Consultation on Implementing the Singapore Convention on Mediation – October 2025

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Response to Questions in the September-October 2025 Consultation:

Q1: Do you have any views on the proposed registration model for mediated settlement agreements under the Singapore Convention in (a) England and Wales; (b) Scotland; and/or (c) Northern Ireland?

It is imperative that I take this opportunity to raise the importance of applying the *correct* mechanism for the enforcement of settlement agreements under English civil procedure rules. The registration model proposed is, unfortunately, more appropriate for arbitral awards and foreign judgments. It is to my mind ***unsuitable*** for the enforcement of mediated settlement agreements. Mediation is quite dissimilar to arbitration and litigation, as it is led by a facilitative and non-determinative process. The dispute resolution outcome from mediation is a product of consensus.

The proper method or mechanism for enforcing mediated settlement agreements judicially is by court order: eg, consent orders, Tomlin orders, settlement agreement enforced as a rule of court (See John Sorabji & Sir David Foskett, *Foskett on Compromise* (10th ed, Sweet & Maxwell, 2024), Chapter 11 'Enforcement of a Compromise'). This is settled practice, and introducing a registration mechanism designed for enforcing arbitral awards and foreign judgments will inevitably lead to some confusion. Whilst it may be arguable that the registration mechanism leads to the same outcome in substance (para [34] of the Consultation acknowledges that 'once a mediated settlement agreement has been registered, then all the powers ordinarily available to enforce a court order should be available to enforce a mediated settlement agreement under the Convention'), it is important that the legislation passed to give effect to the Convention retains the legal terminology and mechanism that is currently applied in the UK to enforce mediated settlement agreements.

Rather than creating a *registration* mechanism similar to the enforcement of arbitral awards, I would strongly recommend that this process be instead characterised as a mechanism to have the applicable settlement agreement *recorded* as an order of court.

I would additionally suggest that an appropriate model of reference for legislation to ratify the Convention's Articles would be found in Singapore legislation: Singapore has drafted legislation in 2022 to ratify the Convention, and has passed it through Parliament as the Singapore Convention on Mediation Act 2020 (Act 4 of 2020) ('SCMA 2020'). I have co-authored a peer-reviewed journal article on the Singapore legislation, which may be accessed on an open-access basis: Nadja Alexander & Shouyu Chong, "Leading the way for the recognition and enforcement of international mediated settlement agreements: The Singapore Convention on Mediation Act 2020" (2022) 34 Singapore Academy of Law Journal 1.

I would prefer the enforcement mechanism to be specifically referred to as an 'order of court'. The drafters of the forthcoming legislation should consider the SCMA 2020, which is quite elegantly conceived. For instance, section 5(1) of the SCMA 2020 provides: 'The High Court may, following an application […], grant permission to record an international settlement agreement as an order of court if the requirements of this Act are complied with.'

Q2: Do you have any views on the proposal that the relevant court should have the discretion to direct that an application be served on the respondent for the opportunity to make representations before a registration decision is made?

The procedure to enforce international mediated settlement agreements should mirror how consent orders and Tomlin Orders are recorded. It is important to first bear in mind that the Singapore Convention focuses on enforcing *commercial* dispute resolution outcomes. The commercial context is important because this affects the degree of review which courts are expected to undertake (cf the 'light touch' or deferential approach undertaken of commercial arbitral awards in recognition and enforcement proceedings).

It is imperative to also bear in mind that these settlement agreements are (or should have been) concluded *consensually* between these commercial parties. Therefore, the review undertaken by the courts on commercial mediated settlement agreements submitted to the courts by application for enforcement should be a light one.

In an application by a party to have a mediated settlement agreement recorded as an order of court, it is intuitively natural for the other party to have the right to respond. The application by one party should therefore be served on the other party, and the other party may respond to the application as they see fit. This system should remain in place.

It may be possible to extend the current position. It is possible to legislate and allow a party to an eligible mediated settlement agreement to apply on an *ex parte* basis to have the settlement agreement recorded as an order of court – amendments to the relevant court standard forms should be made accordingly, additionally and specifically providing for the recording of a mediated settlement agreement as a court order under the Singapore Convention.

However, it is submitted that providing the court with a statutory discretion to 'direct that an application be served on the respondent for the opportunity to make representations before a registration decision is made' is not desirable. First, these settlement agreements are the product of *commercial* dispute resolution. Business parties (regardless of their size) should be able to self-regulate their own decisions for challenging and enforcing commercial mediated settlement agreements. These transaction costs should not be placed on the courts, to review what the disputing commercial parties can do for themselves.

I accept that the position in non-commercial disputes -such as when enforcing settlement agreements from family disputes- is different, as the courts may have a strong policy objective to ensure fairness and root out inequities (eg inequality in bargaining/negotiating powers at mediation). This is why the courts have a discretion to review and accept or reject applications to record consent orders after a mediation of family-related disputes. However, there is no reason to extend these policy protections on business parties.

Secondly, a statutory provision allowing courts (even with some limited discretion) to pro-actively invite submissions from a responding party *also invites more litigation*. This creates the ironic situation of inviting litigation over issues which have been resolved at mediation. We must keep in mind how undesirable litigating over disputes which should be resolved at

arbitration may be. Therefore, it is submitted that the legislation implementing the Singapore Convention should *not* provide courts with any 'discretion to direct that an application be served on the respondent for the opportunity to make representations before a registration decision is made'.

Instead, I will recommend that the Ministry of Justice considers section 8 of the SCMA 2020, which is quite elegantly conceived: 'Where an international settlement agreement has been recorded as an order of court […] in the absence of the party against whom the order of court is sought to be enforced or invoked, the [relevant court] may, upon the application of that party, set aside the order of court on any ground which the [relevant court] may refuse to grant the application […] to record the international settlement agreement as an order of court.'

In *ex parte* cases, legislation should specifically provide the absent party with an opportunity to respond to the application of the first party, on precise terms (ie, they may apply to set aside if any of the Article 5 defences in the Singapore Convention are satisfied). The setting aside provision may be limited by a reasonable and/or appropriate timeline (but note that there is no 'limitation period' in the SCMA 2020).

Q3: With regards to invoking a mediated settlement agreement in other legal proceedings, do you have any views on proposals that a party should be required to register a mediated settlement agreement before it can be presented in other legal proceedings in (a) England and Wales; (b) Scotland; and/or (c) Northern Ireland?

I am concerned with the following observations in paragraph [25] in the Consultation document: '[P]arties seeking to invoke a mediated settlement agreement will first need to register it in the relevant UK jurisdiction'. **I do not think that this step is necessary in every case for invocation of the mediated settlement agreement**. I will explain why.

As a matter of principle, *all* commercial mediated settlement agreements, if they reflect a compromise of business disputes, can be invoked on its own as a matter of common law to permanently stay all court proceedings, on issues that have already been compromised (John Sorabji & Sir David Foskett, *Foskett on Compromise* (10th ed, Sweet & Maxwell, 2024), paras [11-02]-[11-03], citing cases such as *Snelling v John Snelling Ltd* [1973] 1 QB 87, and *Harte v Harte* (1976) CAT 432A). Mediated settlement agreements enforceable under the Singapore Convention are proper subsets of these settlement agreements. It is therefore rather unusual to impose an additional requirement for all parties that wish to invoke a mediated settlement agreement under the Singapore Convention to first 'register' it. Mandatory registration before invocation adds an expensive and inefficient step to the existing recognition process of mediated settlement agreements.

Instead, a general provision may be legislated to reinforce the existing common law position on enforcing and invoking mediated settlement agreements in other legal proceedings. Legislation should permissively allow the invocation of the relevant mediated settlement agreements in court or any other legal proceedings, without the need for registration or necessary recording of it as an order of court (see section 4(1)(b) of the SCMA 2020).

Q4: There are two possible routes to challenge of a registration decision: (i) 'set aside' in all cases or; (ii) a hybrid system with 'set aside' available where the registration decision was made *ex parte* and the appeal where the registration decision was made following a hearing involving both parties. Which of these options do you think is the most appropriate route to challenge any Singapore Convention registration decision in (a) England and Wales; (b) Scotland; (c) Northern Ireland? If relevant, we would welcome any examples from your experience of the current processes for challenging court orders allowing enforcement of arbitral awards.

As the starting point of my analysis in Questions 1 and 2 were quite different, I will proceed with what I had in mind as the appropriate model for 'setting aside'.

In an application by a party to have a mediated settlement agreement recorded as an order of court, it is intuitively natural for the other party to have the right to respond. The application by one party should therefore be served on the other party, and the other party may respond to the application as they see fit. **This system *should remain in place***. **If the parties choose to enforce their mediated settlement agreement in this manner, what we expect through the usual adversarial proceedings should apply**. I do not think that we can conceive an 'appeal' to be forthcoming from these types of proceedings; but rather it is more similar to an 'application and counter-claim' form.

If legislation were passed, extending and allowing a party to an eligible mediated settlement agreement under the Singapore Convention to apply on an *ex parte* basis to have the settlement agreement recorded as an order of court, **legislation should specifically provide the absent party with an opportunity to respond to the application of the first party, on precise terms (ie, they may apply to set aside if any of the Article 5 defences in the Singapore Convention are satisfied)**.

Q5: Do you have any views on the proposal that the implementing legislation should not define or gloss any of the terms used in the Convention, but that such interpretations should be left to the courts to develop?

It is important for the implementing legislation to define some key terms.

i. **'Mediation' should be defined**. Take for instance, Section 2(1) of the SCMA 2020 provides that it is 'a process (whether referred to by the expression "mediation" or "conciliation" or any term of similar import) —

(a) by which the parties to the mediation attempt to reach an amicable settlement of their dispute with the assistance of one or more third parties (called in this Act the mediator); and

(b) in which the mediator lacks the authority to impose a solution upon the parties to the dispute…'

ii. **‘Settlement agreement’ should be defined**. Take for instance, Section 2(1) of the SCMA 2020 provides that it ‘means an agreement resulting from mediation and concluded in writing by the parties to the mediation to resolve a commercial dispute’.

iii. **What is ‘commercial’ should be defined**. As a positive definition is quite difficult to achieve, perhaps an exclusionary approach is desirable (eg, ‘This Act does not apply to family, employment and consumer disputes etc.’’

Q6: Do you have any views on the proposals for the grounds for refusing relief under the Convention stated above or any comments on the other Article 5 grounds for refusing relief in (a) England and Wales; (b) Scotland; and/or (c) Northern Ireland?

I am concerned by the following observations at paragraph [41] in the Consultation document: ‘If a registration decision is made without notifying the respondent, the court will have had regard to the grounds for refusal and concluded on the evidence available to it that it was not necessary to direct that the respondent should be informed of the application at that stage’.

I think there is a slight misunderstanding of the Article 5 grounds which must be brought to attention. The Article 5(1) grounds for refusing to grant enforcement relief under the Singapore Convention may only be applied ‘at the request of the party against whom the relief is sought only if that party furnishes to the competent authority [with] proof’ that the defences stated under Articles 5(1)(a)-(f) are available. It is clear from plain reading of the provisions in Article 5(1) that the burden of proof lies on the ‘party against whom the relief is sought’. To my mind, it is not correct to make provisions for the courts to make an initial or prima facie evaluation of whether any Article 5(1) grounds for refusal may be forthcoming or not, in *ex parte* cases: the imposition of a burden here on the courts to do a prima facie review goes against the plain reading of Article 5(1). **Therefore the court should not be permitted to consider if any of the Art 5(1) grounds of refusal are made out, when an *ex parte* application for recording the settlement agreement as a court order is filed**.

As mentioned in my response to Question 4, if legislation were passed, extending and allowing a party to an eligible mediated settlement agreement under the Singapore Convention to apply on an *ex parte* basis to have the settlement agreement recorded as an order of court, **legislation should specifically provide the absent party with an opportunity to respond to the application of the first party, on precise terms (ie, they may apply to set aside, by furnishing proof of how any of the Article 5 defences in the Singapore Convention are satisfied)**. Nothing should be left to the discretion of the court.

However, **the Article 5(2) grounds for refusing to grant enforcement relief under the Singapore Convention may be applied on the initiative of the court**. Here, a review may be made by the court on its own initiative if the settlement agreement appears on the face of it to be contrary to public policy (Art 5(2)(a)) or if the subject matter of the dispute resolved is not capable of settlement by mediation (Art 5(2)(b)).

I must emphasise once again that it is unhelpful to draw comparisons with the Conventions that deal with foreign judgments and choice of court agreements (as it was done in paragraph [40]

of the Consultation document), especially in relation to the Article 5 defences. These instruments were drafted by a completely different body (ie the Hague Conference on Private International Law) and make provisions for a completely different dispute resolution mechanism (ie international commercial litigation).

As to Article 5(1)(b), **I agree with the proposal 'not to make further provision about [determining applicable law] in the implementing legislation'** (paragraph [44] of the Consultation document).

As to Article 5(1)(e), **I agree with the proposal not 'to make provision about which standards apply to the mediator or the mediation in the implementing legislation'** (paragraph [46] of the Consultation document). The applicable standard a mediator is subject to, for the purposes of Art 5(1)(e), is a fact-specific question, similar to the determination of choice of law. However, *unlike the determination of choice of law*, in practice the applicable standard may be a lot more flexibly determined. Take for instance, where it is not possible to subject one contract simultaneously to two governing laws, it is entirely possible for a mediator to belong to two professional mediation institutes and thus subject to two applicable standards. First principles may be applied towards determining the applicable standard (see generally Nadja Alexander, Shouyu Chong & Vakhtang Giorgadze, *The Singapore Convention on Mediation: A Commentary* (2nd Ed, Wolters Kluwer, 2022) paras [5.120]-[5.122]).

I take similar views in respect to the application of Article 5(1)(f). The courts may apply first principles to interpret this provision in the context of the Singapore Convention.

Q7: Do you have any views on the proposal that a mediated settlement registered, and therefore made enforceable under the Convention, should not be automatically enforceable in another part of the UK, but only where it has been registered by the court in that other part?

I think it should be automatically enforceable. The UK should prioritise the most efficient way to recognise mediated settlement agreements across various parts within it. The ratification process of the Singapore Convention presents a rare opportunity for the UK to create a different mechanism for the recognition and enforcement of settlement agreements, distinct from the mechanisms accepted for the recognition and enforcement of foreign judgments.

Q8: Do you agree that no legislative action is required to ensure that a mediated settlement agreement reached in one part of the UK can be enforced in another part of the UK?

Yes.

Q9: Do you have any views as to whether implementation of the Singapore Convention should be extended to include Scotland and Northern Ireland as part of a UK-wide

statutory instrument laid in Westminster or through an alternative approach in either or both of these jurisdictions?

No comment.

Q10: Do you have any views on whether a statutory instrument should tailor implementation in any specific ways for Scotland and Northern Ireland?

I think it is for the benefit of Scotland and Northern Ireland to legislate for the same provisions.

Q11: Do you have any additional comments on the implementation of the Singapore Convention in the UK?

It is hoped that the drafters of the ratifying legislation consider my submitted response carefully and thoroughly. Most importantly, the drafters should recognise that their registration model proposed is, unfortunately, more appropriate for arbitral awards and foreign judgments. It is to my mind *unsuitable* for the enforcement of mediated settlement agreements. Mediation is quite dissimilar to arbitration and litigation, as it is led by a facilitative and non-determinative process. The dispute resolution outcome from mediation is a product of consensus. I must therefore reiterate **my strong recommendation that this process be instead characterised as a mechanism to have the applicable settlement agreement *recorded* as an order of court**. The current methodology for common law enforcement (and invocation) should be retained, and extended to accommodate mediated settlement agreements under the Singapore Convention, rather than to be wholly overhauled and reformed.

Next, the drafters must accept that the mediated settlement agreements enforceable under the Singapore Convention are of a *commercial* nature. Therefore, review of the settlement agreement enforced under the Convention should be contextualised accordingly. For instance, the implementing legislation should not provide too much discretion for the courts to initiate a review, especially in *ex parte* cases. Careful drafting of the powers of review is necessary to avoid inadvertently encouraging more litigation over the enforcement of a mediated settlement agreement.

Furthermore, I recommend for a re-consideration of the drafters' treatment of the defences in Article 5(1) of the Convention, if a party applies to enforce a mediated settlement agreement *ex parte*. I must reiterate that **the court should not be permitted to consider if any of the Art 5(1) grounds of refusal are made out on its own initiative, when an *ex parte* application for recording the settlement agreement as a court order is filed**. Legislative provisions which allow the court to do so run contrary to the plain and express provisions of Art 5(1).

Fourthly, I recommend that the drafters of the implementing legislation consider the ratifying legislation passed in Singapore (the SCMA 2020). It is submitted that the SCMA 2020 provides a robust model for the drafters to build on.

If the drafters require any further assistance or clarifications, I will be happy to help. I may be contacted through my Leeds University email address: <s.y.chong@leeds.ac.uk>.