

# Japan-Singapore Joint Mediation Protocol Announced

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Hot off the heels of the Singapore Convention, The Singapore International Mediation Centre (SIMC) and the Japan International Mediation Center (JIMC) on 12 September 2020 signed a Memorandum of Understanding to operate a joint protocol that provides cross-border businesses, including companies along the Singapore-Japan corridor, with an economical, expedited and effective route for resolving commercial disputes amid the COVID-19 pandemic.

The announcement of the JIMC-SIMC Joint Covid-19 Protocol was timed to align with the coming into force of the Singapore Convention last Saturday. As readers will know, the Convention offers a mechanism to directly enforce mediated settlement agreements across borders.

We have seen the emergence of a number of Covid-related mediation protocols in Singapore, the UK and Saudi Arabia. However the JIMC-SIMC Joint Protocol is thought to be the first joint mediation protocol between two international dispute resolution centres committed to providing expedited mediation during the pandemic.

So what is it about mediation that makes it attractive in these changing and challenging times? Mediation systems offer users procedural agility and intuitive responsiveness to navigate unprecedented change. At the same time, mediation systems are grounded in robust regulatory frameworks (including now the Singapore Convention), characterised by solid standards of ethical integrity and professional competence, which keep the parties' moving forward towards resolution. In the words of SIMC Chairman Mr George Lim SC, "With the Convention's entry into force and Covid-19-related disruptions still ongoing, mediation is all the more relevant in these times for its harmonious and pragmatic approach." I agree. The chances for businesses to survive this global economic downturn will depend, in large part, on the timely and commercially sensible resolution of disputes. At this point in time, mediation is possibly the best forum we have to deal with the relational and commercial aspects of conflicts having occurred through no fault of either party and emerging from global and local disruptions we could not have imagined less than one year ago.

The collaboration between Japan and Singapore makes sense. The two countries share strong trade and commercial links. Japan and Singapore are among each other's largest investors. Japanese enterprises have set up key offices in Singapore, while two of Japan's largest law firms recently entered into partnerships with Singapore law practices, mirroring the growth of Japanese investments in Singapore and the region. Moreover, both Singaporean and Japanese cultures seem to relate well to mediation. In the words of Haruo Okada, Chief Director of JIMC, "Japan has a culture that has been respecting harmony since ancient times and has a very high affinity for mediation. The history of mediation in Japan is long." Kazuhiko Nishihara, Secretary General of JIMC, added, "Many Japanese companies focus their efforts on resolving disputes through negotiations when disputes arise, and only when their efforts are not rewarded, they inevitably choose to litigate or arbitrate. This Joint Protocol is an innovative mediation system that aims to resolve disputes online within 1-2 months by co-mediators including mediators who understand Japanese culture, that Japanese companies can use even after the breakdown of their negotiations."

The Joint Protocol is designed to ensure the successful settlement of disputes, which may be marked by physical, cultural and language barriers. Some key aspects of the Joint Protocol include:

- a. Mediations may be easily filed at either JIMC or SIMC online by paying a low JPY 20,000 or SGD 250 filing fee. JIMC and SIMC will jointly manage mediations.
- b. Cases will be resolved by two experienced mediators (one nominated by each Centre) to facilitate cross-border settlement.
- c. Parties will enjoy fixed and reduced fees.
- d. Mediation can be conducted online to overcome the current limitations on travel.
- e. Settlement agreements may be enforced under the Singapore Convention on Mediation in countries that have ratified or approved the Convention, including Singapore.

These features are aimed to give parties the best possible chance at reaching a settlement through mediation. For example, in a mediation between a Japanese and non-Japanese party, the co-mediation aspect allows for the appointment of mediators who are familiar with different legal and cultural contexts; mediators may be a Japanese-speaking and international mediator selected from both centres' established panels of mediators with skillsets to address any given dispute. In this regard, Mr Chuan Wee Meng, CEO of SIMC, commented "In our experience, a successful settlement depends very much on understanding culture and bridging that gap to build rapport. This may not always be apparent but a skilled mediator will be able to draw out those distinctions to help parties understand each other's perspectives and the underlying issues at stake. One of the key features of the Joint Protocol, the co-mediator scheme, addresses that and helps parties to agree on mutually acceptable solutions."

The Joint Protocol is expected to be formally launched later this year at an event marking JIMC's 2nd year anniversary on 20 November.