

## Singapore Convention on Mediation: one step closer

When the Singapore Convention on Mediation was launched in August 2019 it garnered a record-breaking 46 signatories but there were some noticeable absentees, including Canada, the EU and, in particular, the UK. However, that is about to change where the UK is concerned.

In its 2 March 2023 response to its February 2022 consultation on ratifying the Convention, the government confirmed that it is the right time for the UK to become a party to the Convention (*see Opinion "Ratifying the Singapore Convention on Mediation: opportunity or non-event?"*, [www.practicallaw.com/w-034-8815](http://www.practicallaw.com/w-034-8815)). In doing so, the government highlighted the integral part that mediation plays in the justice system. It is estimated that commercial mediation can save businesses around £5.9 billion per year in management time, relationships, productivity and legal fees. The total value of UK-mediated cases is estimated to be £20 billion each year.

The Convention, which officially came into force in September 2020, aims to provide a legal framework for the recognition of mediated settlements across jurisdictions: an aim akin to what the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards has achieved for international arbitration.

While the government has not given an exact timeframe, the signing of the Convention will take place as soon as possible. Ratification will occur once the necessary implementing legislation and rules have been put in place. The Convention will then officially come into force in the UK six months after the UK deposits its instrument of ratification with the UN headquarters in New York.

### Legal framework

The Convention creates an obligation on contracting states to recognise settlement agreements that are reached during the mediation of international commercial disputes by allowing for the agreements to be enforced or to be used as a defence to a claim. In practice, this means that an aggrieved party to an international settlement agreement to which the Convention applies may apply directly to the relevant court for enforcement without the need to initiate new proceedings.

The government has also confirmed that it will not apply the two permissible reservations under the Convention. This means that mediated agreements involving government or state parties will not be excluded and

the Convention will automatically apply to any commercial cross-border mediated settlements, although parties will be able to opt out of the Convention by expressly excluding it in their agreements.

The Convention is not universal and specific criteria must be met before it can be applied. Settlement agreements that are enforceable by court judgment, and those that have been recorded and are enforceable as an arbitral award, do not fall within the scope of the Convention, as other international instruments already cover these types of agreement. However, it remains somewhat unclear if the mere involvement of a judge or arbitrator at some point in the dispute resolution process would exclude a settlement agreement from the Convention. This issue will no doubt come before the courts eventually.

Settlement agreements relating to certain subject matters are also excluded. Notably, this includes employment, family and inheritance matters, and disputes concerning transactions involving a consumer for personal, family or household purposes.

Once the Convention is implemented, changes will be needed to court rules and parties will need to be advised on its applicability. For example, when drafting a mediated settlement agreement relating to an international dispute, parties will need to consider whether it is appropriate to include an express opt-out from the Convention.

### Positive impact

In reaching its decision to become a party to the Convention, the government cited numerous positive impacts. In particular, it has the potential to reinforce the UK's attractiveness as a respected jurisdiction for international dispute resolution because of the reciprocal nature of the Convention and the obligation on the UK to recognise and enforce settlement agreements from any jurisdiction that meets the requisite criteria. It is also hoped that it will support international business by increasing confidence to trade between different jurisdictions by providing a clear process for resolving commercial disputes through mediation.

In recent years, mediation generally has received much attention, with the Master of the Rolls, Sir Geoffrey Vos, putting it front and centre when he asked the Civil Justice Council to report on the legality and desirability of compulsory alternative dispute resolution.

The conclusion reached by the Civil Justice Council in July 2021 was that mandatory alternative dispute resolution is lawful and should be encouraged ([www.judiciary.uk/guidance-and-resources/mandatory-alternative-dispute-resolution-is-lawful-and-should-be-encouraged/](http://www.judiciary.uk/guidance-and-resources/mandatory-alternative-dispute-resolution-is-lawful-and-should-be-encouraged/)). Moreover, the Civil Justice Council noted that, as mediation becomes better regulated, more familiar and continues to be made available in shorter, cheaper formats, there should be no reason for mandatory alternative dispute resolution not to be considered.

Following the Civil Justice Council's conclusion, on 26 July 2022, the government consulted on increasing the use of mediation in the civil justice system ([www.gov.uk/government/consultations/increasing-the-use-of-mediation-in-the-civil-justice-system](http://www.gov.uk/government/consultations/increasing-the-use-of-mediation-in-the-civil-justice-system)). That consultation has now closed and a formal response is awaited.

In addition, owing in part to the COVID-19 pandemic, there has been a rise in the use of online mediation. In its Ninth Mediation Audit, published in May 2021, the Centre for Effective Dispute Resolution predicted that online mediation is here to stay and will only serve to increase the overall level of cross-border mediation ([www.cedr.com/wp-content/uploads/2021/05/CEDR\\_Audit-2021-Ir.pdf](http://www.cedr.com/wp-content/uploads/2021/05/CEDR_Audit-2021-Ir.pdf)).

Therefore, while the Convention should not be seen as a panacea, its eventual ratification by the UK has the potential to bolster the UK's dispute resolution offering for international disputes. It will also further strengthen mediation's seat at the table, alongside its litigation and arbitration cousins, and continue the momentum towards mediation no longer being considered to be an "alternative" form of dispute resolution.

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*The government's response is available at [www.gov.uk/government/consultations/the-singapore-convention-on-mediation/outcome/government-response-to-the-consultation-on-the-united-nations-convention-on-international-settlement-agreements-resulting-from-mediation-new-york-20#conclusions-and-next-steps](http://www.gov.uk/government/consultations/the-singapore-convention-on-mediation/outcome/government-response-to-the-consultation-on-the-united-nations-convention-on-international-settlement-agreements-resulting-from-mediation-new-york-20#conclusions-and-next-steps).*

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