Consultation on implementing the Singapore Convention on Mediation

Introduction

1. The United Nations Convention on International Settlement Agreements Resulting from Mediation (New York, 2018) (better known as the Singapore Convention on Mediation, after the place where it was opened for signature, and hereafter referred to as 'the Singapore Convention' or 'the Convention') is a multilateral private international law (PIL) convention that provides a framework for the effective recognition and enforcement of international commercial settlement agreements resulting from mediation. Following a public consultation that ran from 2 February 2022 to 1 April 2022, the UK Government published a response on 2 March 2023 confirming its intention to sign and ratify the Singapore Convention.[1] The UK signed the Convention on 3 May 2023, as a clear signal of the UK's commitment to maintaining and strengthening its position as a centre for dispute resolution and to promote our flourishing legal and mediation sectors.

2. Ahead of the UK ratifying the Convention, this consultation paper seeks views on certain proposals and options for how the Convention might be implemented and could operate in the UK. Certain procedural details on how the Convention will operate in practice may be set out in court rules in each jurisdiction of the UK, which may be the subject of further consultation by the rule-making bodies.

3. International trade is worth over £1 trillion[2] to the UK economy and therefore it is crucial that UK businesses, big and small, continue to have the confidence to enter into cross-border contracts, investment relationships and to operate across borders in the knowledge that there are effective mechanisms in place to settle disputes as and when they arise. Commercial mediation can support businesses who may be looking for more cost-effective methods of resolving their disputes, outside of the traditional routes of litigation and arbitration, with aspirations of preserving their important and potentially long-standing business relationships by reaching an amicable and mutually agreed resolution[3].

4. The Singapore Convention requires states party to enforce settlement agreements that result from mediation, that resolve a commercial dispute and that are international in nature. The Convention also allows parties to rely on such an agreement to show that a matter has already been resolved through mediation. The obligations to enforce and to recognise such agreements are subject to certain conditions being met and to a discretion to refuse recognition and/or enforcement on certain grounds. The Convention aims to facilitate international trade and commerce by strengthening trust in dispute resolution and promoting mediation as an effective alternative to litigation and arbitration.

5. The Convention only applies to commercial mediated settlement agreements which are "international" in nature. This is defined as meaning that at least two parties to the settlement agreement have their places of business in different States; or that the State in which the parties have their places of business is different from either the State where

[1] Details of the consultation and the Government's response to it are available at: https://www.gov.uk/government/consultations/the-singapore-convention-on-mediation
[2] UK trade in numbers (web version) - GOV.UK
[3] Paragraph 6.3 - Government response to the Consultation on the United Nations Convention on International Settlement Agreements Resulting from Mediation (New York, 2018) - GOV.UK

a substantial part of the obligations under the agreement is performed, or the State with the closest connection to the subject matter of the agreement (Article 1(1)). It does not make a difference whether some, all, or none of these States are parties to the Convention, or whether the mediation took place in a State which is a party. Given that the Convention only applies to international agreements, it will not apply to an agreement where the parties and all relevant connections are in the UK, whether or not in the same UK jurisdiction.

6. A settlement agreement "resulting from mediation" means one resulting from a process, irrespective of the expression used or the basis upon which the process is carried out, in which parties attempt to reach an amicable settlement of their dispute with the assistance of a third person or persons lacking the authority to impose a solution upon the parties to the dispute (Article 2(3)). The settlement agreement must be in writing (Article 1(1)), which means in any form including electronic communication (Article 2(2)) and signed by the parties (Article 4(1)(a)). The Convention does not apply to settlement agreements made in disputes where one party is a consumer acting for personal, family, or household purposes, or agreements relating to family, inheritance or employment disputes (Article 1(2)). It also does not apply to settlement agreements that have been approved by a court, or concluded in the course of proceedings before a court, and are enforceable as a judgment in the state of that court; or to settlement agreements that have been recorded and can be enforced as an arbitral award (Article 1(3)).

7. A party seeking to enforce a settlement agreement under the Convention, or to invoke it as having already resolved a dispute, would need to supply evidence of a number of matters to the authority designated as the authority competent to rule on such enforcement or recognition (see paragraph 15 below for more detail).

8. The Convention contains a number of grounds on which a court can refuse to grant such relief (i.e. refuse to recognise the agreement or to enforce it under Article 3) at the request of the party against whom the relief is sought, if proof is provided. These are listed in Article 5(1) of the Convention, but are summarised here:

   a. A party was under some incapacity.
   b. The agreement is (i) null and void, inoperative, or incapable of being performed under the law to which the parties subjected the agreement or deemed applicable by the competent authority; (ii) not binding or final; (iii) has been subsequently modified.
   c. The obligations in the agreement (i) have been performed or (ii) are not clear or comprehensible.
   d. Granting relief would be contrary to the terms of the agreement.
   e. There was a serious breach of standards applicable to the mediator or the mediation.
   f. Failure by the mediator to disclose circumstances that raise justifiable doubts as to the mediator's impartiality or independence.

9. There are also two further grounds for refusal in Article 5(2), namely that (a) granting relief would be contrary to public policy of the requested State; or that (b) the subject matter of the dispute is not capable of settlement by mediation under the law of the requested State.

10. 16 countries are currently bound by the Convention, namely Bahrain, Belarus, Ecuador, Fiji, Georgia, Honduras, Israel, Japan, Kazakhstan, Nigeria, Qatar, Saudi Arabia, Singapore, Sri Lanka, Turkey, and Uruguay. The Convention will also enter into force for Paraguay on 12 September 2025 and Costa Rica on 25 September 2025. Around 40 further countries are signatories to the Convention but have not yet ratified it.[4]

11. As noted above, this consultation is about how the Singapore Convention should be implemented. It is likely that as part of this process, Regulations will be laid in the UK Parliament under powers available in the Private International Law (Implementation of Agreements) Act 2020 to implement the Convention in domestic law. PIL is a devolved matter in respect of Scotland and Northern Ireland; under the 2020 Act, the Secretary of State may make Regulations extending to Scotland and Northern Ireland but only with the consent, respectively, of the Scottish Ministers and a Northern Ireland Department. The current intention is that the Regulations will extend UK-wide and will generally contain uniform implementing provisions, although there may be some minor differences if considered desirable after this consultation and consultation with the Devolved Governments.

12. It is intended that the Regulations will cover the main legislative changes necessary to implement the Convention while remaining elements will be covered in amendments to court rules in all three UK jurisdictions.

13. The questions in this paper cover certain areas that did not form part of the consultation in relation to signing the Convention. We are seeking views from a broad range of stakeholders including mediation practitioners and organisations; the Lord Chancellor's advisory committee on PIL; PIL subcommittees; the Law Society PIL and Bar Council PIL committees; the Law Society of Scotland and the Faculty of Advocates; PIL academics; international commercial law firms; specialist ADR lawyers; and business organisations such as the Confederation of British Industry (CBI) and the judiciary. We appreciate your expertise and value the input many of you provided during the public consultation. We would be grateful for any comments you have in relation to the further proposals below.

14. This consultation is open for 8 weeks. Please send your responses to the questions below to the PIL@justice.gov.uk inbox by close of business on **15 October 2025**. If you are responding from Scotland, it would be helpful if you could copy your response to Jamie.Wilhelm@gov.scot. If you are responding from Northern Ireland, it would be helpful if you could copy your response to Maurice.Dowling@finance-ni.gov.uk.

[4] A list of countries that are bound by the Convention and those that have signed it is available at: https://www.singaporeconvention.org/jurisdictions.

Questions 1-4: Registration of internationally mediated settlement agreements

15. We envisage that a party seeking recognition and/or enforcement of an international mediated settlement agreement under Article 3 of the Convention will first need to apply to register the settlement with the relevant court in the UK jurisdiction where recognition and/or enforcement is sought (referred to in the Convention as the 'competent authority'). The relevant courts will be the High Court in England & Wales, and in Northern Ireland, and the Court of Session in Scotland.

16. We propose to design a registration system that reflects the Convention's relatively straightforward requirements for recognition and/or enforcement and its intention to enable 'disputing parties to easily enforce and invoke settlement agreements across borders'[5], encouraging the use of mediation to resolve international commercial disputes. However, we also recognise that there were some concerns expressed in response to the previous consultation that mediated settlement agreements may contain complex terms, rights and obligations which might therefore require closer consideration at the registration stage to ensure, for example, that the settlement agreement falls within the scope and definitions of the Convention. We provisionally propose including the following in the registration model, noting some aspects may be better addressed via amendments to court procedure rather than in regulations and would therefore be further considered in due course by the bodies that make the court procedure rules in each jurisdiction:

17. **Process for registration:** We propose that a party seeking recognition and/or enforcement of a mediated settlement agreement will need to apply to register the agreement by submitting an application, the mediated settlement agreement and any other evidence required by Article 4 of the Convention, to the relevant court in the UK. They may make the application without notice to the party against whom recognition and/or enforcement is sought. The court would then have discretion to determine the registration application on the information presented, or to direct that the respondent should be served with the application and given the opportunity to make submissions. If the registration decision is made without involvement of the respondent, then notice would occur after registration and before enforcement or recognition could proceed, with an opportunity at that stage for respondent submissions to challenge the registration (see paragraphs 27 – 28 below for more detail). The decisions at the registration application stage of whether the determination would be without notice to the respondent (ex parte) or contested, and whether it would be on the papers or via oral hearing, will likely be left to the discretion of the court, but this will be considered further as part of court rule amendments in each UK jurisdiction.

18. The Singapore Convention only applies to mediated settlement agreements resulting from international commercial disputes. The requirements for an agreement to fall within scope, and the evidentiary requirements, are relatively straightforward, and given the Convention's aims of efficient enforcement, we anticipate that the court may, in many cases, decide that the information presented by the applicant alone is sufficient to determine the registration application, and that giving the court discretion to determine

[5] About the Convention | Singapore Convention on Mediation

applications ex parte is therefore appropriate. A general requirement to involve the respondent at the registration stage in all cases could unnecessarily delay the court's consideration, where an ex parte decision may be more appropriate. It could also place additional burden on the courts and would be inconsistent with other dispute resolution processes, as set out below.

19. Nonetheless, determining whether a mediated agreement falls within the scope of the Convention and should be registered may not be straightforward in every case. We therefore also propose to give the court discretion to direct that the respondent have the chance to make submissions as part of the registration process, without creating an expectation that all registration applications should be contested. We anticipate that the court may direct an application be served on the respondent in cases where it is not clear whether the requirements of the Convention are met or where it might be plain from the application that a ground of refusal could be met.

20. This is a similar approach to that taken in respect of arbitration awards under the 1958 New York Convention. In England and Wales and Northern Ireland, under section 101 of the Arbitration Act 1996, an arbitration award to which the New York Convention applies may be enforced with leave of the court. This is supplemented by court rules; in England and Wales, for example, rule 62.18 of the Civil Procedure Rules provides that an application for leave to enforce may be made without notice, and the court may determine the application ex parte or direct that it be served on the other party. We understand that, in practice, most applications are determined ex parte. In Scotland, the Arbitration (Scotland) Act 2010 makes similar provision on the recognition and enforcement of New York Convention awards.

21. A key difference between the proposed approach for the Singapore Convention and that in the 1996 Act for England and Wales and Northern Ireland is that we propose that a settlement agreement will be registered in the relevant court, rather than leave to enforce it being given. In this respect the proposed approach is more similar to that set out in the Civil Jurisdiction and Judgments Act 1982 and the approach taken generally in Scotland where overseas judgments are, following an application to the court, registered in the register of judgments of the Books of Council and Session. The registration approach is proposed for both recognition and enforcement to ensure that international mediated settlement agreements, which will not have been previously considered by a court, are properly recorded and verified as meeting the legal requirements of the Convention, before enforcement actions begin or other steps are taken that depend on the recognition of the agreement. It will also ensure consistency of approach between parties seeking recognition only and those seeking recognition and enforcement.

22. If the court directs that the application be served on the respondent, we propose that they will be given a deadline by which to file submissions as to why recognition and/or enforcement should be refused, either because the requirements of the Convention are not met or an Article 5 ground of refusal is made out and the court should exercise its discretion to refuse on that basis. The court would then determine the registration application, which may be on the papers lodged by both parties or following a contested hearing.

23. Alternatively, if the court proceeds to make a registration decision ex parte, then the court would consider the information presented to it by the applicant only and would make an order either to recognise or enforce the mediated settlement agreement. This would then need to be served on the respondent with a copy of the original application and there would be a specified route for the respondent to challenge the registration decision, before enforcement proceedings could be brought (as set out below).

24. **Invoking a settlement agreement:** Under Article 3 of the Singapore Convention 'if a dispute arises concerning a matter that a party claims was already resolved by a mediated settlement agreement, a Party to the Convention shall allow the party to invoke the mediated settlement agreement in accordance with its rules of procedure and under the conditions laid down in this Convention, in order to prove that the matter has already been resolved'. "Invoking" an agreement under the Convention effectively means seeking to have it recognised for the purposes of res judicata or issue estoppel (that is, to prevent the other party from bringing a claim based on the same cause of action that has been agreed or seeking to litigate the same issue).

25. We expect that a mediated settlement agreement will primarily be invoked during other legal proceedings, often as a defence to prevent settled disputes being reopened or as a set-off to reduce financial claims. We propose to introduce invocation rules similar to those in the 1996 Act for England and Wales and Northern Ireland, and the 2010 Act for Scotland, in respect of the 1958 New York Convention, whereby an arbitral award may be relied upon by way of a defence, set-off or otherwise in any legal proceedings. However, parties seeking to invoke a mediated settlement agreement will first need to register it in the relevant UK jurisdiction. As mentioned further above, applications should be made to the High Court in England and Wales, the High Court in Northern Ireland and the Court of Session in Scotland. This will ensure consistency in how decisions are made based on the requirements of the Convention and the grounds of refusal, ensure that settlement agreements not previously considered by a court are verified as meeting the Convention's requirements before they can be invoked in other proceedings, and enable courts to develop expertise in handling the registration of claims for enforcement and invocation under the Convention.

26. In cases where a party wishes to invoke a mediated settlement agreement in proceedings related to another matter, the hearing in question might be taking place in a court not designated to register the settlement agreement. A separate hearing in a designated court may be necessary for the separate registration proceeding.

27. **Route to challenge:** The registration model adopted will provide the possibility for challenge by the party against whom enforcement is sought following registration and prior to enforcement or invocation. The party seeking registration will also be permitted, if the court decided not to register the settlement agreement, to challenge that decision.

28. Where a registration decision has been made without notice being given to the respondent, a 'set aside' approach would seem the most appropriate route to challenge. This is because the 'set aside' remedy is typical where the court made its first instance decision without full facts and/or counterargument, often by virtue of an ex parte process. The application to set aside would be made to the same court that made the

original decision, and if that court decides that it should be set aside then a fresh decision will be made, usually at the same time. This is the approach taken in the 1982 Act for registration applications made under Hague 2019 and Hague 2005, which are determined without the party against whom enforcement is sought being entitled to make submissions. One possibility for implementing Singapore would be to take the same approach and provide for set-aside as the route of challenge in all cases.

29. However, where the court has taken a registration decision on the basis of receiving representations by both parties, challenge by way of appeal rather than by set aside, might be a more appropriate route. This is because the party against whom enforcement is sought has already had the opportunity to make their case against registration, so any challenge should be limited to appeal (which would usually be to a higher court, and most commonly based on an error of law). Another possibility would therefore be for the implementing legislation to provide that the route of challenge is an application to set aside the decision where the registration stage was ex parte, and an appeal where the registration stage was contested. This approach would in some ways be consistent with the approaches under both the Civil Jurisdiction and Judgments Act 1982, in all three UK jurisdictions, and the Arbitration Act 1996 for England and Wales and Northern Ireland (under which, for example, rule 62.18(9) of the Civil Procedure Rules in England and Wales provides for the respondent to apply to set aside an order allowing enforcement of an arbitral award that was made without notice, while an order made on notice is subject to appeal). In Scotland, the 2010 Act provides a distinct framework with limited grounds for challenging an arbitral award. However, creating a dual system could add complexity for courts and litigants. We would be interested in receiving your views on the most appropriate approach here.

30. For both enforcement and invocation of mediated settlement agreements, there needs to be a period following registration when a party can challenge the registration decision before action on the registered mediated settlement can take place. We propose that standard deadlines to challenge will be set out by the respective rule-making bodies in each part of the UK for both enforcing and invoking mediated settlement agreements. This is consistent with the 1982 Act and the Arbitration Act 1996 for England and Wales and Northern Ireland. In Scotland, the Court of Session rules deal with the recognition of and enforcement of foreign applications in relation to the Civil Jurisdiction and Judgments Act 1982[6].

31. **Courts (Competent Authority):** The proposed courts for registering a mediated settlement agreement are set out above (see paragraph 15). For England and Wales, we propose that the ordinary rules on allocation within each court should apply, for example as set out in Part 30 of the Civil Procedure Rules for England and Wales, allowing courts to order the transfer of claims to different or specialist divisions within the same court system based on criteria such as the value or complexity of the claim, or to specify where a hearing is to be held. This is a matter that may also be considered as part of court rule amendments at a later stage.

[6] Court of Session rules, Chapter 62, Other proceedings in relation to statutory applications

32. **Evidential aspects of the Convention:** Article 4.1 of the Convention requires the party seeking to rely on a mediated settlement agreement to provide a copy of the agreement signed by the parties and evidence that it resulted from mediation, either as specified in Art 4.1(b)(i) the mediator's signature on the settlement agreement, (b)(ii) a document signed by the mediator indicating that the mediation was carried out or (b)(iii), an attestation by the institution that administered the mediation, or in the absence of these forms of evidence, "any other evidence acceptable to the competent authority" as set out in (b)(iv). We do not propose (subject to consideration with and by relevant court rules authorities, if this is addressed in court rules) that the implementing legislation should set out what types of other evidence might be acceptable. Respondents to the previous consultation proposed many different types of evidence that could be presented, and it appears unlikely that an exhaustive list could be compiled and attempting to do so could unduly limit the court's discretion in individual cases. We instead propose that it be left to applicants for registration to provide any further evidence they think necessary for the court to decide on registration, and to the court's discretion to decide on a case-by-case basis what further evidence might need to be supplied before the court can reach its decision.

33. **Status of a mediated settlement agreement once recognised:** In response to the previous consultation, a minority of respondents stated that, given the possible inclusion of complex terms, rights and obligations in mediated settlement agreements as mentioned earlier in this paper, that the court may need additional or general powers to enforce the provisions of a mediated settlement agreement. However, most respondents felt that there were already sufficient powers to enforce a mediated settlement agreement and there was no need for any particular additional powers to enforce an agreement under the Convention.

34. In keeping with the majority view, we propose 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. This will support the aims of the Convention, to promote mediation as a viable and effective method of resolving international commercial disputes alongside litigation and arbitration. Giving courts lesser enforcement powers for such agreements would significantly undermine that aim.

35. Further, if the agreement is registered for the purpose only of invoking it in other proceedings as having settled matters under dispute in that other proceedings, then it will have for that purpose the same status as a court judgment i.e. the matters that the agreement covers will be considered to be resolved for the purpose of res judicata/issue estoppel/set-off.

36. Finally, it should be noted that parties can specify within the terms of a mediated settlement agreement that it is not enforceable under the Convention, so it will be open to them to avoid this route to enforcement if they wish[7].

[7] See paragraph 39 if the Report of UNCITRAL's 51st session (25 June-13 July 2018) - LINK

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?

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

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?

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 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 orders allowing enforcement of arbitral awards.

Question 5: Definitions within the Convention

37. There are a number of undefined terms used in the Convention which respondents to the previous consultation suggested may be the subject of satellite litigation (i.e. dispute at the registration stage, together with challenges to registration decisions) and the emergence of a body of interpretive case law. Such terms include when a settlement agreement "results from mediation", what constitutes a "commercial dispute" or "mediation", and how to determine the parties' "places of business".

38. We have considered whether it may be appropriate for the implementing legislation to include some domestic interpretation of these or other terms. However, some respondents to the previous consultation suggested that it would be more appropriate for the courts to interpret the Convention's terminology and to allow case law to develop and evolve over time, rather than seeking to define these terms more precisely in legislation. There is also a question about the extent to which concepts in a treaty aimed at unified rules are capable of codified interpretations in the domestic law of states party that could differ from interpretations that develop more widely. We do not propose to set out in the implementing legislation any definitions or other interpretative provisions to Convention terms. This is consistent with the approach taken in the 1982 Act and the 1996 Act for England and Wales and Northern Ireland, and the 2010 Act for Scotland, to

implementing other PIL treaties including the New York Convention and the 2005 and 2019 Hague Conventions.

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?

Question 6: Grounds for Refusal

39. The Singapore Convention allows a competent authority (e.g. a court) to refuse to grant relief (i.e. refuse recognition and/or enforcement of a mediated settlement agreement) only if the party against whom relief is sought (the respondent) provides proof that one or more of the grounds for refusal listed in Article 5 are met.

40. Recent recognition and enforcement regimes, such as for Hague 2005 and Hague 2019 under the 1982 Act, only consider grounds for refusal after registration if the respondent brings a challenge against the registration decision. In those systems, the court is not permitted to consider if any of the grounds of refusal are made out at the registration stage, which also does not include the respondent at that stage. However, in line with the registration model above, we propose that for applications under Singapore, the court should be allowed to consider whether any grounds of refusal might apply when it is deciding whether to have a contested registration stage or whether it should be determined ex parte, and to also consider these grounds of refusal as part of its registration decision. This is because the court is in any event taking a decision about whether to involve the respondent at this stage, and if it is doing so, it would be more efficient to consider and hear argument not just on whether the requirements of the Convention are met, but also whether any of the Article 5 grounds applies and whether relief should be refused on that basis.

41. 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. The respondent would still, however, be able to challenge the registration decision, via the route to challenge set out above, when they will need to prove that one or more of the Article 5 grounds are met in order to prevent enforcement action.

42. As set out earlier in this paper, there are a number of grounds of refusal under Article 5, but we would be interested in your views on the proposals for Article 5(1)(b), Article 5(1)(e) and Article 5(1)(f) specifically:

43. **Article 5(1)(b)** states that a court may refuse to grant relief where a mediated settlement agreement relied upon: *‘(i) Is null and void, inoperative or incapable of being performed under the law to which the parties have validly subjected it or, failing any indication thereon, under the law deemed applicable by the competent authority of the Party to the Convention where relief is sought under article 4; (ii) Is not binding, or is not final, according to its terms; or (iii) Has been subsequently modified;’*

44. As we expect most users of the Convention to be legally sophisticated commercial parties who will be aware of and have legal advice on issues relating to the choice of law, we anticipate that in most cases the applicable law will be specified in the mediated settlement agreement. The Convention's obligations do not depend upon the country where the mediation took place or the mediated settlement agreement was concluded. In light of this, we have considered whether the legislation should specify how the court should determine the law to be deemed applicable to a mediated settlement agreement if this is not explicitly specified in the agreement. The UK jurisdictions already have comprehensive rules on how to determine the law which applies to a contract in the absence of choice, and we do not consider it is necessary to make different provision for determining applicable law under the Convention. Therefore, we propose not to make further provision about this in the implementing legislation. We would be interested in your views on this proposal or whether you might consider it more appropriate for the legislation to make express provision on how applicable law should be determined if the agreement is silent on this, and any suggestions on how this might be achieved?

45. **Article 5(1)(e)** states that a court may refuse relief where a party provides proof that *'there was a serious breach by the mediator of standards applicable to the mediator or the mediation without which breach that party would not have entered into the settlement agreement'*.

46. As the Convention does not distinguish between settlement agreements based on the place where the mediation took place or the agreement was concluded, it may be used to enforce settlement agreements mediated in the UK or elsewhere (provided that they meet the Convention definition of "international"). We note that whilst the UK does not have statutory standards for mediators or mediation, there are professional bodies for mediators which impose their own non-statutory codes of practice. Other countries may have either statutory or non-statutory standards applying to mediators or mediation. The standards applicable to the mediator or the mediation itself may therefore be UK or foreign non-statutory standards, or there may be foreign statutory standards that apply. We do not propose to make provision about which standards apply to the mediator or the mediation in the implementing legislation, but we welcome your views on this proposed approach, or whether you think the legislation should make express provision about how the court should apply this ground of refusal?

47. **Article 5(1)(f)** states relief may be refused if proof is provided that *'There was a failure by the mediator to disclose to the parties circumstances that raise justifiable doubts as to the mediator's impartiality or independence and such failure to disclose had a material impact or undue influence on a party without which failure that party would not have entered into the settlement agreement'.*

48. As noted above, the UK does not have statutory standards for mediators, including any express provision about a mediator's impartiality or independence or the consequences when these are breached, though mediators may be governed by non-statutory codes. So, the Convention may raise new issues about how to apply such codes which the courts will want to consider. We therefore propose that the interpretation of claims under this Article be left to the courts to interpret and for case law to develop in the context of the Convention. We welcome any views you might have on this proposal and whether

you think the legislation should make provision as to what circumstances would come within this ground for refusal?

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?

Question 7 & 8: Enforceability in one part of the UK of international mediated settlement agreements registered under the Convention in a different part of the UK

49. We are considering the appropriate approach for mediated settlement agreements registered under the Convention and specifically whether an agreement registered in a court in one UK jurisdiction should be enforceable and capable of recognition across all UK jurisdictions, or only in the part of the UK where it has been considered by the court.

50. The UK generally excludes court decisions allowing the enforcement of foreign judgments from the near-automatic intra-UK recognition and enforcement regime found in the 1982 Act (section 18 and Schedules 6 and 7). This means that each part of the UK decides whether a foreign judgment should be enforceable and capable of recognition in its jurisdiction. This is a conventional approach in PIL, as set out in Dicey, Morris and Collins on Conflict of Laws[8]: "The civil law principle that *exequatur sur exequatur ne vaut* is sometimes used to help explain why a judgment from the third State is not converted into an enforceable foreign judgment by virtue of its recognition or endorsement by another court." This approach was recently taken for the 2019 Hague Convention, and previously in respect of the 2005 Hague Convention, as well as for foreign judgments registered in a part of the UK by various other routes, such as other Hague Conventions and the Foreign Judgments (Reciprocal Enforcement) Act 1933. It is also the approach taken to foreign arbitral awards that become enforceable in England and Wales and Northern Ireland under the 1996 Act and in Scotland under the Arbitration (Scotland) Act 2010.

51. By contrast, an arbitration award which was given in a part of the UK and has become enforceable in the same manner as a judgment in that part of the UK does benefit from the regime in section 18 and Schedules 6 and 7 of the 1982 Act (per section 18(2)(e)): no equivalent provision is made in respect of foreign awards.

52. We propose to follow the established approach to recognising and enforcing foreign judgments across UK jurisdictions, as outlined in the 1982 Act, for consistency. While we do not intend to implement the Convention through the 1982 Act, we are proposing that a mediated settlement agreement, once registered, should be treated like a court order for enforcement purposes but that the section 18 regime will not apply to it. Given that PIL is a devolved matter for Scotland and Northern Ireland, there may be instances where approaches to the enforcement of mediated settlement agreements will differ between UK jurisdictions. Additionally, it is appropriate for courts in each part of the UK

[8] Chapter 14, paragraph 14-118.

to be able to determine whether a mediated settlement agreement should be enforceable there, rather than this automatically being the case once the agreement has been registered in any part of the UK. This is also consistent with the approach to arbitral awards, whereby an arbitral award given in the UK and made enforceable under Part I of the 1996 Act benefits from the section 18 regime (by virtue of section 18(2)(e) which includes such an award in the definition of "judgment"), while a foreign award to which the New York Convention applies and which is made enforceable under Part III of the 1996 Act does not.

53. Therefore, we propose that once a mediated settlement agreement is registered and enforceable in one part of the UK, enforcement in another UK jurisdiction will require a separate registration application in that jurisdiction. The appropriate court in that jurisdiction will then decide whether to enforce that agreement under the Convention. Consequently, a mediated settlement agreement registered by a court in one UK jurisdiction will only be enforceable in that jurisdiction (unless and until it is also registered in another UK jurisdiction).

Q7: Do you have any views on the proposal that a mediated settlement agreement 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?

54. A separate scenario outside the terms of the Singapore Convention (i.e. where the mediated settlement agreement is not 'international' within the definition of the Convention) is where a party seeks to register in Scotland or Northern Ireland a mediated settlement agreement reached in England and Wales or where the obligations fall to be taken there (or other permutations involving the three UK jurisdictions). In our view, no action needs to be taken to provide for such cases, as the normal principles of law within the UK jurisdictions would treat a settlement registered in one part of the UK as to be treated as though it were registered in another part of the UK.

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?

<u>Question 9 & 10: Implementation of the Convention in Scotland and Northern Ireland</u>

55. The UK Government is proposing UK-wide implementation and ratification of the Singapore Convention. The UK Government would seek consent of Scottish and Northern Ireland Ministers to make any UK-wide implementing Regulations to give effect to the Convention. The Regulations would generally contain uniform implementing provisions, with some specific provisions for each jurisdiction. It would be for each jurisdiction to make any necessary court rule amendments in order to implement the Convention.

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?

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

Question 11: Any other comments

56. We would welcome any further comments on the implementation of the Singapore Convention on Mediation in the UK which may not have already been covered in this consultation paper, but which you would want the Government take into consideration.

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

Data Protection & Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 2018 (DPA), the General Data Protection Regulation (UK GDPR) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Ministry.

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