

OON & BAZUL





## Singapore: The birthplace of the Singapore Convention on Mediation

The United Nations Convention on International Settlement Agreements resulting from Mediation or the Singapore Convention was first opened for signature in Singapore on 7 August 2019. The Singapore Convention paves the way for mediated settlements to be enforced across borders saving parties both time and money. Since its inception two years ago, the Singapore Convention has already gained fifty-five signatories and nine countries have ratified it. The countries that have ratified the Singapore Convention are Singapore, Turkey, Saudi Arabia, Qatar, Honduras, Fiji, Ecuador, Belarus and Georgia.

Briefly, the Singapore Convention provides a harmonised mechanism for the enforcement of negotiated settlement agreements arising out of mediation, akin to what the New York Convention on the Recognition and Enforcement of Arbitral Awards (the “New York Convention”) does for international arbitral awards. It allows the enforcing party to go directly to a state’s court and seek enforcement of the settlement agreement rather than spending resources on obtaining a judgment for breach of contract, and then seeking to enforce that judgement potentially in multiple jurisdictions. Like the New York Convention, there are various grounds for which a court may refuse to enforce a mediated settlement and these include incapacity of a party, the granting of relief would be contrary to public policy, and doubts as to a mediator’s independence. Notably, the speed at which the Singapore Convention has gained traction among states is a testament to the viability of mediation as a dispute resolution tool apart from litigation and arbitration. In fact, mediated settlements may overtake litigation and arbitration as the preferred dispute resolution mechanism. The reason for this is commercially motivated.

In the maritime context, disputes are often unavoidable. This brings the focus on solving the dispute in the most cost-effective and commercial method, which not only preserves the future relationship but allows the current commercial arrangement to continue while the dispute is sequestered and resolved. Mediation will play a bigger role than it does in the resolution of disputes. There is already the concept of ‘Early Intervention Mediation’ where parties appoint a trusted and independent third party with whom each party can discuss the case on a ‘without prejudice’ and confidential basis at a very early stage in a dispute. Early Intervention Mediation uses a more fluid and dynamic, less formalised approach than the classic ‘one day mediation’. Moreover, with the availability of technology there is likely to be changes made to the way in which mediations take place which will allow a quick method to resolve the dispute, for example through a Zoom mediation with the costs corresponding to the quantum of the claim.

In the future, there will be a greater demand for practitioners to build the requisite skillset to cut through the clutter and narrow in on the issues in contention, understand the differences and find the best approach to bridge the difference in the most cost-effective way. This may lead to a change in the way disputes are presented for mediation for maritime claims. Given its specialised nature, the practitioners in this field will be able to differentiate between the real issues and the issues which are there to fill up the pages in the case statements. There may be a demand for page limits and a specialised mediator may be able to focus the attention of the parties to resolve the dispute in a session limited by time. Once a settlement is reached, the enforcement becomes easier with the Singapore convention. It is right for the commercial man to have the expectation that their legal advisors will be able to come together to put a framework to allow their disputes to be resolved faster and in a cost-effective way such that the focus on the commercial enterprise is not hijacked or profits destroyed by the dispute. The Singapore Convention may well form the framework for the way forward.

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Bazul Ashhab is the firm's Managing Partner and Head of Dispute Resolution, where he runs an active Litigation and International Arbitration practice. He also dedicates much of his time to championing mediation. He has been appointed a Specialist Mediator and Ambassador of the Singapore International Mediation Centre.

In his practice, Bazul has acted in a range of shipping litigation and arbitration matters, cargo claims, ship arrests and sanctions-related shipping matters. He acts for both domestic and international banks, shipping companies and shipowners. In recognition of his work and deep expertise in the area, Bazul has been listed as a Senior Accredited Specialist in Maritime and Shipping Law by the Singapore Academy of Law.

Bazul is especially renowned for his expertise in the highly specialised area of misdelivery claims. He has been involved in several matters before the Singapore Courts that provide instructive guidance on the law in relation to the use of bills of lading as security, including *The "Yue You 902"* [2019] SGHC 106 and the Singapore Court of Appeal's decision in *The Luna* [2021] SGCA 84. Over the past 2 years, he has been instructed on 15 misdelivery claims with a combined value exceeding US\$150 million. Bazul's industry expertise in this niche area, together with the fact that the firm is one of the largest conflict-free firms in Singapore, has meant that he is now being instructed as counsel by other shipping firms who are dealing with misdelivery claims.

His client-focussed approach has led to him being recognised in Chambers Global & Asia Pacific, Legal 500 Asia Pacific, Benchmark Litigation Asia Pacific and other publications as a leading practitioner in the Shipping and Maritime field.

Bazul was also awarded the title of "*Singapore Managing Partner of the Year*" by Asian Legal Business. He is ranked as one of Singapore's top 100 lawyers by Asia Business Law Journal. Chambers Global & Asia Pacific, Legal 500 Asia Pacific, and asialaw Profiles recognises him as an exceptional lawyer who provides outstanding client service.

Clients have described him as "*incredibly bright and knowledgeable*", with "*astonishing speed and strategy*" as quoted in Legal 500 Asia Pacific. He is commended for his ability to "*combine legal knowledge with commercial acumen*", being "*exceptional at crisis management*" and having "*a very keen mind*" and able to handle "*complex, high-value claims*". He is admired for his "*honest, carefully analysed solution*" and his ability to "*not hesitate to disagree which avoids decisions made on impulse*".

