

April 27 2023

# United Kingdom announces intention to sign and ratify Singapore Convention on Mediation

Clifford Chance | Arbitration & ADR - United Kingdom



OLIVER  
CARROLL



BENJAMIN  
BARRAT

## > [What is the Singapore Convention?](#)

## > [Enforcement steps](#)

## > [Ratification without reservations](#)

## > [What next?](#)

## > [Comment](#)

Following a consultation which concluded in April 2022, the UK government has announced that it will sign and proceed to ratify the United Nations (UN) Convention on International Settlement Agreements Resulting from Mediation (the Singapore Convention). The Singapore Convention allows parties to settlement agreements reached through mediation to enforce those agreements directly in convention states. The United Kingdom's announcement that it will sign the Singapore Convention as soon as possible will help to cement its position as a leading hub for dispute resolution.

### **What is the Singapore Convention?**

The Singapore Convention facilitates the enforcement of mediated settlement agreements against a party that has breached the terms of the settlement. In addition, where a dispute arises relating to a matter that has already been resolved by a mediated settlement agreement, the agreement can be invoked in a convention state to establish that the matter has been resolved. The Singapore Convention is not reciprocal and, as such, applicable settlement agreements will be directly enforceable in convention states regardless of where the mediation takes place or the settlement agreement is made.

The Singapore Convention is the product of four years' work by the UN Commission on International Trade Law Dispute Settlement Working Group, which finalised its text and gained the approval of the UN General Assembly in 2018. The Singapore Convention was opened for signature in Singapore in 2019 as the world's first ever convention on mediation and came into effect in September 2020. To date, it has been signed by 55 states, and ratified by 10.

Under the Singapore Convention, "mediation" is defined broadly. 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 (the mediator) lacking the authority to impose a solution upon the parties to the dispute. Under this broad definition, "mediation" could potentially include settlement agreements obtained following other processes, such as conciliation, expert determination or even dispute resolution boards.

The Singapore Convention applies to settlement agreements resulting from mediation proceedings which, among other things:

- relate to an underlying dispute that was international at the time of the conclusion of the mediation agreement (satisfied if at least two parties to the settlement have their places of business in different jurisdictions) (article 1(1)); and
- resolve a commercial dispute. This excludes disputes arising from transactions by consumers for personal, family or household purposes, or relating to family, inheritance or employment law (article 1(2)).

The Singapore Convention does not apply to settlement agreements reached through mediation that:

- are enforceable as a judgment in the state in which enforcement is sought;
- have been recorded and are enforceable as an arbitral award; or
- have been approved by a court or concluded in the course of proceedings before a court (article 1(3)).

The UK government is assessing whether the Singapore Convention covers *Tomlin* orders used to approve the settlement of certain claims issued in England and Wales.

### **Enforcement steps**

The Singapore Convention provides a relatively simple and mechanistic enforcement process in the courts of other convention states (comparable to the enforcement of arbitration awards under the New York Convention 1958). For mediation settlements within scope, the Singapore Convention provides that settlement agreements can be directly enforced in "the competent authority" (usually a court) of a convention state, in accordance with its rules of procedure and under the conditions laid down in the Singapore Convention.

Accordingly, once the Singapore Convention enters into force in the United Kingdom, a party to an applicable settlement agreement will be able to directly enforce the agreement through UK courts. Currently, a party would be required to commence a claim for breach of the mediated settlement agreement.

Under the Singapore Convention, a party seeking to enforce a settlement agreement must provide the relevant court with the signed settlement agreement and evidence that the settlement agreement resulted from mediation (eg, the mediator's signature on the settlement agreement).

Under the Singapore Convention, grounds for a court to refuse to enforce the mediated settlement agreement include if:

- a party to the settlement agreement was under incapacity (article 5(1)(a));
- the settlement agreement:
  - is not binding;
  - is null and void, inoperative or incapable of being performed under the law to which it is subjected; or
  - has been subsequently modified (article 5(1)(b));
- there was a serious breach by the mediator of standards applicable to the mediator, or failure by the mediator to disclose circumstances that raise doubts as to their impartiality or independence, without which the party would not have entered into the settlement agreement (articles 5(1)(e) and (f)); and
- granting relief would be contrary to the public policy of the convention state (article 5(2)(a)).

#### **Ratification without reservations**

States may apply two reservations when adopting the Singapore Convention, namely:

- to remove from its scope settlement agreements to which a state or government agency is a party; and
- to provide that the Singapore Convention's protections apply only where the parties to the settlement agreement explicitly have opted in (article 8).

The UK government intends to sign the Singapore Convention without reservation, meaning that relevant settlement agreements reached with the UK government and state agencies will not be excluded. However, the Singapore Convention permits parties to explicitly opt out of its protections in any given settlement agreement should they wish to do so.

#### **What next?**

Each of the United Kingdom's three jurisdictions have sophisticated processes and well-developed jurisprudence dealing with the treatment and enforcement of settlement agreements reached through mediation. However, it is envisaged that once the Singapore Convention is ratified, amendments to the Civil Procedure Rules, the Session Rules and the High Court Rules in England and Wales, Scotland, and Northern Ireland, respectively, will be necessary to facilitate enforcement of relevant agreements.

The UK government, for its part, states that following its signature and ratification of the Singapore Convention, the United Kingdom "will champion the Convention internationally to encourage further ratifications". Notably, both the United States and the European Union have so far failed to ratify the Singapore Convention (in the latter case, due to uncertainty over whether legal competence for its signature and ratification sits at EU or member state level).

#### **Comment**

The United Kingdom's endorsement of the Singapore Convention will, the government hopes:

- boost the United Kingdom's already well-established mediation sector;
- promote the use of mediation internationally; and
- strengthen the United Kingdom's position as a centre for dispute resolution.

While the UK courts already strive to uphold settlement agreements entered into by mediation, any development to streamline the process for enforcement is to be welcomed. The development may serve to remind parties of the potential benefits of mediation as an alternative to, or alongside, arbitration and litigation.

*For further information on this topic please contact [Oliver Carroll](mailto:oliver.carroll@cliffordchance.com) or [Benjamin Barrat](mailto:benjamin.barrat@cliffordchance.com) at Clifford Chance LLP by telephone (+44 20 7006 1000) or email ([oliver.carroll@cliffordchance.com](mailto:oliver.carroll@cliffordchance.com) or [benjamin.barrat@cliffordchance.com](mailto:benjamin.barrat@cliffordchance.com)). The Clifford Chance LLP website can be accessed at [www.cliffordchance.com](http://www.cliffordchance.com).*