)(f) of the Singapore Convention. Rather, the principle of self-determination should guide the interpretation. The

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principle of self-determination for mediation is broader than the doctrine under contract law. Self-determination involves voluntary entry into the mediation process, active participation, and informed consent to MSAs. Following this logic, other than mutual assent of international mediation settlement agreements (iMSAs), the voluntary entry into the mediation process and parties' active participation should be reflected while applying article 5(1)(e) and article 5(1)(f). In this sense, the principle of self-determination would be a better fit to fulfill the objective of article 5(1)(e) and 5(1)(f) of the Singapore Convention, allowing the enforcing state to scrutinize mediators' conduct.

KEYWORDS: *Singapore Convention, mediator, the principle of self-determination, non-enforcement, misconduct, conflict of interest*