

Consultation on Singapore Convention on Mediation
Response of the Chancery Bar Association

The ChBA is a specialist bar association for barristers practising Chancery law. The Chancery field is very diverse, spanning finance, business, insolvency, property, intellectual property, trusts and estates, fraud, asset tracing, and specialist areas such as charities, pensions, and tax. The ChBA has a membership of more than 1,500 barristers practising in England and Wales.

The responses below respond only as regards the proposals for implementation in England and Wales.

Q1

1. We agree with the proposal for the process for registration to involve an application to court, with the precise rules to be determined by court rule amendments. As the paper observes, this envisages a similar mechanism to the way registration and enforcement of arbitral awards under the New York Convention and foreign judgments under the CJJA 1982 are facilitated and ought to be familiar to practitioners and capable of implementation in court rules.

Q2

2. We consider the registering party should have the option either to enforce *ex parte* or to give notice.
3. We do not disagree with the proposal that, rather than automatic registration, the courts consider whether it thinks the grounds for registration are *prima facie* satisfied. We do note that this means that applications may in some cases need to go before a judge, rather than a court officer, to consider whether the criteria are *prima facie* satisfied and this may add delay. However, this could be accommodated in court rules in a similar way to applications for default judgments under CPR part 13, where the court takes a provisional view as to whether the criteria are satisfied.
4. We consider that if the court is to have discretion to order an *inter partes* hearing, there will need to be a mechanism to allow the applicant to resist this where it would not be appropriate (i.e. in cases where urgency or secrecy is required).

Q4

5. We consider the hybrid system for challenge is most appropriate and consistent with existing principles.
6. We agree that, where a registration has been made *ex parte*, a 'set aside' approach is the most appropriate route where a party wants to challenge registration. That is an approach with which the courts are familiar (being the approach already taken for Hague judgments) and is consistent with the general rule that a party against whom an order is made *ex parte* may apply to set it aside. We do not think that this would be appropriate where

the decision in respect of registration or enforcement is made after hearing both parties. In such a case, the losing party has already made submissions on the merits, *Henderson* principles would prevent a party from re-arguing the same points on a set aside such a case, and so appeal is a more appropriate route. This is consistent with established procedural law in any other scenario where an order is made after a fully contested hearing.

Q5

7. We agree that there is no need to include definitions of the Convention terms in the implementing legislation, and that this is best left to the courts to develop.

Q6

8. **Article 5(1)(b)** We do not consider the legislation should make provision for how applicable law should be determined if the agreement is silent. The courts have proved fully able to develop these principles in the adjacent context of arbitration agreements, and we anticipate that the case law would similarly develop here.
9. **Article 5(1)(e)** We consider the legislation could present an opportunity to make provision for the standards applicable to mediators, either by way of a code of conduct, or the development of an associated code between signatories. Given the mediation sector is a rich and varied one, which is unregulated, there is a diverse range of standards. However, the practical reality is that mediators will naturally need and choose to differentiate themselves from others in a crowded marketplace, and some will choose to do so by reference to high standards and the quality of their mediation offering. They may do so by seeking training and gaining accreditation from a professional organisation. They may decide to incorporate, in their own mediation agreements, elements requiring high standards of themselves, for example standards incorporating or inspired by the European Code of Conduct for Mediators. There is currently no one size fits all, and the routes to demonstrate quality and standards in a saturated market are matters of personal choice in an unregulated field. However, all routes tend, whether formally or informally, towards the same benchmark of standards covering universally accepted values arising in mediation settings e.g. good faith, impartiality, neutrality, and freedom from conflicts of interest. We recognise that there are, of course, also those who act as mediators who do not train, are not accredited, do not invest in continuous professional development, and do not subscribe to nationally or internationally recognised codes of conduct, or are otherwise poor quality providers. Given this, and given also that there are discernible, obvious standards which apply in all mediations and could lend themselves relatively easily to codification, the ChBA's view is that these standards could be made part of the implementing legislation. This would be a positive and confidence-boosting move for the mediation sector. Where the mediator is already a regulated professional (e.g. a barrister, solicitor, or other legal professional) many of these standards of behaviour will tend to mirror their professional obligations and ethical codes in any event.
10. **Article 5(1)(f)** we agree that the interpretation of claims under this Article be left to the courts to interpret.

Q7 and 8

11. We agree that a registered mediated settlement agreement should not be automatically enforceable in another part of the UK, consistently with the

approach taken to arbitral awards under the 1996 Act and Hague Convention foreign judgments.

12. We agree that no legislative action is required to cater for non-Singapore Convention mediation settlement agreements.

Q9-10

13. We are not practitioners in Scotland and Northern Ireland and do not comment on the proposed mechanism for implementation of the Convention in those jurisdictions.

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