

UK Announces it will become a party to the Singapore Convention on Mediation

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It has been announced that the UK will become a party to the United Nations Convention on International Settlement Agreements Resulting from Mediation (the “Singapore Convention”), as an “important signal of [the UK’s] intentions to remain a world leader in this area and as a clear indication of the UK’s commitment to mediation”.

The Singapore Convention

The Singapore Convention was adopted by the UN in December 2018, opened for signatures in August 2019 and in force by September 2020. It currently has 55 signatories, 10 of whom have ratified.

It creates a framework for the enforcement of international mediation settlement agreements, avoiding the need for full court proceedings.

The Singapore Convention provides that each State shall enforce any international mediation settlement agreement in accordance with its own rules of procedure and under the conditions of the Singapore Convention. (“International” being defined as where at least two of the parties have their place of business in different States; or the State of the parties’ place of business is different from the State in which a substantial part of the obligations under the settlement agreement is performed / with which the subject matter is most closely related.)

A party can seek relief under the Singapore Convention by supplying evidence to the competent authority in the State (i.e. a court) that the settlement agreement resulted from mediation (such as the mediator’s signature on the settlement agreement or other document indicating that the mediation was carried out), after which there are limited grounds on which the court may refuse to grant the relief sought. For more information, please see our previous Law-Nows [here](https://cms-lawnow.com/en/ealerts/2019/08/a-stepforward-for-international-mediation-the-singapore-convention-open-for-signatures) [https://cms-lawnow.com/en/ealerts/2019/08/a-stepforward-for-international-mediation-the-singapore-convention-open-for-signatures] and [here](https://cms-lawnow.com/en/ealerts/2020/09/international-mediation-update-the-singapore-conventionin-force-on-12-september-2020) [https://cms-lawnow.com/en/ealerts/2020/09/international-mediation-update-the-singapore-conventionin-force-on-12-september-2020] .

The Singapore Convention has been largely well received, although some say it is not necessary given that there are few issues regarding enforcement of settlement agreements arising from mediation.

The UK’s Position

On 2 March 2023, the UK Government announced that it “is the right time” for the UK to become a party to the Singapore Convention and that the UK will sign up as soon as possible.

This comes a year after the Ministry of Justice’s consultation of 2022 on whether the UK should become party to the Singapore Convention and if so, how to implement it in UK domestic law. The results of that consultation (published at the same time as this announcement), showed that whilst a minority of respondents thought there would be limited benefits

in the UK becoming party to the Singapore Convention (given there are already effective mechanisms for enforcing settlement agreements in the UK), the majority thought that the UK should become a party now. The key reasons given were to (a) raise the profile of mediation; (b) increase the credibility of UK based mediators; (c) maintain the UK's position as an attractive centre for dispute resolution (including internationally); (d) signal the UK's ambition to remain a global leader in Private International Law; and (e) allow the UK to contribute to the interpretation of the Singapore Convention's provisions through court judgments.

The UK Government appears to agree, emphasising the benefits of mediation, how it is integral to the UK justice system and concluding that *"it is the right time for the UK to become a party ... as a clear signal to our international partners that the UK is committed to maintaining and strengthening its position as a centre for dispute resolution and to promote the UK's flourishing legal and mediation sectors"*.

In doing so, the UK Government has gone "all in" and confirmed that it will not make either of the two permissible reservations. Those reservations are that the Singapore Convention (1) shall not apply to settlement agreements involving Governmental or state parties; and (2) shall only apply to the extent that parties to the settlement agreement agree to apply it. The reasons given are that the reputation of mediation and of the Singapore Convention will be strengthened by the UK not applying the first reservation; and that to apply the second reservation and requiring parties to opt-in could be perceived to be contrary to the UK Government's aims of promoting mediation as an effective method of dispute resolution and providing businesses with a uniform process for enforcing a cross-border commercial mediated settlement agreement. It remains the case however, that under the provisions of the Singapore Convention mediating parties can still opt-out, by expressly stating in their settlement agreement that it shall not apply.

Developments in Singapore

Meanwhile in a SIDRA International Dispute Resolution Survey: 2022 Final Report carried out by the Singapore International Dispute Resolution Academy, respondents indicated that their top two most used mediation institutions were the Singapore International Mediation Centre ("SIMC") (61%) and the International Chamber of Commerce ("ICC") (28%). An important feature of the SIMC is the connectedness that it has with other institutions, such as the SIMC-CAMP Joint COVID-19 Protocol, which was designed to offer businesses operating along the India-Singapore business corridor access to economical, efficient and effective mediation amidst the COVID-19 pandemic. The two countries have seen bilateral trade rising over the years to about US\$28 billion in 2019. The SIMC also has a similar arrangement with the Japan International Mediation Center ("JIMC") under the JIMC-SIMC Joint COVID-19 Protocol which expedites mediation for business relationships with a Japanese connection and is the first known COVID-19 mediation protocol between two international centres.

The SIMC reports double-digit growth year-on-year in the last 3 years – with 77 cases in 2022. The value of disputes filed for mediation at the SIMC tripled between 2019 and 2021 to US \$3 billion – this sum equalled the total dispute value for the previous six years (2014 – 2020). In 2022, the total dispute value of cases exceeded US\$4.84 billion.

Conclusions

The UK has taken some time to confirm that it will sign up to the Singapore Convention – whereas 46 states, including the US and China, signed on the day the Singapore Convention opened for signatures in 2019.

Whilst the UK signing now looks likely to happen quickly, ratification will take some time. Implementing legislation will require to be put in place across the UK (including amendments to rules of court), before the UK Government will lay the Singapore Convention in Parliament, ahead of ratification. This will give rise to questions around the interpretation of the Singapore Convention and therefore how the courts in the UK will approach enforcement issues. Although some consider that the development of such jurisprudence and the increased involvement of lawyers could make enforcement more difficult.

Nevertheless, it is an obvious step for the UK to take. Further the UK government is making headway by consulting on regulating or strengthening the voluntary self-regulation already in place for mediators operating in England and Wales, to align it with the implications of implementing the Convention.

Whilst critics say the Singapore Convention is not needed, given low rates of non-compliance with mediation settlement agreements and pre-existing mechanisms for enforcing settlement agreements in the UK, there is a bigger picture. The Singapore Convention is a critical step forward for mediation on the international stage – it gives mediation greater credibility and reassures potential mediation participants. It also sits well with the UK's push in recent years (particularly in England and Wales), to increase the use of alternative dispute resolution and to integrate it into the civil justice system to a much greater extent, even to the point where it will be mainstream and no longer seen as “alternative”.

Mediation forms a major part of that and has had much success in its own journey to becoming mainstream. The latest CEDR Audit (of February 2023) estimated that in the UK annual mediation case numbers are up 3% on pre-pandemic levels to c.17,000; that £20bn worth of cases are mediated each year; and that £5.9bn of savings (from wasted management time, damaged relationships, lost productivity and legal fees) are made by the earlier resolution of cases that would otherwise have gone through litigation. Such popularity is likely to continue going forward in the UK and internationally, with countries across the Indo-Pacific, Middle East and Africa already being signatories to the Singapore Convention.

References:

- [United Nations Convention on International Settlement Agreements Resulting from Mediation](https://uncitral.un.org/en/texts/mediation/conventions/international_settlement_agreements)
- [\[https://uncitral.un.org/en/texts/mediation/conventions/international_settlement_agreements\]](https://uncitral.un.org/en/texts/mediation/conventions/international_settlement_agreements) UK Government response to the consultation on the Singapore Convention on Mediation, 2 March 2023 [\[https://questions-statements.parliament.uk/written-statements/detail/2023-03-02/HCWS592?utm_campaign=Commercial%20Newsletter&utm_medium=email&_hsmi=248494549&_hsenc=p2AN qtz--qqpA8IG8gW8cQ3EHEWImVbwYftsT3Gu4410vvWTUax4G7gNUgAgwrnBc5feSJ8ahqY-1UC1OZlw_B-zRwm6PRBwvk7jC8-EePMzCjJPhNeAmkHmY&utm_content=248494549&utm_source=hs_email\]](https://questions-statements.parliament.uk/written-statements/detail/2023-03-02/HCWS592?utm_campaign=Commercial%20Newsletter&utm_medium=email&_hsmi=248494549&_hsenc=p2AN qtz--qqpA8IG8gW8cQ3EHEWImVbwYftsT3Gu4410vvWTUax4G7gNUgAgwrnBc5feSJ8ahqY-1UC1OZlw_B-zRwm6PRBwvk7jC8-EePMzCjJPhNeAmkHmY&utm_content=248494549&utm_source=hs_email)
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KEY CONTACTS



Richard Bamforth[\[https://cms.law/en/gbr/people/richard-bamforth\]](https://cms.law/en/gbr/people/richard-bamforth)

Partner, London

Head of the CMS International Arbitration Group



Lynette Chew[\[https://cms.law/en/sgp/people/lynette-chew\]](https://cms.law/en/sgp/people/lynette-chew)

Partner, Singapore



Jane Fender-Allison[\[https://cms.law/en/gbr/people/jane-fender-allison\]](https://cms.law/en/gbr/people/jane-fender-allison)

Of Counsel, Glasgow



Rob Wilson[\[https://cms.law/en/gbr/people/rob-wilson\]](https://cms.law/en/gbr/people/rob-wilson)

Partner, London



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