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UK GOVERNMENT ISSUES A CONSULTATION ON THE UK JOINING THE SINGAPORE CONVENTION ON THE ENFORCEMENT OF MEDIATION SETTLEMENT AGREEMENTS

Of interest to commercial parties who engage in or would prefer to engage in mediation to resolve their disputes, will be the UK government's newly launched Consultation seeking views on whether the UK should join the Singapore Convention on the enforcement of mediation settlement agreements (SMC)¹.

The SMC aims to create an effective cross border system for the recognition and enforcement of mediated settlement agreements – similar in concept to arbitration's New York Convention 1958².

Why does this matter?

Mediation is an increasingly popular form of negotiated dispute resolution (also known as alternative dispute resolution), it can provide cost-effective options for resolving disputes without having to go to court. Thereby, potentially saving parties both time and money.

The Consultation references a Centre for Effective Dispute Resolution (CEDR) report³, which estimates that "*mediation can save businesses around £4.6 billion per year in management time, relationships, productivity and legal fees*" and goes on to note, again by reference to a CEDR report, that the economic benefits are not inconsiderable, noting that in 2020 mediation's value was estimated at around £17.5bn⁴.

However, in contrast to litigation, where there are numerous treaties and conventions, which facilitate the enforcement of judgments across most borders, and in the case of arbitration, where the New York Convention 1958 provides a similar system; mediation has not previously been able to offer parties a similar level of comfort, and so its application to those types of disputes has been limited.

The SMC seeks to address this issue and place mediation on a similar footing to litigation and arbitration, in so far as cross border enforcement is concerned.

Will it apply to all mediation settlement agreements?

The SMC will only apply to "*international*" mediation settlement agreements, and requires:

- at least two parties to the settlement agreement to have their places of business in different Convention States; or
- the Convention States in which the parties to the settlement agreement have their places of business are different from to differ:
 - the Convention State in which the obligations under the settlement agreement are to be performed; or
 - the Convention State with which the subject matter of the settlement agreement is most closely connected.

In addition, the settlement agreement must fulfil certain formalities under the SMC:

- it must be in writing and be signed by the parties;

¹ United Nations Convention on International Settlement Agreements Resulting from Mediation (New York, 2018)

² The Convention on the Recognition and Enforcement of Foreign Arbitral Awards

³ Centre for Effective Dispute Resolution 'The full Ninth Mediation Audit' - www.cedr.com/wp-content/uploads/2021/05/CEDR_Audit-2021-lr.pdf

⁴ Centre for Effective Dispute Resolution 'The full Ninth Mediation Audit' - www.cedr.com/wp-content/uploads/2021/05/CEDR_Audit-2021-lr.pdf

- a copy will need to be provided to the Competent Authority (that is the court in the jurisdiction where the enforcement is to take place);
- evidence that the settlement agreement resulted from mediation will be required to be given to the Competent Authority, this can include:
 - the mediator's signature on the settlement agreement;
 - a document signed by the mediator indicating that the mediation took place; or
 - confirmation by any institution administering the mediation.

How will it work?

The SMC enables parties who seek to rely upon a mediated settlement agreement to apply directly to the Competent Authority of the relevant Convention State to enforce the agreement.

Under the terms of the SMC, the 'seat' of the mediation, that is where the agreement was made, took place, or signed is not relevant. The relevant factor is the jurisdiction in which the settlement agreement is to be enforced and whether that jurisdiction is a party to the SMC.

Can enforcement be refused?

A Competent Authority may refuse to grant relief, in a number of circumstances, including where;

- a party lacked capacity;
- the settlement agreement is null and void, inoperative or incapable of being performed under its governing law, or under the law deemed to be applicable;
- the settlement agreement is not binding, or is not final;
- the terms of the settlement agreement have been performed;
- there was a serious breach by the mediator, or failure to declare a conflict; or
- granting relief would be contrary to the public policy.

Which countries are members of the Singapore Mediation Convention?

There are currently nine parties to the Convention: Fiji, Qatar, Saudi Arabia, Belarus, Ecuador, Honduras, Turkey, Georgia, and Singapore.

There are however, another 55 countries who have signed and whom it is presumed intend to finalise membership, these are: Afghanistan, Armenia, Australia, Belarus, Belize, Brazil, Brunei, Chad, Chile, China, Colombia, Republic of the Congo, Democratic Republic of the Congo, Ecuador, Kingdom of Eswatini, Fiji, Gabon, Georgia, Ghana, Grenada, Guinea-Bissau, Haiti, Honduras, India, Iran, Israel, Jamaica, Jordan, Kazakhstan, Laos, Malaysia, Maldives, Mauritius, Montenegro, Nigeria, North Macedonia, Palau, Paraguay, Philippines, Qatar, Rwanda, South Korea, Samoa, Saudi Arabia, Serbia, Sierra Leone, Singapore, Sri Lanka, Timor Leste, Turkey, Uganda, Ukraine, the USA, Uruguay, and Venezuela.

The Consultation

The Consultation was launched on 2 February 2022. The deadline for responses is 1 April 2022.

If you would like to take part in the Consultation you can find the online information and questionnaire on the government site⁵. Alternatively, you can send your feedback to PIL@justice.gov.uk, or if you prefer the authors of this briefing will be happy to submit on your behalf and would be happy to try and answer any questions you may have.

⁵ [Consultation on the United Nations Convention on International Settlement Agreements Resulting from Mediation \(New York, 2018\) - GOV.UK \(www.gov.uk\)](#)

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