Master's Program in Corporate Private and International Law

Enforcement of Mediated Settlement Agreements under Singapore Convention in Georgia

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List of Abbreviation

IMSA	-	International Mediated Settlement Agreement
MSA	-	Mediated Settlement Agreement
ADR	-	Alternative Dispute Resolution
URM	-	Unified Register of Mediators
GAM	-	Georgian Association of Mediators
SIMC	-	Singapore International Mediation Centre
SMC	-	Singapore Mediation Centre
TADM	-	Tripartite Alliance for Dispute Management
WIPO ADR	-	World Intellectual Property Organization Arbitration and Mediation Center
SIMI	-	Singapore International Institute

Introduction

United Nations Convention on International Settlement Agreements Resulting from Mediation ("Singapore Convention") is a multilateral convention developed by UNCITRAL Working Group II[1] that has been adopted in December 2018 and entered into force on September 12th, 2020 with 53 signatory countries and 6 parties.[2] By signing the Convention parties are expressing their intention to comply with the mentioned treaty, whereas ratification grants the latter with the binding force on the state[3]. The purpose of the Convention is to harmonize the enforcement of International Mediates Settlement Agreements ("IMSAs") among contracting states by requiring them to ensure that their national courts will recognize and enforce cross-border IMSAs.[4] Even though, Singapore Convention does not contain the requirement to implement the rules of Convention into domestic law of states, in order to fulfill the goal mentioned above, the countries that wish to ratify the Convention should assure that their legislation complies with the rules established by Singapore Convention. Accordingly, the Convention will only be successful if the enforcement system is proper and functional in national level of contracting states.[5]

Georgia has signed Singapore Convention on August 7th, 2019[6]. On September 18th, 2019 after more than one month after the signature, Georgia has adopted its first law on mediation which came into force on January the 1st, 2020[7]. The reason for establishment of the new law is to raise the awareness regarding to alternative dispute resolution ("ADR") mechanisms and to create appropriate conditions for its usage[8]. Even though Georgia has not yet ratified the

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[1] 'About the Convention' (Singapore Convention on Mediation) https://www.singaporeconvention.org/convention/about-convention/ accessed 15 May, 2021

[2] 'Singapore Convention on Mediation Enters into Force' (Singapore Convention on mediation, 12 September 2020) https://www.singaporeconvention.org/media/media-release/2020-09-12-singapore-convention-on-mediation-enters-into-force accessed 15 May, 2021

[3] Anastasia Tzevelekou, Acer Law LLC, '2018 Singapore Convention on Mediation' (International Arbitration 1 January, 2021) https://www.international-arbitration-attorney.com/2018-singapore-convention-on-mediation/ accessed 17 May, 2021

[4] Craig I. Celniker; Sarah Thomas; Daniel Steel, Client Alert 'Singapore Convention on Mediation Enters into Force' (Morrison Foerster, 12 September, 2020) https://www.mofo.com/resources/insights/200912-singapore-convention-on-mediation-enters-into-force.html accessed 15 May, 2021

[5] Miglė Žukauskaitė, 'Enforcement of Mediated Settlement Agreements' (2019) 111 Vilnius University Press 205, 207

[6] 'Status: United Nations Convention on International Settlement Agreements Resulting from Mediation' 1(1) UNCITRAL https://uncitral.un.org/en/texts/mediation/conventions/international_settlement_agreements/status accessed 20 July, 2021

[7] Georgian Law on Mediation (Legislative Herald of Georgia 27 September, 2019) https://matsne.gov.ge/en/document/view/4646868?publication=0 accessed 17 May, 2021

[8] Georgian Law on Mediation (n 7) Art. 1(1)

Convention it has made steps towards it by signing the Convention and amending relevant laws.[9][10] In this regard, the most significant change in Georgian domestic legislation has become the amendment of the whole chapter on enforcement of IMSAs on the basis of Singapore Convention in Civil Procedure Code of Georgia ("Procedure Code")[11].

Because of the mentioned, the purpose of the thesis is to determine whether enforcement of IMSAs under Georgian legislation is in compliance with enforcement standards of IMSAs under Singapore Convention and what type of agreement and how should they be enforced in Georgian territory taking into consideration the above mentioned amendments of Georgian legislation and Singapore Convention.

The thesis refers to comparative analyze of Singapore Convention and domestic legislation of Georgia. Since, as it has already been mentioned, Georgia has just adopted its first codified Law on Mediation on the basis of which Procedure Code has been amended, materials regarding to the latter has not yet exist. Accordingly, to fulfill the goal of the thesis indicated above the thesis mostly contains comparison of the Singapore Convention and Georgian legislation and the discussion on the basis of the materials regarding to the Singapore Convention.

In order to simplify discussions regarding to newly adopted Georgian Law on Mediation ("Mediation Law") the thesis also refers to the analyze of relevant parts of United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("New York Convention") on the bases of which Singapore Convention has been established and Georgian Law on Arbitration ("Arbitration Law") that is older and more developed than newly adopted Mediation Law.

The thesis is divided into two chapters. The first chapter determines the need for Singapore Convention and includes two sub chapters analyzing enforcement of IMSAs without Singapore Convention and discussing New York Convention and its impact on Singapore Convention.

The goal of the mentioned chapter is to determine why Singapore Convention was initially needed and why it is essential to comply to the latter Convention. On the other hand, it is

[9] Georgian Law on Mediation (n 7)

[10] Civil Procedure Code of Georgia (Legislative Herald of Georgia 14 November 1997) https://matsne.gov.ge/ka/document/view/29962?publication=145 accessed 27 July, 2021

[11] Ibid. Chapter XLIV[16]

significant to understand how and on the basis of what it has been created. In this regard, in order to avoid gaps that may appear in practice while using Singapore Convention for enforcement of IMSAs in Georgian territory there is a need to draw the parallel with more successful and older Convention such as New York Convention which aims the same for enforcement of international arbitration awards as Singapore Convention for enforcement of IMSAs.

On the other hand, the second paragraph is more practical and refers to the analysis of scopes of application of Singapore Convention and its comparison to domestic legislation of Georgia. In this regard, the thesis aims to determine what type of IMSAs should be enforced under Singapore Convention and what are in the scope of Georgian legislation.

The chapter also discuss the requirements for reliance on settlement agreement to determine what type of documents are parties obliged to present and to which body to be able to enforce IMSA in Georgian territory.

Chapter 1: The need for Singapore Convention

Opinions regarding to the need for the unified tool for enforcement of IMSAs has always been heterogeneous. Some people thought that there is no fundamental difference between the agreements resulted from negotiation and the agreements resulted from mediation[12]. Accordingly, in their opinion, there was no need for separate tool for its enforcement, since in case of the breach of the IMSA it can be litigated in the same way as in case of the breach of the regular contract. In addition, since the outcome of the successful mediation is the voluntary agreement reached by the parties, some people thought that the chances of its voluntary performance without the specific tool for its enforcement were higher than in case of litigation or arbitration[13].

[12] KC Lye, Tim Robbins 'Enforcement of Mediated Settlement Agreements Time for an International Standard' (Norton Rose Fulbright, May 2016) https://www.nortonrosefulbright.com/en-gb/knowledge/publications/511d2b89/enforcement-of-mediated-settlement-agreements accessed 20 May, 2021

[13] Eunice Chua, 'Enforcement of International Mediated Settlements Without the Singapore Convention on Mediation' (2019) 572 SacLJ https://journalsonline.academypublishing.org.sg/Journals/Singapore-Academy-of-Law-Journal-Special-Issue/Current-Issue/ctl/eFirstSALPDFJournalView/mid/503/ArticleId/1472/Citation/JournalsOnlinePDF

However, on the other hand, proponents of the mediation considered the absence of the uniform tool for enforcement of the IMSAs as the missing piece in international mediation that may significantly raise the usage of international mediation among businesses[14].

In order to get more familiar with the Singapore Convention and to determine the solutions of prospective difficulties in enforcement of IMSAs under Singapore Convention in the national level the following chapter will analyse the need for its establishment as the unified tool for enforcement of IMSAs. For the mentioned purpose, the first part of the chapter refers to the discussion how IMSAs have been enforced without Singapore Convention, whereas the second chapter touches the history of New York Convention and its impact on Singapore Convention.

1.1. Enforcement of IMSAs without Singapore Convention

As mediation is faster and less expensive form of dispute resolution than arbitration or litigation, which also helps parties to protect their further relationships, business expressed the interest towards it[15]. However, since different countries followed various approaches regarding to the enforcement of IMSAs and the outcome of the international mediation was vague, businesses avoided to be involved in international mediation proceedings[16][17].

The companies used to put a lot of time, energy and money into resolving disputes by mediation, though the destiny of the IMSAs were uncertain regarding to its enforcement and differed from country to country[18].

In this regard, the situation in the EU member States and outside of the EU varies essentially. EU countries have managed to establish a mechanism that allows Mediated Settlement Agreement ("MSA") to be transferred into directly enforceable title[19]. On the other hand, significant number of non-EU countries, such as Cambodia, Lebanon and South Africa do not offer such mechanism and parties of the mediation have to go through the whole litigation

[14] Ibid. 573
[15] Timothy Schnabel, 'The Singapore Convention on Mediation: A Framework for the Cross-Border Recognition and Enforcement of Mediated Settlements' (2019) 2(1) 19 Pepp Disp Resol LJ 1
[16] Christina G. Hioureas, 'The Singapore Convention on International Settlement Agreements Resulting from Mediation a New Way Forward?' (2019) 217 (215) BJIL https://lawcat.berkeley.edu/record/1128946?ln=en
[17] For more details, see Ketevan Tarkhnishvili, 'Enforcement of International Mediated Settlement Agreements Under Singapore Convention in Comparison to Enforcement of International Arbitration Awards Under New York Convention' (Master thesis, Central European University 2020) https://sierra.ceu.edu/search/a?tarkhnishvili+ketevan
[18] Ibid.
[19] Žukauskaitė, (n 5) 207

proceeding for the breach of contract in case one of the parties did not fulfill the obligations under the MSA and to enforce the court judgment instead of the MSA itself[20].

In order to transfer MSA into directly enforceable title there are mostly three ways that defends on the law of the country where the MSA is going to be enforced: (i) to file in a court for summary proceeding and to enforce it as a court judgment (Italy, Latvia, Hungary, Lithuania); (ii) to notarize it and enforce it regarding to the "regime applicable to notarized documents"(Austria, Belgium); (iii) to transfer the IMSA to arbitration award and to enforce it as an arbitration award (Austria, Germany)[21][22].

Since the need for unification of the enforcement of IMSAs has appeared there have been some attempts to harmonize the latter. In particular, Article 14 of UNCITRAL Model Law on International Commercial Conciliation 2002 determined that in case parties reached an agreement for settling a dispute, this agreement is binding and enforceable[23] and Article 6 of EU Mediation Directive established that the member states should ensure that the parties are able to enforce the written agreement resulting from mediation[24]. However, in case of UNCITRAL model law the issue of enforcement and the authority from whom enforcement is going to be sought is left to domestic law without establishing the principles of its enforcement[25]. Whereas, the EU Mediation Directive entitles parties to choose which countries' procedural mechanisms to use for enforcement of IMSA[26]. Moreover, EU Mediation Directive follows the opinion that the MSA is "more likely to be complied voluntarily[27]" because of which it does not take into specific account establishment of particular regime for its enforcement. Since, the mentioned tools were not able to establish the unified mechanism for enforcement as they transferred the enforcement of IMSAs to domestic law without establishment of the standards of the procedures, they could not succeed.[28]

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[20] Ibid.

[21] Anna KC Koo, 'Enforcing International Mediated Settlement Agreements', in MP Ramaswamy, J Ribeiro (eds), *Harmonizing Trade Law to Enable Private Sector Regional Development* (New Zealand 2017)

[22] For more details, see Ketevan Tarkhnishvili, 'Enforcement of International Mediated Settlement Agreements Under Singapore Convention in Comparison to Enforcement of International Arbitration Awards Under New York Convention' (Master thesis, Central European University 2020) https://sierra.ceu.edu/search/a?tarkhnishvili+ketevan

[23] UNCITRAL Model Law on International Commercial Conciliation [2002] Art. 14

[24] Council Directive 2008/52/EC of May 21 on Certain Aspects of Mediation in Civil and Commercial Matters [2008] OJ L136/3, Article 6

[25] Chua (n 13) 574-575

[26] Ibid.

[27] Council Directive 2008/52/EC (n 24) preamble

[28] Chua (n 13) 575-576

1.2. New York Convention and its impact on Singapore Convention

Likewise to Singapore Convention New York Convention is multilateral treaty which has been signed in June 1958 and entered into force in June 1959[29]. Nowadays New York Convention has 168 parties and 24 signatories and is considered as "the most successful treaty in the world"[30] and the "key instruments in international arbitration"[31]. The primer intention for establishment of the New York Convention was to replace Geneva treaties because of the dissatisfaction results of Geneva Protocol on Arbitration Clauses of 1923 and the Geneva Convention on the Execution of Foreign Arbitral Awards of 1927[32].

The aim of the New York Convention is the same for arbitration as in case of Singapore Convention for mediation. The latter provides unified legislative standards for recognition and enforcement of international arbitration awards in every contracting state.[33] In particular, New York Convention establishes common standard for every contracting state to ensure the enforcement of none-domestic arbitration awards in the same way as enforcement of domestic awards[34]. First sentence of article III of New York Convention determines that "[e]ach Contracting State shall recognize arbitral awards as binding […]"[35].

Georgia has accessed New York Convention on 2nd of June, 1994 that entered into force on 31st of August of the same year.

International arbitration and mediation has often been considered as competitors "in an antagonistic battle for the hearts, minds and wallets of disputants".[36] In the Global Pound Conference Survey that took place in 2016-2017 years the delegates have been asked about

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[29] Kaj Hober, 'The New York Convention: A Commentary, Reinmar Wolff' (2014) 8 Disp Resol Int'l 94

[30] Felipe Pavan Callejas, 'The Singapore Convention on Mediation: What Everyone Should Know About It' (Master thesis, Universitat De Barcelona 2019) 7

[31] The New York Convention (New York Arbitration Convention) https://www.newyorkconvention.org/ accessed 17 May, 2021

[32] 'History 1923-1958' (New York Arbitration Convention) https://www.newyorkconvention.org/travaux+preparatoires/history+1923+-+1958 accessed 17 May, 2021

[33] United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) [1958] (n 31) preamble

[34] For more details, see Ketevan Tarkhnishvili, 'Enforcement of International Mediated Settlement Agreements Under Singapore Convention in Comparison to Enforcement of International Arbitration Awards Under New York Convention' (Master thesis, Central European University 2020) https://sierra.ceu.edu/search/a?tarkhnishvili+ketevan

[35] New York Convention [1958] (n 33) Art. III

[36] Iris Ng, 'The Singapore Mediation Convention: What Does it Mean for Arbitration and the Future of Dispute Resolution?' (Kluwer Arbitration Blog, 31 August, 2019) http://arbitrationblog.kluwerarbitration.com/2019/08/31/the-singapore-mediation-convention-what-does-it-mean-for-arbitration-and-the-future-of-dispute-resolution/ accessed 17 May 2021

what would most improve commercial dispute resolution and 51% of them answered the "legislation or conventions that promote recognition and enforcement of settlements, including those reached in mediation".[37]

In another Building on Strong's survey 84% of delegates selected "yes" on the question if they would increase usage or start using mediation during cross-border disputes if there was a uniform global mechanism similar to New York Convention for enforcement of IMSAs[38].

Since, the New York Convention gained a huge success as it has already been mentioned, the best way for establishment of the universal mechanism for enforcement of IMSAs was to establish something similar to it. Even though there are some key differences between those two conventions, such as none existence of seat of mediation (see chapter 2.1.5) or possibility of reservation[39], the influence of New York Convention on Singapore Convention is obvious, since the Singapore Convention[40] is mirroring New York Convention in most of the articles[41] e.g. one of the most significant provision such as grounds for refusal for IMSAs and for international arbitration awards[42].

In this regard, it is also significant to discuss the approaches that is used by Law of Georgia on Arbitration ("Arbitration Law") which is adopted on the basis of the New York Convention[43].

[37] Chua (n 13) 573
[38] Ibid. 574
[39] For more details, see Ketevan Tarkhnishvili, 'Enforcement of International Mediated Settlement Agreements Under Singapore Convention in Comparison to Enforcement of International Arbitration Awards Under New York Convention' (Master thesis, Central European University 2020) https://sierra.ceu.edu/search/a?tarkhnishvili+ketevan
[40] 'United Nations Convention on International Settlement Agreements Resulting from Mediation' (Singapore Convention) [2018]
[41] New York Convention [1958] (n 33)
[42] Jane Player, 'The Impact of Enforcement on Dispute Resolution Methodology' (2021) 1(1) International Mediation Institute https://imimediation.org/2021/05/04/the-impact-of-enforcement-on-dispute-resolution-methodology/ accessed 20 August, 2021
[43] Giorgi TiTberidze, *Law of Georgia on Arbitration Commentary* (second edition, JSC "Print Speech Factory" 2020) 3

Chapter 2: Usage of Singapore Convention in the Framework of Domestic Legislation of Georgia

Article 3 of Singapore Convention determines that “[e]ach 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[44]”.

The latter means that in case the IMSA falls into the scope of Singapore convention (see chapter 2.1.) domestic legislation of contracting state comes into play. In this case each party to the Convention has an obligation to enforce a settlement agreement according to the domestic rules of procedure of the country where the IMSA is going to be enforced but under the conditions established by Singapore Convention. The latter means that the party of the international mediation should be able to enforce its IMSA in any contracting state in accordance to the procedure rule of that state, though the conditions determined by Singapore Convention should also be taken into account.

The mentioned provision is mirroring the first sentence of Article III of New York Convention[45]. The purpose of the latter is to avoid “double *exequatur*”[46] and simplify enforcement regime of IMSAs and arbitration awards.

In this regard, in order to determine the usage of Singapore Convention, it is essential to establish in which cases Singapore Convention is applicable and what type of cases is under the scope of Mediation Law. Moreover, it is also significant to analyze the procedures for enforcement of IMSAs on the basis of Article 3 of Singapore Convention and how and where a party seeking to enforce IMSA should apply for its enforcement.

[44] Singapore Convention [2018] (n 40) Art. 3(1)
[45] New York Convention [1958] (n 33) Art.III
[46] Shouyu Chong and Felix Steffek, 'Enforcement of International Settlement Agreements Resulting from Mediation under the Singapore Convention: Private International Law Issues in Perspective' (2019) 31 SAcLJ 448

2.1. Scopes of Application of Singapore Convention and Mediation Law

Singapore Convention establishes its scopes under Article 1 and determines four prerequisites for its application.

Article 1 of Singapore Convention defines that in order Singapore Convention to be applicable the agreement should be **resulted from mediation**; should be concluded **in writing**; the dispute which is resolving should be **commercial** and **international** at the time of its conclusion[47].

Singapore Convention excludes its application in cases when the settlement agreement is concluded after the dispute in which one of the parties is conducting transaction for personal, family or household reasons and when the agreement is "[r]elated to family, inheritance or employment law"[48]. Furthermore, the Singapore Convention also limits its application for procedural reasons and establishes that the latter is not applicable in case the court has approved the settlement agreement or it is resulted from the court proceedings and enforceable as a judgment in the State of that court[49]; or is recorded and enforceable as an arbitral award[50].

On the other hand, Article 1 of Mediation Law indicates that the latter law is applicable for **mediation** that is conducted on the basis of **mediation agreement** as well as for **judicial mediation** that took place in accordance with Chapter XXI[1] of the Procedure Code[51]. On itself, Chapter XXI[1] deals only with judicial mediation[52].

It is noteworthy that a new Chapter XLIV[16] has been added to the Procedure Code on 22nd of June, 2021 which regulates the role of court in enforcement of IMSA. The mentioned chapter envisages the enforcement of IMSAs in accordance with the Singapore Convention[53].

On the other hand, Article 13[1] (2) of Mediation Law determines that the Supreme Court of Georgia reviews the issue regarding to recognition and enforcement of IMSAs according to the rules established under the latter law and Procedure Code,[54] which means that Mediation Law will apply to Chapter XLIV[16] of Procedure Code for procedural matters for recognition and enforcement of IMSAs.

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47 Singapore Convention [2018] (n 40) Art. 1(1) (n 30)
48 Ibid. Art. 1(2)
49 Ibid. Art. 1(3; a)
50 Ibid. Art. 1(3; b)
51 Georgian Law on Mediation (n 7) Art. 1(2)
52 Civil Procedure Code of Georgia (n 10) Chapter XXI[1]
53 Ibid. Chapter XLIV[16]
54 Georgian Law on Mediation (n 7) Art. 13[1] (2)

On 22nd of June, 2021 scope of application of Mediation Law has also been expanded and it has been added in Article 1(1) that the latter law together with principles of mediation, the rules of organization and operation of the association of mediators and the rights of mediators also regulates the recognition and enforcement of IMSAs[55]. The latter amendment came into force on 8th of July, 2021.

It is noteworthy, that unlike to Mediation Law Singapore Convention avoids usage of the term “recognition” to avert confusion that may appear because of the different interpretation of the latter term in civil law and common law countries[56]. However, the main concept of “recognition” is still covered by Article 3 (2) of Singapore Convention by which a party to the convention should allow a party to the dispute claiming that the ongoing dispute has already been resolved to invoke IMSA in accordance to the rules of procedure of this state and under the conditions of the Convention itself[57].

Another amendment of Mediation Law is Article 13^2 that has appeared on 22nd of June and came into force on 8th of July, 2021 which is mirroring Article 1 (2) and 1 (3) of Singapore Convention that excludes the possibility of recognition and enforcement of same types of IMSAs (see discussion above)[58]. In this regard, Mediation Law not only limits this type of IMSAs to be enforced under Singapore Convention but also excludes the possibility of their enforcement under Georgian legislation.

On the other hand, Article 13^2 spreads the applicability of Mediation Law and Procedure Code in recognition and enforcement of IMSAs only in the scopes in which parties have agreed[59]. In particular, the latter article states that procedural aspects of recognition and enforcement of IMSAs mentioned laws are only applicable in the scopes in which parties have agreed.

Adding the mentioned provision may mean that Georgia is going to ratify Singapore Convention with reservation provided under Article 8 (1) (b) which gives parties to the Singapore Convention right to declare that the Convention will only be applicable if parties of the dispute agree on it.[60]

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[55] Georgian Law on Mediation (n 7) Art. 1(1)
[56] Hal Abramson, ‘The New Singapore Mediation Convention: The Process and Key Choices' (2019) 1056 (1037) 20 Cardozo J Conflict Resol
[57] Timothy Schnabel, 'Recognition by Any Other Name: Article 3 of the Singapore Convention on Mediation' (2019) 1184 (1181) 20 Cardozo J Conflict Resol
[58] Georgian Law on Mediation (n 7) Art. 13^2(1)
[59] Ibid. Art. 13^2(2)
[60] Singapore Convention [2018] (n 40) Art. 8(1)(b)

Since Mediation Law as well as Procedure Code stayed silent regarding to applicability of Georgian law in case cross-border / international mediation proceedings by this time, the reason for the mentioned additions was an attempt to comply with the Singapore Convention. Before those amendments there was a huge ambiguity whether IMSAs could be enforceable under Georgian legislation, since Georgian legislation did not take into account existence of international mediation and enforcement of IMSAs at all.

On the other hand, according to abovementioned discussions from now on Mediation Law extends its application to recognition and enforcement of IMSAs as well.

However, from this prospective it should be analyzed whether those amendments cover gaps that existed before their addition in Georgian legislation and whether they comply with Singapore Convention and simplify usage of the latter in case of cross-border mediation.

2.1.1. "Mediation"

As it has already been mentioned, one of the prerequisites for Singapore Convention to be applicable is that the agreement should be resulted from mediation[61].

Article 2 of Singapore Convention defines the term "mediation" and determines that it "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".[62]

Accordingly, Singapore Convention characterizes the process as mediation when the aim of the parties is **to reach the settlement of their dispute** with a **help of a third neutral party** who should **lack the authority to resolve the dispute** upon to the parties[63].

On the other hand, Mediation Law distinguishes two types of mediation: (i) the mediation that took place on the basis of the agreement of the parties to mediate (private mediation)[64] and (ii) that took place in accordance with Chapter XXI[1] of the Procedure Code[65] (judicial mediation). In particular, Article 2(a) states that mediation is the process where parties of the dispute are

[61] Singapore Convention [2018] (n 40) Art. 1(1)
[62] Ibid. Art. 2(3)
[63] Ibid.
[64] Georgian Law on Mediation (n 7) Art. 1(2)
[65] Ibid.

trying to reach an agreement on their dispute with the help of a mediator regardless whether the process is initiated by the parties or it is determined by law[66].

In itself, Article 187^1 of Procedure Code determines that the case that is subordinated under the judicial mediation can be transferred to mediator for settling a dispute after filing a lawsuit to the court.[67]

Unlike to Mediation Law, Singapore Convention does not take into account the existence of mediation agreement by stating that the mediation is a process "[…] irrespective of the expression used or the basis upon which the process is carried out […]"[68] and does not distinguishing mediation proceeding into private and judicial mediation.

On 22nd of June new definition of IMSA has been added in Mediation Law which links the term "international" to Singapore Convention and states that IMSA is a **written agreement** formed and concluded **for the purpose of resolving a commercial dispute** and **is considered as international agreement under Singapore Convention**[69]. The latter means that Georgian legislation is going to establish the same prerequisites for agreement to be qualified as IMSA as Singapore Convention and by doing so it establishes that all type of IMSAs falling into the scopes of Singapore Convention should be enforced on the basis of its standards.

However, Georgian legislation does not determine whether Singapore Convention should be applicable in case judicial mediation is international, commercial and falls into the scope of the Convention.

On the other hand, Article 1(3) of Singapore Convention excludes its application if settlement agreement has been "approved by a court or concluded in the course of proceedings before a court"[70]. The aim for mentioned exclusion is to avoid overlaps[71] with Hague instruments[72][73], thus it will be only affective when the approval of a court enable parties to enforce agreement as a judgment[74].

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[66] Georgian Law on Mediation (n 7) Art 2(a)
[67] Civil Procedure Code of Georgia (n 10) Art $187^1(1)$
[68] Singapore Convention [2018] (n 40) Art. 2(3)
[69] Georgian Law on Mediation (n 7) Art. $2(e^1)$
[70] Singapore Convention [2018] (n 40) Art. 1(3)(a)(i)
[71] Schnabel, 'The Singapore Convention on Mediation: A Framework for the Cross-Border Recognition and Enforcement of Mediated Settlements' (n 15) 25
[72] Convention on Choice of Court Agreements [2005]
[73] Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters [2019]
[74] Timothy Schnabel, 'The Singapore Convention on Mediation: A Framework for the Cross-Border Recognition and Enforcement of Mediated Settlements' (n 15) 25

In this regard, since in case of judicial mediation similar to private mediation parties are forming IMSA, the latter resulted from judicial mediation may also be enforceable under Singapore Convention in case it falls into its scopes. Moreover, abovementioned Hague instruments does not establish the enforcement of judicial mediation hence, the parallel proceeding or overlap cannot take place.

2.1.2. "Mediator"

In order mediation to be considered as such under Singapore Convention it is obligatory that it was held with assistance of **third neutral party** (mediator) who **lacks authority to impose a solution** upon the parties of the mediation[75].

Requirement of participation of mediator in dispute resolution process for qualification the process as mediation is also determined under Article 2 of Mediation Law[76].

Singapore Convention unlike to Mediation Law does not require mediators to be certified or to hold any type of prove for qualification by stating that any third neutral party may be appointed as mediator for international mediation. In this regard, the Singapore Convention establishes lower standard than it is determined under Mediation Law.

In particular, according to Article 2(e) of the mentioned law the mediator is a neutral person who should be registered at Unified Register of Mediators ("URM") and meets the requirements of the latter law and agrees to conduct the mediation despite the selection procedure or his / her status[77]. Accordingly, the latter clause of the law links the definition of mediator to the registration at the URM that is a unified list of the members of the Georgian Association of Mediators ("GAM" or "Association") administered by the association itself and qualifies the person as the "mediator" only if he / she is a member of GAM and is registered at the URM[78].

The procedure for registration at URM itself is indicated in Article 14 (4) of Mediation Law which states that the legally capable natural person (regardless of nationality) with no criminal record who has completed 60-hour training course, has been participating at simulation

[75] Singapore Convention [2018] (n 40) Art. 2(3)
[76] Georgian Law on Mediation (n 7) Art. 2(a)
[77] Ibid.
[78] Georgian Law on Mediation (n 7) Art. 2(k)

sessions, has developed professional skills and abilities for participating in real mediation[79] and is holding a certificate issued by GAM can be registered at URM[80].

Article 14(6) establishes that the mediation trainings should be held in compliance with the standards established by certification program for mediators[81].

Since mediation is new and less developed ADR mechanism in Georgia, establishment of higher standard for mediators by domestic legislation may have its reasons. In particular, establishment of obligation of being the part URM for conducting a mediation process is an attempt of GAM to control mediators and establish some standards for them. By doing so the law tries to raise the standard for appointment of mediators that would result increase of the level of mediation proceeding in Georgia itself.

On the other hand, by staying silent regarding to the certification requirement and leaving the establishment of the standard to national law the Convention avoids the responsibility to determine the common standard for appointment of mediators for all of the contracting states.

However, Mediation Law tried to establish the standard for foreign mediators as well by stating that the Association will provide the list of international programs that will be considered similarly to the program concluded by Association for certification of mediators[82] for Georgian legislation by which international mediators will be able to be included into URM despite the fact that they are not holding a certificate issued by Association.

In this regard, Article 10(4) of Statute of the Mediators Certification Program of GAM states that mediator of any country is entitled to apply to the executive council of the association with the request for conducting mediation practice in the territory of Georgia for 1 year which can be prolonged every year for the same period of time. The payment of membership costs 500 GEL a year and the latter person should provide the proof of his / her mediator status and / or certificate that should be in compliance with the rules of certification by GAM[83].

Even though, the abovementioned statute determines the procedure for foreign mediators to receive a certificate issued by GAM there is no indication in Mediation Law whether it applies only to foreign mediators who are practitioner mediators in another jurisdiction and / or are

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[79] 'How to Become a Mediator' (Mediators Association of Georgia) https://mediators.ge/en/how-to-become
[80] Georgian Law on Mediation (n 7) Art. 14(4)
[81] Ibid. Art. 14(6)
[82] Ibid. Art. 14(6)
[83] Statute of the Mediators Certification Program of Georgian Mediators Association (revised version of April 24, 2021) Art. 10(4) https://mediators.ge/en/legal-framework

already holding a certificate issued by other country, but wish to continue their practice in Georgia or to mediators who are practitioner mediators / are holding a certificate of other country but are assisting parties who wish to enforce their IMSA in Georgian territory, or merely assisting Georgian parties to settle their dispute as well.

In this regard, since as it has already been mentioned, Singapore Convention does not establish the requirement for certification and new amendment of Mediation Law links definition of IMSA to Singapore Convention[84], in case when Singapore Convention is applicable requirement for certification should be irrelevant for enforcement of IMSA in Georgia. In particular, new amendment of Mediation Law states that IMSA is an agreement formed for settling commercial dispute that is considered as IMSA under Singapore Convention[85]. Accordingly, based on the latter Article even if the IMSA is going to be enforced in Georgian territory in case the agreement falls into the scope of application of Singapore Convention instead of the standard for appointment of mediators established under Mediation Law should be used the standard determined by Singapore Convention.

The mentioned is especially significant since Mediation Law does not determine the definition of "international mediator" and the procedures he/she should go through to acknowledge himself / herself as "mediator" to conduct international mediation that is going to be enforced in Georgian territory.

On the other hand, Article 363^{42} of Procedure Code determines that international mediation is process in which **foreign mediator** is assisting parties to resolve a dispute outside the territory of Georgia. In this regard, the term "foreign mediator" does not fully complies with Singapore Convention since Georgian mediator may still assist parties in mediation that can be considered as international according to the Singapore Convention (see chapter 2.1.5.). Accordingly, in case if Georgian court follows the definition of Georgian Legislation huge amount of IMSAs may remain unenforced due to requirements of certification or the participation of non-Georgian/foreign mediator.

Accordingly, in this regard Georgian court who is going to enforce IMSA should not take into account the establishments under Georgian legislation on certification of mediator or the requirement of participation of foreign mediator and enforce the IMSA under the standard of Singapore Convention in case it suits with its requirements.

[84] Georgian Law on Mediation (n 7) Art. $2(e^1)$
[85] Ibid.

As far as the certification of mediators is concerned, it is also significant to discuss law of the state that has already ratified the Singapore Convention to find out the best solution to establish some kind of standards for mediators but not to get international mediators to be involved into time-consuming procedures for fulfillment of the latter standard.

Republic of Singapore that is one of the states who has signed and ratified[86] Singapore Convention in its Mediation Act 2017 which has been amended after ratification of Singapore Convention establishes that the minister may appoint mediation service provider which will determine accreditation or certification scheme administered by a mediation institution[87]. According to the wording used in the Act accreditation of mediators is not obligatory but it is the right of the minister to appoint mediation service provider that will establish accreditation and certification scheme.

For the mentioned reason, on 1st of November, 2017 minister has named four institutions such as Singapore International Mediation Centre ("SIMC"), Singapore Mediation Centre ("SMC"), Tripartite Alliance for Dispute Management ("TADM"), World Intellectual Property Organization Arbitration and Mediation Center ("WIPO ADR") and Singapore International Institute ("SIMI") as mediation service providers[88].

The benefit of the approach chosen by Republic of Singapore is that the mentioned scheme allows the state to be more flexible in setting standards for domestic as well as for international mediators. In particular, SIMC as well as SIMI and WIPO ADR are international organizations which offer parties mediators from various countries. E.g. WIPO ADR database includes over 2,000 independent mediators and arbitrators from more than 90 jurisdictions[89]. On the other hand, trainings of SMC that is center operating in Singapore has also been approved as certified mediator training program of International Mediation Institution that means that mediators accredited by them will also be qualified international mediators[90]. On itself, SIMC Mediation Rules determines that "[t]he nomination may be from SIMC's Panel of Mediators or from any

[86] 'Status: United Nations Convention on International Settlement Agreements Resulting from Mediation' (n 6)
[87] Republic of Singapore Government Gazette Acts Supplement 2017, s 7 https://sso.agc.gov.sg/Act/MA2017#:~:text=%E2%80%94(1)%20Where%20a%20mediated,as%20an%20order%20of%20court.
[88] 'Singapore Mediation Act in Force from Nov 1' (2017) 1(1) the Business Times Government & Economy https://www.businesstimes.com.sg/government-economy/singapore-mediation-act-in-force-from-nov-1 accessed 20 July, 2021
[89] 'WIPO Neutrals' 1(1) WIPO https://www.wipo.int/amc/en/neutrals/index.html accessed 20 July 2021
[90] 'New Certified Mediator Training Program: Singapore Mediation Centre' (2019) 1(1) IMI https://imimediation.org/2019/12/09/new-certified-mediator-training-program-singapore-mediation-centre/ accessed July 21 2021

other panel"[91] that means that parties may choose SIMC for their dispute resolution but appoint a mediator from e.g. WIPO ADR database, even though SIMC also offers the list of mediators from various countries[92]. On the other hand, SIMI lists qualifying assessment programs that are suitable for SIMI standards for certifying mediators which also includes SIMC[93].

In this regard, unlike to Georgian legislation the ability to choose mediators from abovementioned international organization lists give parties of the international mediation confidence that the mediator is certified and suits with the standards established by the state but do not overload international mediators to go through time-consuming procedures to become the part of that list.

Since, as it has already been mentioned, Singapore Convention[94] copies Article III[95] of New York Convention by which it establishes that the arbitration award should be enforced in accordance to domestic legislation and the Convention itself, it should also be analyzed how Arbitration Law regulates certification of arbitrators and whether the latter is significant for enforcement of international arbitration awards.

Article 11 of Arbitration Law establishes the rule for appointment of arbitrators according to which a person who is going to be appointed as an arbitrator before starting his / her role is obliged to provide parties and arbitration tribune upon their request with written information about his / her education and experience of working as an arbitrator if this person has such type of experience[96]. The latter means that the arbitrator does not have any obligation to possess any type of certificate or to be accredited to be appointed as an arbitrator. Furthermore, it states that in case a court or any other authority is appointing an arbitrator it should take into consideration the qualification that has been required by parties[97].

Moreover, the same article states that a person can only be denied to be appointed as an arbitrator when he / she "a) is a person with limited legal capacity or a beneficiary of support,

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[91] Singapore International Mediation Center Mediation Rules (2020) Art. 4(1) https://simc.com.sg/v2/wp-content/uploads/2020/10/SIMC-Mediation-Rules-EN-FINAL_A4-updated-16-Oct-2020.pdf accessed July 20 2021

[92] 'Our Panel' 1(1) SIMC https://simc.com.sg/mediators/?_sft_simc-panelist-type=international-mediator accessed 20 July 2021

[93] Singapore International Mediation Institute Qualifying Assessment Program (SIMI QAP) 1(1) SIMI https://www.simi.org.sg/What-We-Offer/Mediation-Organisations/SIMI-Qualifying-Assessment-Program#SIMC accessed 20 July 2021

[94] Singapore Convention [2018] (n 40) Art. 3(2)

[95] New York Convention [1958] (n 33) Art. III

[96] Law of Georgia on Arbitration (n 7) Art. 11(5)

[97] Ibid. Art. 11(6)

unless otherwise defined by the court judgment; b) is a state employee, a state political official, a political official or a public servant; c) has been convicted of committing a crime and his / her conviction has not been vacated or expunged; d) was either a mediator in the same case or another case substantively related to that case.[98]"

According to the abovementioned article, Arbitration Law does not even require the specific education or experience or the possession of any type of certificate unless it is required by parties.[99] Accordingly, any person with the knowledge that is demanded by the parties can be appointed as an arbitrator despite the field of education or experience or the certification. It is also noteworthy that Arbitration Law does not indicate the existence of any certification programs for accreditation of a person as an arbitrator. In this regard, parties have full autonomy to appoint arbitrators of any jurisdiction, experience or education that meets their requirements.

On the other hand, likewise Republic of Singapore Georgian arbitration centers and institutes may provide list of arbitrators among which parties of the dispute may choose arbitrators for appointment.[100] However, unlike to legislation of Republic of Singapore the state or the government is not taking participation in granting the center or institution with specific right to provide such list or certifying the members of that list. In particular, any center or institution can provide their own list of arbitrators without any procedures. In addition to the latter, Arbitration Law does not limit parties to choose an arbitrator who is not included in any of the lists provided by Georgian arbitration centers or institutions.

The latter approach can be considered in Mediation Law as well. In particular, in this regard the latter addition would avoid the misunderstanding in certification procedures or the vagueness in obligation to be certified in case of international mediation as well. On the other hand, it would raise the level of party autonomy that is one of the most significant principle in mediation by entitling parties to choose their mediator in accordance to their requirements. The latter approach is way more flexible than the approach established by Republic of Singapore since in this regard the state itself is not taking participation in private dispute resolution

[98] Georgian Law on Mediation (n 7) Art. 11(7)
[99] Giorgi TiTberidze (n 43) 74
[100] see webpage of Georgian International Arbitration Centre (GIAC) https://giac.ge/arbitrators/, or webpage of European Business Association Mediation and Arbitration Center (EBA MAC) https://www.eba-mac.com/arbitrators

process and entitles parties to appoint the person who will resolve a dispute at their discretion from or outside of any list.

However, as it has already been mentioned, since mediation is not as developed as arbitration in Georgia, GAM may need to control mediators and establish some standards for them initially. In this situation the better solution for Georgia nowadays can be approach that is established under Republic of Singapore. In particular, in order GAM to have an ability to control those mediators it may give accreditation to various domestic and international centers or institution who may certify mediators on the basis of which they will provide their own list of mediators and / or to include already certified international mediators into the list of mediators.

Moreover, the approach established in Article 14(6) by which the GAM will provide the international programs which comply the standards establish by GAM[101] can also make some sense in case those mediators will not be obliged to go through the time-consuming and vague procedures but to be automatically considered as certified mediators for Georgian legislation for conducting specific mediation proceeding that may be enforced in Georgian territory.

2.1.3. "In Writing"

Singapore Convention[102] as well as Mediation Law[103] and Procedure Code[104] determine the requirement for IMSA to be in writing in order to be enforced under Singapore Convention.

Georgian legislation does not contain definition of "in writing". However, it is determined under Singapore Convention. In particular, Article 2(2) establishes that "in writing" requirement is met if the content is recorded in any form[105]. Moreover, Singapore Convention determines "in writing" requirement for electronic communication as well according to which it should be accessible and usable for reference in order the agreement to be considered as "in writing"[106][107].

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[101] Georgian Law on Mediation (n 7) Art. 14(6)
[102] Singapore Convention [2018] (n 40) Art. 1(1)
[103] Georgian Law on Mediation (n 7) Art. 2(e[1])
[104] Civil Procedure Code of Georgia (n 10) Art. 363[42](1)(b)
[105] Singapore Convention [2018] (n 40) Art 2(2)
[106] Ibid.
[107] For more details, see Ketevan Tarkhnishvili, 'Enforcement of International Mediated Settlement Agreements Under Singapore Convention in Comparison to Enforcement of International Arbitration Awards Under New York Convention' (Master thesis, Central European University 2020) https://sierra.ceu.edu/search/a?tarkhnishvili+ketevan

On the other hand, Georgian legislation refers to Singapore Convention in the regard of “in writing” requirement and thus fully shares the definition established under the Convention.

2.1.4. “Commercial”

Singapore Convention is established only for enforcement of IMSAs that are formed for settling disputes that are commercial. Thus, one of the main prerequisite for application of Singapore Convention is that the dispute which has been mediated should be commercial[108].

Despite the mentioned, Singapore Convention does not define the term “commercial”. However, the latter definition is provided by the footnote of Article 1(1) of Model Law on International Commercial Mediation and International Settlement Agreements resulting from Mediation (“Model Law”), that has amended UNCITRAL Model Law on International Commercial Conciliation 2002.[109] Model Law determines the term in the broad way and considers that the latter should have wide interpretation and should refer to “all relationships of a commercial nature, whether contractual or not”.[110] The list that is provided under Model Law includes but not limits transactions such as “any trade transaction for the supply or exchange of goods or services; distribution agreement; commercial representation or agency […]” and etc.[111]

By defining “commercial” in such a broad way Model Law intends not to limit the parties of the dispute by linking the latter term to national laws of contracting states.[112][113]

On the other hand, Singapore Convention limits the term by excluding its application in case the agreement relates to employment law.[114]

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[108] Singapore Convention [2018] (n 40) Art. 1(1)

[109] Simon Cheng, Vinceng Yeung, ‘60 Years of Enforceable Arbitration, It’s Now Time For Mediation’ (2018) (Ince Gordon Dadds, 02 October 2018) <https://www.incegd.com/en/news-and-events/news/60-years-of-enforceable-arbitration-it-s-now-time-for-mediation>

[110] 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) footnote of Art. 1(1)

[111] Ibid.

[112] Ellen E. Deason, What’s in a Name? The Term “Commercial” and “Mediation” in the Singapore Convention on Mediation in Harold Abramson (ed), *Singapore Mediation Convention Reference Book* (Tuoro Law Center, 2019)

[113] For more details, see Ketevan Tarkhnishvili, ‘Enforcement of International Mediated Settlement Agreements Under Singapore Convention in Comparison to Enforcement of International Arbitration Awards Under New York Convention’ (Master thesis, Central European University 2020) https://sierra.ceu.edu/search/a?tarkhnishvili+ketevan

[114] Singapore Convention [2018] (n 40) Art. 1(2)(b)

Georgian legislation follows to the mentioned broad interpretation of "commercial" and does not limit it with national interpretation by stating that IMSA is written agreement to solve commercial dispute that is considered as international under Singapore Convention.[115][116]

The benefit not to limit the term "commercial" and not to link the mentioned to domestic law is that it may be defined differently in various states. In particular, the transaction can be considered as "commercial" in one state but has not been deemed as such in another and due to which the IMSA may remain unenforced.

Such type of issue took place regarding to the enforcement of international arbitration award on the base of New York Convention. In particular, New York Convention unlike to Singapore Convention links the term "commercial" to domestic law of the state if that state is making a declaration only to enforce international awards that are considered as commercial under that state[117].

In this regard, in the case of Organic Chemical LTD v. Chemtex Fibers Inc. the court refused to enforce international arbitration award, since even though the agreement between them had commercial nature, the parties could not prove that their relationship was deemed as commercial under the law of India, since India established strict definition of commercial[118][119].

2.1.5. "International"

Another prerequisite for Singapore Convention to be applicable is that mediation should be international.

Article 1 of Singapore Convention states that the dispute is international when: (a) "[a]t least two parties to the settlement agreement have their places of business in different States[120]"; or (b) "[t]he State in which the parties to the settlement agreement have their places of business is different from either: (i) [t]he State in which a substantial part of the obligations under the settlement agreement is performed; or (ii) [t]he State with which the subject matter of the

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[115] Georgian Law on Mediation Art. 2(e[1])
[116] Civil Procedure Code of Georgia (n 10) Art. 363[42] (1)(c)
[117] New York Convention (n 33) Art. 1(3)
[118] Herbert Kronke, Patricia Nacimiento, Dirk Otto, Nicola Christine Port, *Recognition and Enforcement of Foreign Arbitral Awards: A Global Commentary on the New York Convention* (Kluwer Law International B.V 2010) 84
[119] For more details, see Ketevan Tarkhnishvili, 'Enforcement of International Mediated Settlement Agreements Under Singapore Convention in Comparison to Enforcement of International Arbitration Awards Under New York Convention' (Master thesis, Central European University 2020) https://sierra.ceu.edu/search/a?tarkhnishvili+ketevan
[120] Singapore Convention [2018] (n 40) Art. 1(1)(a)

settlement agreement is most closely connected.[121]" In this regard, Singapore Convention deems MSA as international not only in case when the parties are from different state but also in case when the parties are from the same place but the substantial part of obligation was going to be fulfilled in different state or when the IMSA in itself is closely connected to other state.

The definition of "international" has caused some confusions during the initial draft of the Singapore Convention[122]. In particular, working group of the Singapore Convention decided to avoid the term "international agreement" in Article 1(1) since they thought that it may "raise confusion as that expression often referred to agreements between States or other international legal persons binding under international law"[123]. For the mentioned reason, they tried to merge Articles 1(1) and 3(1) (the mentioned was a definition of "international") of draft Convention without indication of the term "international" before "agreement" and formulated the Article 1(1) as follows: "This Convention applies to agreements resulting from mediation and concluded in writing by parties to resolve a commercial dispute ('settlement agreements') if, at the time of the conclusion of that agreement: […]."[124] However, in that case the working group got concerned what type of terminology should have been used for the merged article and that the merger of the scope of application with the definition of "international" may cause some structural issues[125][126].

Due to the mentioned discussions, the working group has decided to leave the combination of the definition of "international" and scope of application by defining "international" in Article 1(1) but to use terminology such as "which is international in that […] with continuing definition of "international"."[127][128]

[121] Singapore Convention [2018] (n 40) Art. 1(1)(b)
[122] Working Group II, Report on the Work of its Sixty-Eight Session (Report, A/CN.9/934, 2018) Ch. 1 United Nations General Assembly, Para IV, 23
[123] Working Group II, Report on the Work of its Sixty-Eight Session (Report, A/CN.9/934, 2018) (122)
[124] Ibid.
[125] Ibid.
[126] For more details, see Ketevan Tarkhnishvili, 'Enforcement of International Mediated Settlement Agreements Under Singapore Convention in Comparison to Enforcement of International Arbitration Awards Under New York Convention' (Master thesis, Central European University 2020) https://sierra.ceu.edu/search/a?tarkhnishvili+ketevan
[127] Ibid.
[128] For more details, see Ketevan Tarkhnishvili, 'Enforcement of International Mediated Settlement Agreements Under Singapore Convention in Comparison to Enforcement of International Arbitration Awards Under New York Convention' (Master thesis, Central European University 2020) https://sierra.ceu.edu/search/a?tarkhnishvili+ketevan

As it has already been mentioned Mediation Law refers to Singapore Convention in the regard to IMSA. Accordingly, Mediation Law follows the same prerequisites for MSA to be considered as international.

However, as it has already been mentioned, at the same time to Mediation Law there has been made some amendments in Procedure Code by one which it has specifically defined the term international mediation[129]. According to the mentioned amendment international mediation is a process despite its name which is concluded **outside the territory** of Georgia by which two or more parties are trying to settle their dispute with a help of foreign mediator[130].

Accordingly, unlike to Singapore Convention and Mediation Law Procedure Code links the feature of internationality to the place of mediation and to the inhabitance of mediator (see the discussion above).

The mentioned reference is nearly similar to the seat of arbitration (the place where the arbitration takes place) that is the requirement under New York Convention the arbitration award to be considered as foreign[131]. In particular, New York Convention has more limited scopes of application then it is considered under Singapore Convention by stating that the New York Convention is applicable for "the recognition and enforcement of arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought"[132]. The same Article unlike to Singapore Convention links the feature "foreign" to domestic legislation of the State by saying that the arbitral award is also foreign if it is not considered as domestic under the State where the recognition and enforcement of the award should take place[133].

The mentioned limitation has rationale for arbitration in the manner that the reference to the seat of arbitration is more crucial for international arbitration than it is in case of mediation, as it gives the specific supervisory rights to domestic courts of State including the right to set

[129] Civil Procedure Code of Georgia (n 10) Art. 363^{42}(1)(b)
[130] Ibid. Art. 363^{42}
[131] New York Convention (n 33) Art. 1(1)
[132] Ibid.
[133] Ibid.

aside an arbitration award[134] that is the only possible way for arbitration award to be appealed[135][136].

On the other hand, since mediation is a starting point for dispute resolution process and in case of its failure parties have right to go through the litigation or arbitration proceedings to resolve the same dispute again, it is vague why Procedure Code linked the feature of internationality to the seat of mediation[137].

Apart from the abovementioned, since definition of international mediation which is stated in Procedure Code is much broader than it is in case of Singapore Convention may cause some uncertainty for qualification of mediation proceedings as international.

In particular, e.g. the mediation which took place outside the territory of Georgia where both parties and the mediator are from the same place the mediation will be considered as international under the Procedure Code but will not be deemed as such under Singapore Convention, hence in such cases Singapore Convention will not be applicable.

On the other hand, the same Article of Procedure Code determines that IMSA is written agreement formed to settle a commercial dispute and which is considered as such under the Singapore Convention[138]. According to the mentioned, those two paragraphs are in collision and may qualify the feature of internationality differently and on the basis of the mentioned, a proceeding outside the territory of Georgia may be considered as international mediation but the agreement formed as a result of latter mediation not be deemed as IMSA.

According to all abovementioned, some types of mediations that is determined as international mediation Article 363^{42} of Procedure Code[139] will not be considered as international mediation

[134] Ahdieh Alipour Herisi, Wendy Trachte-Hiber, 'Aftermath of Singapore Convention: A Comparative Analysis between the Singapore Convention and the New York Convention' (2019) 160 (154) 12 Am J Mediation <https://heinonline.org/HOL/Page?handle=hein.journals/amjm12&div=9&g_sent=1&casa_token=&collection=journals>

[135] Convention on the Execution of Foreign Arbitral Awards [1927] Art 2(a)

[136] For more details, see Ketevan Tarkhnishvili, 'Enforcement of International Mediated Settlement Agreements Under Singapore Convention in Comparison to Enforcement of International Arbitration Awards Under New York Convention' (Master thesis, Central European University 2020) https://sierra.ceu.edu/search/a?tarkhnishvili+ketevan

[137] For more details, see Ketevan Tarkhnishvili, 'Enforcement of International Mediated Settlement Agreements Under Singapore Convention in Comparison to Enforcement of International Arbitration Awards Under New York Convention' (Master thesis, Central European University 2020) https://sierra.ceu.edu/search/a?tarkhnishvili+ketevan

[138] Civil Procedure Code of Georgia (n 10) Art. 363^{42} (c)

[139] Ibid. Art. 363^{42} (b)

under Singapore Convention[140] and the agreement resulted from the latter will be enforced as an regular MSA and not the IMSA that is enforceable under Singapore Convention.

2.2. Requirement for Reliance on Settlement Agreements

As it has already been mentioned, Singapore Convention determines that party wishing to enforce IMSA should act in accordance to the procedures of the states and Convention itself[141].

Article 4 of Singapore Convention establishes "Requirements for reliance on settlement agreements[142]" that determines list of documents that "[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[143]." In particular, the mentioned Article provides standard how parties wishing to enforce IMSA in accordance to Singapore Convention may prove that international mediation really took place. The mentioned standard has been established since some delegates of working group thought that parties may try to enforce agreement that was not reached on the basis of "real" mediation[144].

For the mentioned reason Article 4 (1) of Singapore Convention establishes that a party seeking to enforce IMSA should provide the competent authority of the state with:

> *"(a) The settlement agreement signed by the parties;*
>
> *(b) Evidence that the settlement agreement resulted from mediation, such as:*
>
> > *(i) The mediator's signature on the settlement agreement;*
> >
> > *(ii) A document signed by the mediator indicating that the mediation was carried out;*
> >
> > *(iii) An attestation by the institution that administered the mediation; or*
> >
> > *(iv) In the absence of (i), (ii) or (iii), any other evidence acceptable to the competent authority.[145]"*

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[140] Singapore Convention [2018] (n 40) Art. 1(1)
[141] Ibid. Art. 3(1)
[142] Ibid. Art. 4
[143] Singapore Convention [2018] (n 40) Art. 1(1)
[144] Allan J Stitt, 'The Singapore Convention: When has a Mediation Taken Place (Article 4)' (2019) 20 Cardozo J Conflict Resol (1173) 1174
[145] Singapore Convention [2018] (n 40) Art. 4

According to the mentioned article, signature of the parties is obligatory for IMSA to be enforced under Singapore Convention, whereas parties may choose which evidence to provide to the competent authority from the list under the paragraph (b) of the mentioned article.

The mentioned diversity is the cause of differences in legislation of countries that may become parties of the convention. In particular, since some of them thought that parties may try to create IMSA fraudulently there was a consensus in the working group that the IMSA should be signed by the parties, as it would be harder to commit fraud if there be the requirement to sign the agreement[146].

It is noteworthy, that Singapore Convention also provides the different requirement for mediations that took place through electronic communication to meet the requirement to "sign"[147]. However, the mentioned unlike to New York Convention[148] does not determines the requirement to exchange letters or telegrams in this case.

However, as for other documents that are determined in article 4(1)(b) there was disagreement among members of working group[149]. In particular, in some of the European states and in Israel it is common when the mediator is drafting and signing the MSA[150]. However, on the other hand, in some states such as North America and UK it is considered as dangerous practice, since the drafting of the agreement and signing it may be deemed as legal work and the mediator considered as a lawyer who in this case has an obligation to make full disclosure to every party of the mediation that will become an obstacle during caucuses[151]. That is why Singapore Convention contains the possibility to prove that mediation took place by submitting other type of documents such as attestation by the institution or any other evidence that may prove that mediation proceeding was real[152].

The abovementioned standard is almost invariably provided by Procedure Code as well[153]. In particular, as it has already been mentioned, Mediation Law provides that the recognition and enforcement of IMSAs should take place in accordance to the procedures provided by

[146] J Stitt (n 144) 1175
[147] Singapore Convention [2018] (n 40) Art. 4(2)
[148] New York Convention [1958] (n 33) Art. II(2)
[149] J Stitt (n 144) 1175-1176
[150] Ibid. 1176
[151] Ibid.
[152] Singapore Convention [2018] (n 40) Art. 4(1)(b)(iii; iv)
[153] Civil Procedure Code of Georgia (n 10) Art. 363^{43}(3)

Mediation Law and Procedure Code[154]. However, even though the latter procedure is not provided by Mediation Law it is established by Procedure Code.

It should also been emphasized, that Mediation Law[155] as well as Procedure Code[156] names Supreme Court of Georgia as competent authority which may recognize and enforce IMSAs.

The latter amendments have been added on June 22, 2021. Before those amendments neither Mediation Law[157] nor Procedure Code[158] determined such type of competent authority. Accordingly, by this time it was vague to whom a party would have to address for recognition and enforcement of IMSAs.

Article 363^{43} establishes that an application for recognition and enforcement of an international mediation settlement may be submitted to the Supreme Court of Georgia by one or both parties to the international mediation[159]. The list of the documents that may become as evidence that mediation proceeding took place is almost the same as in case of Singapore Convention[160].

The only difference that appears is the one that has been unanimously established by members of working groups – signature of the parties. In particular, Article 363^{43} (3)(a) determines that the party who wishes to recognize and enforce IMSA should submit to the court original or duly certified copy of the IMSA, as well as a duly certified translation of this document into Georgian language[161]. In this regard, the Code does not specify that the IMSA should contain the signature of the parties.

Procedure Code does not also establish the requirements for enforcement of IMSAs that took place by means of electronic communication.[162]. Its absent may be drawback especially nowadays in the period of Covid-19 when the borders are closed and parties and the mediators may not be able to travel in different country to conduct mediation. In this regard, since the only way to participate in international mediation is to perform it online, it is essential to regulate enforcement of the latter as well.

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[154] Georgian Law on Mediation (n 7) Art. 13^{1}(2)
[155] Ibid. (n 7) Art. 13^{1}
[156] Civil Procedure Code of Georgia (n 10) Art. 363^{43}(1)
[157] Georgian Law on Mediation (n 7) Art. 13^{1}
[158] Civil Procedure Code of Georgia (n 10) Art. 363^{43}
[159] Ibid. Art. 363^{43}(2)
[160] Ibid. Art. 363^{43}(3)
[161] Ibid. 363^{43}(3)(a)
[162] Singapore Convention [2018] (n 40) Art. 4(2)

Conclusion

Signature of the Singapore Convention as well as adoption of new Law on Mediation is a big step towards development of international mediation in Georgia. Enforcement of IMSAs has always been challenging and avoidance of business to be involved into international mediation showed the need for establishment of unified rule that will guarantee its enforcement in various states. However, even though Singapore Convention determines standards for enforcement of IMSAs as it has already been mentioned, it will never succeed if contracting states do not comply with it.

The thesis aimed to determine the usage of Singapore Convention on the basis of Georgian legislation and its compliance to the standards established by the Convention itself.

In this regard, one of the most essential amendment that has appeared in Georgian legislation is that both Mediation Law as well as Procedure Code linked the term IMSA to Singapore Convention and determined that IMSA is every written agreement that is resulted from the settlement of commercial dispute and considered as IMSA under Singapore Convention[163][164].

According to the mentioned addition, Georgian legislation is going to qualify agreement as IMSA as it is determined under Singapore Convention that will guarantee the application of Singapore Convention for enforcement of those IMSAs.

However, despite of the mentioned, the following paper showed that new amendments contain some provision that are vague or does not comply with the standards determined under Singapore Convention.

In particular, Mediation Law establishes higher standard for appointment of mediators than it is determined under Singapore Convention. In particular, the mentioned Convention allows the appointment of any third party who lacks authority to impose solution upon the parties as a mediator. On the other hand, Georgian legislation obliges mediators to go through the time-consuming procedures including trainings and simulations to be registered at the URM that is a unified list of member states of GAM in order to be appointed as a mediator.[165] Even though,

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[163] Georgian Law on Mediation Art. $2(e^1)$
[164] Civil Procedure Code of Georgia (n 10) Art. $363^{42}(1)(b)$
[165] Georgian Law on Mediation (n 7) Art. 2(e)

the mentioned obligation refers to the mediators who are going to be appointed for domestic mediation proceedings the law establishes the standard for foreign mediators as well[166].

The main issue in this case is that the law does not determines whether the mentioned requirement applies only to foreign mediators who are going to continue their practice in Georgia, or to foreign mediators who wish to conduct international mediation that will be enforceable in Georgian territory as well.

In this regard, the paper showed that, since Georgian legislation determined the same requirement for agreement to be considered as IMSA as it is established under Singapore Convention, the requirement of certification should be irrelevant in case the agreement falls into the scope of Singapore Convention.

On the other hand, the paper also showed that, since mediation is new and still not developed ADR mechanism in Georgia, the establishment of URM by the GAM may have its reasons such as the attempt to provide high standard for mediators to gain confidence of the parties of the dispute.

In this regard, the thesis analyzed two approaches one of which is the approach used by Arbitration Law and the one that is used in Republic of Singapore that is one of the states ratifying Singapore Convention.

Arbitration Law does not provide any requirement for certification but obliges arbitrator to submit information about his / her education and experience of working as an arbitrator if any upon the request of the parties[167]. Moreover, it also obliged the court or any other authority which is appointing an arbitrator to take into consideration the qualification that has been required by parties[168].

On the other hand, in case of Republic of Singapore its minister has named four national and international institutions who may certify mediators and create their own list of mediators among which parties of the mediation may choose their national as well as international mediator[169].

In this regard, Mediation Law may also grant different national and international centers and institutions with right to provide their own list of mediators by certifying them or including

[166] Georgian Law on Mediation (n 7) Art. 14(6)
[167] Law of Georgia on Arbitration Art. 11(5)
[168] Ibid. Art. 11(6)
[169] Republic of Singapore Government Gazette Acts Supplement (n 87)

already certified mediators into it. By doing so, GAM may remain the control in certification and appointment process of mediators but it will be established different standards for national and international mediators.

Moreover, unlike to Singapore Convention Procedure Code linked the feature of internationality of agreement to the place of mediation (seat of mediation) and to the inhabitance of mediator.[170]

According to the mentioned, the paper showed that the seat may be relevant for New York Convention, since it gives the court of the state certain supervisory power and allows the arbitration award to be set aside[171]. However, it is irrelevant for Singapore Convention, since mediation is starting point in dispute resolution and parties does not need to set aside IMSA as they are entitled to go through litigation or arbitration proceeding for the same dispute.

Furthermore, the paper also showed that such broad definition of international mediation as well as linkage the mentioned to the inhabitance of the mediator may cause some uncertainties, since some of the mediation proceedings may be considered as international under the latter provision but do not deemed as such under Singapore Convention.

In this manner, the paper showed that even if the mediation is going to be considered as international under Georgian legislation the agreement may still be domestic under Singapore Convention and thus it will be enforced as domestic MSA under domestic legislation instead of the IMSA through Singapore Convention.

On the other hand, the requirements of "in writing" and "commercial" under Georgian legislation fully complies with the standard determined under Singapore Convention.

Moreover, Georgian legislation directly copies the list of documents that should be provided to the competent authority for enforcement of IMSA[172]. The only difference between them is that Georgian legislation requires a dully certified copy of the IMSA, as well as a duly certified translation of this document into Georgian language by the party seeking for relief instead of requirement to provide signed IMSA[173].

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[170] Civil Procedure Code of Georgia (n 10) Art. 363^{42}(1)(b)
[171] Alipour Herisi, Trachte-Hiber (n 134)
[172] Civil Procedure Code of Georgia (n 10) 363^{43}(3)(a)
[173] Ibid.

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