



## *A Scandinavian Perspective in the Era of the Singapore Convention on Mediation*

**Mr. Thomas Samsø Bloch**

**Date: 01 July 2020 Time: 1:00pm CEST**

### Presentation Summary:

Mr. Thomas Samsø Bloch (CEO at the Danish Mediation Institute) gave an interesting presentation on the topic ‘A Scandinavian Perspective in the Era of the Singapore Convention on Mediation’. The presentation began with an overview of the mediation landscape in Denmark, Sweden, and Norway.

Beginning with Sweden, there are currently two pieces of legislation governing mediation domestically. They are (i) the Swedish Civil Code “Rättegångsblaken” (1948) for court-initiated mediation, and (ii) the [Act \(2011:860\) on Mediation in Certain Private Law Disputes](#) i.e. the Law on Mediation that governs non-court initiated mediation, arbitration proceedings, and proceedings before a public authority. However, both legislations are rarely used.

The main commercial mediation service providers in Sweden are the Chambers of Commerce. Currently, there are three Chambers of Commerce in Sweden, (i) Stockholm, (ii) Gothenburg, and (iii) Malmö. Mediation services are also provided for by the Arbitration Institutes or on an ad-hoc basis whereby lawyers are mediators to the disputes. The Svenska Medlare is a new mediation initiative where a network of mediator-lawyers collaborate with the Danish Mediation Institute to focus on cross-border mediation in the Øresund region.

In Norway, the main legislation on mediation is the Norwegian Civil Code which governs both judicial and non-judicial mediation. Judicial mediations as handled by judges are popular in Norway in comparison to non-judicial mediations as handled by mediation-lawyers. Consequently, initiatives to promote ad-hoc mediation where lawyers mediate the disputes were sought and introduced. For instance, the Norwegian Bar Association introduced the Mekl.no within the organisation to promote non-judicial mediation. This initiative focused on promoting non-judicial mediation in addition to the appointment of mediators and provision of dispute resolution boards amongst other things. The initiative initially focused on construction disputes, but is now looking towards campaigning for mediation in insurance disputes and in workplace disputes.

Moving on to Denmark, the Danish Civil Code regulates court mediation, and non-judicial mediation is governed by contract law as there is no separate law on mediation in Denmark. Both judges and lawyers mediate civil cases in court mediation. Non-judicial mediation is popular in construction disputes because semi-mandatory mediation was incorporated into the [general conditions for building and construction works and supplies \(AB 18\)](#). Semi-mandatory mediation, as effective from 1 January 2019, only required one party to the dispute to request for mediation. There is no need for the approval of all parties involved. However, this does not imply that parties must settle disputes using mediation but rather, there is an obligation on parties to participate in mediation.

The main service providers of commercial mediation in Denmark are the Danish Mediation Institute, the Danish Building and Construction Arbitration Board, and the Danish Institute of Arbitration. This is in addition to ad-hoc mediation.

Mr. Bloch shared that when he first started out as the CEO at the Danish Mediation Institute, he chanced upon some articles documenting interviews with some of Denmark's biggest companies. In those articles, there were clear signs from the industrial giants that they preferred mediation to litigation and arbitration. Additionally, key findings from the Global Pound Conference (GPC) series revealed the following points:

- The key priority for the clients is efficiency;
- Clients expect greater collaboration from their lawyers;

- There is a global interest among clients to use mediation both before or in combination with litigation and arbitration; and
- External lawyers have been reported to being resistance to change.

With these findings in mind, the Danish Mediation Institute and the Danish Building and Construction Arbitration Board organized a conference to better understand end-users' needs. The findings were similar to the GPC series' findings. For example, the greatest gain for corporate users of mediation were efficiency, cooperation, time reduction, solutions, and saving relations. The greatest reported barrier to the use of mediation in the corporate world was ignorance. Other reported barriers included lawyers being resistant to using mediation, tradition, and prejudice. As a result, the following initiatives are examples of actions taken to promote mediation:

- The Danish Mediation Institute's website now provides the following:
  - Easy access to information on mediation and mediators;
  - Transparent pricing on mediation services;
  - Options for law firms to partner with mediation institutes to show their support to mediation; and
  - Opportunities for collaboration with Construction Arbitration Board to promote mediation in construction industry.
- The publication of a book titled the 'Maze of the Solution – Lawyers' experience with mediation', and other literary works related to mediation including instructions and articles.
- The promotion of mediation related campaigns on social media.
- The analysis of settlement rates in court mediation.
- An appeal to the Danish Ministry of Justice to promote mediation to the profession at large.

Mr. Bloch was confident that the Singapore Convention of Mediation (SCM) would be adopted by the European Union (EU).<sup>1</sup> He would like to encourage all EU members to adopt the SCM and mediation. He believed that when the SCM is ratified, it will become necessary to differentiate the applicability of the SCM and the EU Directive on Mediation to avoid any overlaps and confusion.

### Q&A Discussion

The presentation was followed by an interactive Q&A session. Mr. Bloch was joined by Mr. Morton Tveten and Mr. Gert Nilsson Eldrimner. Some questions addressed by them during the session are as follows:

- What effect will the SCM have on mediation in Scandinavia since Scandinavia has not signed the SCM?
- How should Scandinavia raise awareness among the parliamentarians regarding the necessity of the SCM in Scandinavia?
- How are mediated settlement agreements enforced in Denmark?
- How would the mediation landscape in Scandinavia be like 10 years from now?
- What are the key factors contributing to the growth of mediation in Denmark?

We invite you to listen to the answers from the video record of the session [here](#), as well as to catch up on their responses to other questions not listed above.

Links to requested resources that came up during the session are provided below:

- Formal accreditation by a standards body for individual mediators:<sup>2</sup>
  - [International Mediation Institute \(IMI\) Certified Mediator](#)
  - [Singapore International Mediation Institute \(SIMI\) – Credentialing Scheme](#)

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<sup>1</sup> Officially named United Nations Convention on International Settlement Agreements Resulting from Mediation.

<sup>2</sup> There is cross recognition offered between IMI's Certified Mediators and SIMI's Certified Mediators. Individual mediators accredited on other levels by IMI or SIMI do not qualify for cross recognition by virtue of having not met the minimum required experience

- [United Nations Convention on International Settlement Agreements Resulting from Mediation](#) also known as the ‘Singapore Convention on Mediation’
- [Act \(2011:860\) on Mediation in Certain Private Law Disputes](#)
- [Global Pound Conference Series](#)
- [Danish Mediation Institute](#)
- [Mediation Center in Norway](#) (Mekling.no)
- [Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008](#) on certain aspects of mediation in civil and commercial matters

The team at SIMI and IMI would like to express our gratitude to Mr. Bloch, Mr. Tveten and Mr. Eldrimner for sharing their time to be a speaker and/or panelist at the Singapore Convention Seminar Series and to participants for joining us live for the session. Do join us for our next seminar by Mr. Pasit Asawawattanaorn on ‘*Thailand and the Singapore Convention on Mediation*’!

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### About the Speaker



Thomas Samsø Bloch is the CEO of the Danish Mediation Institute where he works to promote and raise awareness of mediation as an effective, constructive and sustainable way of solving private and commercial disputes in Denmark.

Thomas is highly experienced in collaborative problem solving as a lawyer and has practised mediation since 2008. He has mediated private, commercial, construction, family and employment cases and also serves as a court mediator at the Danish Eastern High Court and the Court of Elsinore. Prior to his current position he was the Chairman of the Association of Danish Mediator Lawyers and the Vice Chairman of the Danish Mediation Institute.

