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No. T 2

EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT[1] BETWEEN THE REPUBLIC OF AUSTRIA AND THE REPUBLIC OF SINGAPORE ON THE CONTINUED APPLICATION OF THE CONVENTION BETWEEN THE REPUBLIC OF AUSTRIA AND THE UNITED KINGDOM REGARDING LEGAL PROCEEDINGS IN CIVIL AND COMMERCIAL MATTERS, SIGNED AT LONDON ON 31 MARCH 1931

I

EMBASSY OF THE REPUBLIC OF SINGAPORE

Bangkok, August 15, 1968

Your Excellency,

I have the honour to address Your Excellency on the subject of the Convention between the United Kingdom and the Republic of Austria, regarding Legal Proceedings in Civil and Commercial Matters, signed at London on 31st March, 1931, which Convention was extended to Singapore, then a British Colony, by an Exchange of Notes, dated 28th June, 1951, between the United Kingdom and the Republic of Austria.

1 Came into force on 3 November 1969, the date on which the two Governments had notified each other of the fulfillment of their respective constitutional procedures, in accordance with the provisions of the said notes.

I have the honour to inform Your Excellency that the Government of the Republic of Singapore would consider herself continued to be bound by the above said Convention, subject, however, to the following qualifications:

(i) The term "competent authority" in the Convention, shall, insofar as Singapore is concerned, be deemed to refer to the Registrar, High Court, Singapore.

(ii) In reference to Articles 3(*d*) and 7(*c*) of the Convention, the request for service of judicial or extra-judicial documents and Letters of Request for the taking of evidence shall be addressed or transmitted to the Registrar, High Court, Singapore.

(iii) Article 11 of the Convention shall be amended to read as follows: "The subjects of one High Contracting Party resident in the territory of the other High Contracting Party shall not be compelled to give security for costs in any case where a subject of such other High Contracting Party would not be so compelled."

(iv) Notwithstanding anything to the contrary in the Convention, either Singapore or Austria, may terminate this Convention by giving six months notice of termination through the diplomatic channel.

If the Government of the Republic of Austria are prepared to accept the above qualifications, I have the honour to suggest that the present Letter and Your Excellency's reply to that effect should be regarded as constituting an agreement between the two Governments. This agreement shall enter into force on the day the two Governments notify each other that the requirements for its entry into force under their respective constitutional procedures have been fulfilled.

Accept, Your Excellency, the renewed assurances of my highest consideration.

R.H. Ho m. p.

Ambassador Extraordinary and Plenipotentiary

His Excellency Dr. Werner Sautter
Ambassador Extraordinary and Plenipotentiary
The Austrian Embassy
Bangkok

II

AUSTRIAN EMBASSY

Bangkok, January 13, 1969

Your Excellency,

I have the honour to refer to your note of 15 August 1968 which reads as follows:

[*See note I*]

I have the honour to inform Your Excellency that the Republic of Austria agrees with the above proposals of the Republic of Singapore and that, accordingly, your note and this note in reply shall constitute an agreement between the two Governments.

Accept, Excellency, the renewed assurances of my highest consideration.

Dr. Werner SAUTTER m. p.
Ambassador Extraordinary and Plenipotentiary

His Excellency R. H. Ho
Ambassador Extraordinary and Plenipotentiary
Embassy of the Republic of Singapore
Bangkok

CONVENTION between the United Kingdom and Austria regarding Legal Proceedings in Civil and Commercial Matters.— London, March 31, 1931.([1])

[Ratifications exchanged at Vienna, January 12, 1932.]

His Majesty the King of Great Britain, Ireland and the British dominions beyond the Seas, Emperor of India, and the Federal President of the Republic of Austria;

Being desirous to render mutual assistance in the conduct of legal proceedings, in their respective territories, in civil and commercial matters which are being dealt with or which it is anticipated may be dealt with by their respective judicial authorities, have resolved to conclude a convention for this purpose and have appointed as their plenipotentiaries:

[Here follow the names.]

Who, having communicated their full powers, found in good and due form, have agreed as follows :—

I.—*Preliminary*.

ART. 1.—(*a*) This convention applies only to civil and commercial matters, including non-contentious matters.

(*b*) In this convention the words:—

(1) "territory of one (or of the other) high contracting party" shall be interpreted as meaning at any time any of the territories of such high contracting party to which the convention at that time applies;

(2) "subject of one (or of the other) high contracting party" shall in relation to His Majesty the King of Great Britain, Ireland and the British dominions beyond the Seas, Emperor of India, mean all subjects of His Majesty wherever domiciled.

II.—*Service of Judicial and Extra-Judicial Documents*.

2. When judicial or extra-judicial documents drawn up in the territory of one of the high contracting parties are required by a judicial authority situated therein to be served on persons, partnerships, companies, societies or other corporations in the territory of the other high contracting party, such documents may be served on the recipient, whatever his nationality, in any of the ways provided in articles 3 and 4.

([1]) *Treaty Series* No. 4 (1932) (Cmd. 4007). Signed also in the German language.

3.—(*a*) A request for service shall be addressed by a diplomatic or consular officer of the high contracting party from whose territory the documents to be served emanate, to the competent authority of the country where the documents are to be served, requesting such authority to cause the documents to be served. The request shall be sent by such diplomatic or consular officer to such authority.

(*b*) The request for service shall be drawn up in the language of the country where service is to be effected.

The request for service shall state the names and descriptions of the parties, the name, description and address of the recipient, and the nature of the document to be served, and shall enclose the documents to be served in duplicate.

(*c*) The document to be served shall either be drawn up in the language of the country in which it is to be served, or be accompanied by a translation in such language. Such translation shall be certified as correct by a diplomatic or consular officer of the high contracting party from whose territory the document emanates.

(*d*) Requests for service shall be addressed and sent —

In England, to the Senior Master of the Supreme Court of Judicature.

In Austria, to the Federal Ministry of Justice.

If the authority to whom a request for service has been sent is not competent to execute it, such authority shall of his own motion transmit the document to the competent authority of his own country.

(*e*) Service shall be effected by the competent authority of the country where the document is to be served, who shall serve the document in the manner prescribed by the municipal law of such country for the service of similar documents, except that, if a wish for some special manner of service is expressed in the request for service, such manner of service shall be followed in so far as it is not incompatible with the law of that country.

(*f*) The execution of the request for service duly made in accordance with the preceding provisions of this article shall not be refused unless (1) the authenticity of the request for service is not established, or (2) the high contracting party in whose territory it is to be effected considers that his sovereignty or safety would be compromised thereby.

(*g*) The authority by whom the request for service is executed shall furnish a certificate proving the service or explaining the reason which has prevented such service, and setting forth the fact, the manner and the date of such service or attempted service, and shall send the said certificate to the diplomatic or consular officer by whom the request for service was made. The certificate of service or of attempted service shall be placed on one of the duplicates or attached thereto.

4.—(*a*) Any of the following methods of service may be used in the territory of either high contracting party, without any request to or intervention of the authorities of the country where service is to be effected in connexion with judicial

or extra-judicial documents drawn up in the territory of the other high contracting party:—

(1) Service by a diplomatic or consular officer of the high contracting party from whose territory the document emanates;

(2) Service by an agent appointed for the purpose either by the judicial authority by whom service of the document is required, or by the party on whose application the document was issued;

(3) Service through the postal channel;

(4) Any other mode of service recognised by the law existing at the time of service in the country from which the documents emanate.

(*b*) It is understood —

(1) that in none of the methods of service provided for in this article shall any measures of compulsion be employed;

(2) that the validity and effect of any such service will remain a matter for the determination of the respective courts of the high contracting parties in accordance with their law.

(*c*) The high contracting parties agree that in principle it is desirable that documents served by any of these methods should, unless the recipient is a subject of the high contracting party from whose territory the document to be served emanates, either be drawn up in the language of the country in which service is to be effected or accompanied by a translation into such language. Nevertheless, in the absence of any legislation in their respective territories making translations obligatory in such cases, the high contracting parties do not accept any obligation in this respect.

5.—(*a*) In any case where documents have been served in accordance with the provisions of article 3, the high contracting party, by whose diplomatic or consular officer the request for service is addressed, shall pay to the other high contracting party any charges and expenses which are payable under the law of the country where the service is effected to the persons employed to effect service, and any charges and expenses incurred in effecting service in a special manner. These charges and expenses shall not exceed such as are usually allowed in the courts of that country.

(*b*) Repayment of these charges and expenses shall be claimed by the competent authority by whom the service has been effected from the diplomatic or consular officer by whom the request was addressed when sending to him the certificate provided for in article 3(*g*).

(*c*) Except as provided above, no fees of any description shall be payable by one high contracting party to the other in respect of the service of any document.

III.—*Taking of Evidence.*

6. When a judicial authority in the territory of one of the high contracting parties requires that evidence should be taken in the territory of the other high contracting party, such evidence may be taken, whatever the nationality of the parties, in any one of the ways prescribed in articles 7 and 8.

7.—(*a*) The judicial authority by whom the evidence is required may, in accordance with the provisions of its law, address itself by means of letters of request to the competent authority of the country where the evidence is to be taken, requesting such authority to take the evidence.

(*b*) The letter of request shall be drawn up in the language of the country where the evidence is to be taken, or be accompanied by a translation in such language. Such translation shall be certified as correct by a diplomatic or consular officer of the high contracting party from whose judicial authority the request emanates. The letters of request shall state the nature of the proceedings for which the evidence is required, the names and descriptions of the parties thereto, and the names, descriptions and addresses of the witnesses. They shall also either be accompanied by a list of interrogatories to be put to the witness or witnesses, or, as the case may be, by a description of the documents, samples or other objects to be produced and identified, and a translation thereof certified as correct in the manner heretofore provided or shall request the competent authority to allow such questions to be asked *vivâ voce* as the parties or their representatives shall desire to ask.

(*c*) The letters of request shall be transmitted:—

In England by an Austrian diplomatic or consular officer to the Senior Master of the Supreme Court of Judicature.

In Austria by a British consular officer to the Federal Ministry of Justice.

In case the authority to whom letters of request are transmitted is not competent to execute them, he shall forward them without any further request to the competent authority of his own country.

(*d*) The competent authority to whom the letters of request are transmitted or forwarded shall give effect thereto and obtain the evidence required by the use of the same compulsory measures and the same procedure as are employed in the execution of a commission or order emanating from the authorities of his own country except that, if a wish that some special procedure should be followed is expressed in the letters of request, such special procedure shall be followed in so far as it is not incompatible with the law of the country where the evidence is to be taken.

(*e*) The diplomatic or consular officer, by whom the letters of request are transmitted, shall, if he so desires, be informed of the date and place where the

proceedings will take place, in order that he may inform the interested party or parties, who shall be permitted to be present in person or to be represented if they so desire by any persons competent to appear before the courts of either of the countries concerned.

(*f*) The execution of the letters of request can only be refused—

(1) if the authenticity of the letters of request is not established;

(2) if in the country where the evidence is to be taken the execution of the letters of request in question does not fall within the functions of the judiciary;

(3) if the high contracting party in whose territory the evidence is to be taken considers that his sovereignty or safety would be compromised thereby.

(*g*) In every instance where the letters of request are not executed by the authority to whom they are addressed, the latter will at once inform the diplomatic or consular officer by whom they were transmitted, stating the grounds on which the execution of the letters of request has been refused, or the judicial authority to whom they have been forwarded.

8.—(*a*) The evidence may also be taken, without any request to or intervention of the authorities of the country in which it is to be taken, by a person in that country directly appointed for the purpose by the court by whom the evidence is required. A diplomatic or consular officer of the high contracting party whose court requires the evidence or any other suitable person may be so appointed.

(*b*) A person so appointed to take evidence may request the individuals named by the court appointing him to appear before him and give evidence, or to produce any document, sample or other object. He may take all kinds of evidence which are not contrary to the law of the country where the evidence is being taken and shall have power to administer an oath, but he shall have no compulsory powers. False testimony given before a person appointed to take evidence in accordance with this article shall be punishable in the courts of the country for which the evidence is required in the same manner as if such testimony had been given before a court of such country.

(*c*) Requests to appear issued by such person shall, unless the recipient is a subject of the high contracting party for whose judicial authority the evidence is required, be drawn up in the language of the country where the evidence is to be taken, or be accompanied by a translation into such language.

(*d*) The evidence may be taken in accordance with the procedure recognised by the law of the country for whose judicial authority the evidence is required, and the parties will have the right to be present or to be represented by any persons competent to appear before the courts of either of the countries concerned.

9. The fact that an attempt to take evidence by the method laid down in article 8 has failed, owing to the refusal of any witness to appear, to give evidence or to produce documents, samples or other objects, does not preclude a request being subsequently made in accordance with article 7.

10.—(*a*) Where evidence is taken in the manner provided in article 7 the high contracting party by whose judicial authority the letters of request are addressed shall repay to the other high contracting party any expenses incurred by the competent authority of the latter in the execution of the request in respect of any charges and expenses payable to witnesses, experts, interpreters, or translators, the costs of obtaining the attendance of witnesses who have not appeared voluntarily, and the charges and expenses payable to any person whom such authority may have deputed to act in cases where the law of his own country permits this to be done, and any charges and expenses incurred by reason of a special procedure being requested and followed. These expenses shall be such as are usually allowed in similar cases in the courts of the country where the evidence has been taken.

(*b*) The repayment of these expenses shall be claimed by the competent authority by whom the letters of request have been executed from the diplomatic or consular officer by whom they were transmitted when sending to him the documents establishing their execution.

(*c*) Except as above provided, no fees of any description shall be payable by one high contracting party to the other in respect of the taking of evidence.

IV.—*Judicial Assistance for Poor Persons, Imprisonment for Debt and Security for Costs.*

11. The subjects of one high contracting party shall enjoy in the territory of the other high contracting party a perfect equality of treatment with subjects of that high contracting party as regards free judicial assistance for poor persons and imprisonment for debt; and provided that they are resident in any such territory, shall not be compelled to give security for costs in any case where a subject of such other high contracting party would not be so compelled.

V.—*General Provisions*

12. Any difficulties which may arise in connexion with the operation of this convention shall be settled through the diplomatic channel.

13. The present convention, of which the English and German texts are equally authentic, shall be subject to ratification. Ratifications shall be exchanged in London. The convention shall come into force 1 month after the date on which ratifications are exchanged and shall remain in force for 3 years after the date of its coming into force. If neither of the high contracting parties shall have given

notice through the diplomatic channel to the other not less than 6 months before the expiration of the said period of 3 years of his intention to terminate the convention, it shall remain in force until the expiration of 6 months from the day on which either of the high contracting parties shall have given notice to terminate it.

14.—(*a*) This convention shall not apply *ipso facto* to Scotland or Northern Ireland, nor to any of the colonies or protectorates of His Majesty the King of Great Britain, Ireland and the British dominions beyond the Seas, Emperor of India, nor to any territories under his suzerainty, nor to any mandated territories administered by his Government in the United Kingdom, but His Majesty may at any time, while the convention is in force under article 13, by a notification given through his Minister at Vienna, extend the operation of this convention to any of the above-mentioned territories.

(*b*) Such notification shall state the authorities in the territory concerned to whom requests for service or for the taking of evidence are to be transmitted, and the language in which communications and translations are to be made. The date of the coming into force of any such extension shall be 1 month from the date of such notification.

(*c*) Either of the high contracting parties may, at any time after the expiry of 3 years from the coming into force of an extension of this convention to any of the territories referred to in paragraph (*a*) of this article, terminate such extension on giving 6 months' notice of termination through the diplomatic channel.

(*d*) The termination of the convention under article 13 shall, unless otherwise expressly agreed to by both high contracting parties, *ipso facto* terminate it in respect of any territories to which it has been extended under paragraph (*a*) of this article.

15.—(*a*) The high contracting parties agree that His Majesty the King of Great Britain, Ireland and the British dominions beyond the Seas, Emperor of India, may at any time, while the present convention is in force, either under article 13 or by virtue of any accession under this article, by a notification given through the diplomatic channel, accede to the present convention in respect of any member of the British Commonwealth of Nations, whose Government may desire that such accession should be effected, provided that no notification of accession may be given at any time when the Federal President of the Republic of Austria has given notice of termination in respect of all the territories of His Majesty to which the convention applies. The provisions of article 14(*b*) shall be applicable to any such notification. Any such accession shall take effect 1 month from the date of its notification.

(*b*) After the expiry of 3 years from the date of the coming into force of any accession under paragraph (*a*) of this article either of the high contracting parties may, by giving 6 months' notice of termination through the diplomatic channel,

terminate the application of the convention to any country in respect of which a notification of accession has been given. The termination of the convention under article 13 shall not affect its application to any such country.

(*c*) Any notification of accession under paragraph (*a*) of this article may include any dependency or mandated territory administered by the Government of the country in respect of which such notification of accession is given; and any notice of termination in respect of any such country under paragraph (*b*) shall apply to any dependency or mandated territory which was included in the notification of accession in respect of that country.

In witness whereof the undersigned have signed the present convention in English and German texts, and have affixed thereto their seals.

Done in duplicate in London on the 31st day of March 1931.

(L.S.) ARTHUR HENDERSON.

(L.S.) G. FRANCKENSTEIN.

CONVENTION between the United Kingdom and Austria respecting Legal Proceedings in Civil and Commercial Matters. — London, March 31, 1931. ([1])

ACCESSION: —	Effective Date.
New Zealand … … …	July 25, 1932.
Extended to: —	
Scotland, Northern Ireland … …	April 1, 1932.
Bahamas, Barbados, Bermuda, British Guiana, British Honduras, Ceylon, Cyprus, Falkland Islands and dependencies, Federated Malay States, Fiji, Gambia (Colony and Protectorate), Gibraltar, Gold Coast (including Ashanti, Northern Territories and Togoland), Grenada, Hong Kong, Jamaica (including Turks and Caicos Islands and Cayman Islands), Kenya (Colony and Protectorate), Leeward Islands, Malta, Mauritius, Nigeria (including Cameroons), North Borneo, Northern Rhodesia, Nyasaland Protectorate, Palestine (excluding Transjordan), St. Helena and Ascension, St. Lucia, St. Vincent, Sarawak, Seychelles, Sierra Leone (Colony and Protectorate), Somaliland Protectorate, South African High Commission Territories, Straits Settlements, Tanganyika Territory, Trinidad and Tobago, Uganda Protectorate, Unfederated Malay States, Western Pacific (British Solomon Islands, Gilbert and Ellice Islands and Tonga), Zanzibar Protectorate	April 1, 1932.

([1]) Vol. CXXXIV, page 211.

EXCHANGE OF NOTES between the United Kingdom and Austria, providing for the continued application of the Convention of 31st March, 1931, regarding Legal Proceedings in Civil and Commercial Matters, with Annex.— Vienna, 28th June, 1951([1]).

(No. 1.)—*His Majesty's Minister at Vienna to the Austrian Minister for Foreign Affairs*

Your Excellency, *Vienna, 28th June*, 1951.

I HAVE the honour to address your Excellency on the subject of the Convention between His Majesty, in respect of the United Kingdom, and the Federal President of the Republic of Austria, regarding Legal Proceedings in Civil and Commercial Matters, signed at London on 31st March, 1931 the respective Instruments of Ratification of which were exchanged at Vienna on 12th January, 1932.

Under instructions from His Majesty's Principal Secretary of State for Foreign Affairs, I have the honour to propose to your Excellency that effect shall be given to the Convention as from the date of this Exchange of Notes, and that the Convention shall continue in force in accordance with the provisions of Article 13.

I have the honour further to propose that as from the date of this Exchange of Notes the Convention shall also apply to Scotland, Northern Ireland, the Channel Islands and the Isle of Man and to the territories named in the Annex to this Note.

If the Austrian Government are prepared to accept the above proposals, I have the honour to suggest that the present Note and your Excellency's reply to that effect should be regarded as constituting the agreement between the two Governments which shall take effect this day, the 28th June, of 1951.

I have, &c.
HAROLD CACCIA.

([1]) Treaty Series No. 99 (1951) (Cmd. 8408).

ANNEX

Southern Rhodesia
Aden (Colony and Protectorate)
Bahamas
Barbados
Basutoland
Bechuanaland Protectorate
Bermuda
British Guiana
British Honduras
Brunei
Cyprus
Falkland Islands and Dependencies
Federation of Malaya
Fiji
Gambia (Colony and Protectorate)
Gibraltar
Gold Coast (including Ashanti, the Northern Territories and Togoland under United Kingdom Trusteeship)
Hong Kong
Jamaica (including Turks and Caicos Islands and Cayman Islands)
Kenya (Colony and Protectorate)
Leeward Islands
Malta
Mauritius
Nigeria (Colony, Protectorate and Cameroons under United Kingdom Trusteeship)
North Borneo
Northern Rhodesia
Nyasaland Protectorate
St. Helena and Dependencies
Sarawak
Seychelles
Sierra Leone (Colony and Protectorate)
Singapore
Somaliland Protectorate
Swaziland
Tanganyika
Tonga
Trinidad and Tobago
Uganda Protectorate
Western Pacific Islands (British Solomon Islands Protectorate and Gilbert and Ellice Islands Colony)
Windward Islands (Grenada, St. Lucia, St. Vincent and Dominica)
Zanzibar Protectorate

(No. 2.)—*The Austrian Minister for Foreign Affairs to His Majesty's Minister at Vienna*

(Translation)

Mr. Minister, *Vienna, 28th June*, 1951.

I HAVE the honour to confirm the receipt of your Note of 28th June, 1951, which reads as follows:—

[As in No. 1]

I have the honour to inform you that the Austrian Federal Government accept the above proposals and agree that your Note and the present reply should be regarded as constituting an agreement between the two Governments which shall take effect this day.

Accept, &c.

GRUBER.