UNCITRAL WORKING GROUP II

INSTRUMENTS ON THE ENFORCEMENT OF INTERNATIONAL COMMERCIAL SETTLEMENT AGREEMENTS RESULTING FROM MEDIATION

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Executive summary

At its 68th session, held in New York City in February 2018, UNCITRAL Working Group II completed its work drafting two instruments for the enforcement of international commercial mediated settlement agreements. At its 51st session on 25 June 2018, the UNCITRAL Commission adopted the two instruments with some amendments. The first instrument is a new Convention on the Enforcement of International Commercial Agreements resulting from Mediation – inspired by the New York Convention in the field of international arbitration. The second instrument is an amendment to the 2002 Model Law on International Commercial Conciliation. At its 73rd session on 20 December 2018, the United Nations General Assembly adopted the Convention and took note of the adoption of the amended Model Law by the Commission. These two instruments will provide common legislative standards for the enforcement of international commercial settlement agreements resulting from mediation and should make this type of dispute settlement more attractive and efficient.

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I. Introduction

As previously reported,[1] at its 47th session in 2014, the United Nations Commission on International Trade Law ("UNCITRAL") agreed that Working Group II (Arbitration and Conciliation/Dispute Settlement) ("WG II") should consider the issue of the enforcement of international settlement agreements resulting from conciliation (mediation) proceedings. At its 48th session in 2015, UNICTRAL agreed that WG II should commence the preparation of a convention, model provisions or "guidance texts" on the topic.

II. Developments at Working Group II's 68th session in February

Since its 62nd session in February 2015, WG II has dedicated its work to the topic of the enforcement of international settlement agreements resulting from conciliation (mediation), as directed by the UNCITRAL Commission.[2] WG II reached a consensus that it would develop, at the same time, additional provisions and amendments to the UNCITRAL Model Law on Conciliation as well as a convention on the enforcement of international commercial settlement agreements resulting from mediation.[3] WG II further agreed to suggest to the General Assembly of the United Nations, when adopting a resolution for the approval of these instruments, not to express a preference as to which of the two instruments should be adopted by Member States.[4] Further, it has been a guiding principle of WGII in its deliberations on the draft amended Model Law to ensure a level of consistency with the then-draft Convention and, at the same time, to preserve the existing text of the Model Law to the extent possible.[5]

At its 68th Session, WG II first confirmed that the two instruments would refer to "mediation" instead of "conciliation", because "mediation" is a more widely used term.[6]

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[1] *See* H. Verbist, "UNCITRAL Instruments on enforcement of international commercial settlement agreements resulting from mediation," 1 Jan. 2018 (https://static1.squarespace.com/static/5a4599e6bce17688a9e7bde2/t/5b6a0e1c575d1f32da3b98ed/1533677326961/FICA+-+UNCITRAL+Working+Group+II+Report+-+67th+Session.pdf)

[2] UNCITRAL Commission Report, 47th session, 7-18 July 2014, New York, A/69/17, para. 123.

[3] Report of Working Group II, 66th session, 6-10 February 2017, New York, A/CN.9/901, para. 93.

[4] *Ibid*.

[5] UNCITRAL Commission Report, 51st session, New York, 25-13 July 2018, A/73/17, para. 52.

[6] Report of Working Group II, 68th session, 5-9 February 2018, New York, A/CN.9/934, para. 16. *See also* Note by Secretariat, "International commercial mediation: preparation of instruments on enforcement of international commercial settlement agreements resulting from mediation, A/CN.9/WG.II/WP.205 (23 Nov. 2017), para. 4; Report of Working Group II, 67th session, 2-6 October 2017, Vienna, A/CN.9/929, paras.

The text of the amended Model Law specifies in a footnote that this change in terminology does not have any substantive or conceptual implications.[7] WG II then discussed a number of issues regarding the scope and exclusions of the draft instruments, as well as definitions. In general, no substantive alterations or changes were agreed.[8] With respect to whether the draft instruments should set forth how a competent authority would ascertain whether a settlement agreement fell within the scope of the exclusions of the instruments, it was noted that such a procedure would largely depend on the domestic rules of procedure and, therefore, it was not necessary for the draft instruments to prescribe any particular procedure for that purpose.[9]

The Working Group then considered possible alterations to the draft provisions governing the applicability of the draft convention and revised Model Law.[10] The most significant modifications agreed were to change "the application" in article 4(5) of the draft convention and article 17(5) of the draft amended model law to read "the request for relief."[11] In addition, WG II made clear that the "illustrative and non-hierarchical list of means to evidence that a settlement agreement resulted from mediation" was indeed non-exhaustive and that a party requesting enforcement could submit any other evidence to prove that a settlement agreement resulted from mediation if it could not produce the evidence mentioned in the draft instruments.[12]

WG II then turned to consideration of defences. The Working Group confirmed that the grounds listed for refusing to grant relief in Article 5 of the draft convention and Article 18 of the proposed amended Model Law applied both to requests for enforcement and to situations where a party invokes a settlement agreement as a defence against a claim.[13] WG II then turned more fully to Articles 5 and 18, and after

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102-104. WG II also proposed that this change of terminology should apply to the UNCITRAL Conciliation Rules (1980), *See* A/CN.9/934, para. 16.

[7] UNCITRAL Commission Report, 51st session, 25 June-13 July 2018, New York, A/73/17, Annex II, p. 56, note 2.

[8] *See* A/CN.9/934, paras. 17-32.

[9] *Ibid*., para. 24.

[10] *Ibid*., paras. 33-39.

[11] *Ibid*., para. 37.

[12] *Ibid*., para. 38.

[13] *Ibid*., para. 41.

considerable discussion, agreed on amended language.[14] Ultimately, it was agreed that the provision stating grounds for refusing to grant relief should read:

> 1. The competent authority of the Contracting State where relief is sought under article 4 may refuse to grant relief at the request of the party against whom the relief is sought, only if that party furnishes to the competent authority proof that: (a) A party to the settlement agreement was under some incapacity; (b) The settlement agreement sought to be 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 Contracting State 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; (c) The obligations in the settlement agreement (i) have been performed; or (ii) are not clear or comprehensible; (d) Granting relief would be contrary to the terms of the settlement agreement; (e) 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; or (f) 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.
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> 2. The competent authority of the Contracting State where relief is sought under article 4 may also refuse to grant relief if it finds that: '(a) Granting relief would be contrary to the public policy of that State;' or '(b) The subject matter of the dispute is not capable of settlement by mediation under the law of that State.'[15]

The Working Group also expressed a shared understanding that there might be overlap among the grounds provided for in paragraph 1 of Article 5 of the draft Convention and in paragraph 1 of Article 18 of the draft amended Model Law, and that competent authorities should take that aspect into account when interpreting the various grounds.[16] Further, it was accepted that it would be up to each contracting state to decide what constituted "public policy" as stated in section 2(a), and that "public policy could include, in certain cases, issues relating to national security or national interest."[17]

WG II then reviewed the remaining provisions in the draft convention and proposed amendments to the Model Law. Most suggestions for changes in the

[14] *Ibid*., paras. 42-67.

[15] *Ibid*., paras. 59, 66.

[16] *Ibid*., para. 65.

[17] *Ibid*., para. 67.

previously-agreed provisions did not obtain a consensus or were non-substantive alterations or clarifications.[18] One more important clarification was to Article 11 of the draft Convention, which relates to regional economic integration organizations. Draft Article 11(4)(b) was amended to make it clear that a party seeking enforcement of a mediated settlement agreement could only seek relief from a single member State in the regional economic integration organization, and could not re-apply to courts of other member States following a decision in one member State.[19]

The Working Group recommended adoption by the UNCITRAL Commission and the United Nations General Assembly, "without creating any expectation that interested States may adopt either instrument."[20]

III. Amendment of the Instruments by the UNCITRAL Commission

At its 51st Session in New York on 25 June 2018, the UNCITRAL Commission approved the draft Convention, entitled, "United Nations Convention on International Settlement Agreements Resulting from Mediation" in its entirety with two minor modifications.[21] First, the Commission deleted the definitions of "electronic communication" and "data message" from Article 2(2) because those terms were contained in other United Nations and UNCITRAL instruments.[22] Second, the Commission deleted paragraph 4 of Article 2, because that paragraph was "generally considered unnecessary."[23] As approved, the draft Convention contains a preamble and 16 articles.

Also, the UNCITRAL Commission adopted the amendments to the UNCITRAL Model Law on International Commercial Conciliation, which is henceforth entitled, "UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation, 2018".[24] The Commission adopted a parallel change to draft Article 16 of the Model Law to conform to the change made in

[18] *See generally ibid*., paras. 68-137.

[19] *Ibid*., paras. 96-97.

[20] *Ibid*., paras. 140-142.

[21] *See generally* UNCITRAL Commission Report, 51st session, New York, 25-13 July 2018), A/73/17, paras. 18-49.

[22] *Ibid*., para. 23.

[23] *Ibid*., para. 24.

[24] *Ibid*., para. 68.

Article 2(2) of the draft convention.[25] The Commission also modified the footnotes to the draft amended Model Law. It made the third sentence of footnote 5 a separate footnote to Article 16, paragraph 1. It also modified paragraph 4 in footnote 6 to read, "A settlement agreement is also 'international' if it results from international mediation as defined in article 3, paragraphs 2, 3 and 4."[26] Whereas the 2002 Model Law contained 14 articles, the amended 2018 Model Law now contains 20 articles.

Finally, the UNCITRAL Commission asked the Secretariat to compile the *travaux préparatoires* of the draft Convention and draft amended Model Law so that they can be easily accessible; to supplement the "Guide to enactment and use of the UNCITRAL Model Law on International Commercial Mediation"; and to provide guidance on how sections 2 and 3 of the amended Model Law should each be enacted as a stand-alone legislative text.[27]

IV. The Convention Adopted by the United Nations General Assembly

The draft Convention and amended Model Law were submitted to the General Assembly of the United Nations at its session that opened on 18 September 2018.[28] Introducing the texts, the chair of the UNCITRAL Commission stated that the instruments "would allow parties to rely on a mediated settlement agreement and enforce it in a cross-border context according to simplified procedures."[29] The General Assembly adopted the Convention and noted with approval the amended Model Law on 20 December 2018.[30]

The Convention will be open for signature by all States in Singapore on 7 August 2019, and thereafter at United Nations Headquarters in New York.[31] The Convention will be referred to as the "Singapore Convention on Mediation".[32] Pursuant to Article 14,

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[25] *Ibid*., paras. 56-57.

[26] *Ibid.*, paras. 66.

[27] UNCITRAL Commission Report, 51st session, 25 June-13 July 2018, New York, A/73/17, para. 67.

[28] *See* http://www.un.org/en/ga/.

[29] United Nations Meetings Coverage and Press Releases, GA/L/3575 (16 Oct. 2018) (https://www.un.org/press/en/2018/gal3575.doc.htm).

[30] UNCITRAL, "General Assemb;y Adopts United Nations Convention on International Settlements Resulting from Mediation," 21 Dec. 2018 (https://uncitral.un.org/en/news/general-assembly-adopts-united-nations-convention-international-settlement-agreements-resulting).

[31] A/73/17, para. 44; United Nations General Assembly Resolution A/RES/73/199, 20 Dec. 2018.

[32] *Ibid*., para. 45.

the Convention will enter into force six months after deposit of the third instrument of ratification, acceptance, approval or accession.

The texts of the Convention and of the amended Model Law will be available in the six official languages of the United Nations. The text of the Convention as adopted by the General Assembly, and the amended Model Law as adopted by the UNCITRAL Commission, in English, are attached to this Paper as Appendix A and Appendix B, respectively.

V. Conclusion

After three years of intense work, Working Group II developed and reached agreement on a new convention for the enforcement of international mediated settlement agreements and corresponding amendments to the pre-existing Model Law on International Commercial Conciliation. Those instruments now have been approved by the United Nations General Assembly and UNCITRAL Commission. In announcing the adoption of the Convention by the General Assembly, the UNCITRAL Commission stated:

> Until the adoption of the Convention, the often-cited challenge to the use of mediation was the lack of an efficient and harmonized framework for cross-border enforcement of settlement agreements resulting from mediation. In response to this need, the Convention has been developed and adopted by the General Assembly.
>
> The Convention ensures that a settlement reached by parties becomes binding and enforceable in accordance with a simplified and streamlined procedure. The Convention provides a uniform and efficient international framework for mediation, akin to the framework that the New York Convention has successfully provided over the past 60 years for the recognition and enforcement of foreign arbitral awards.
>
> The Convention has been designed to become an essential instrument in the facilitation of international trade and in the promotion of mediation as an alternative and effective method of resolving trade disputes. It also contributes to strengthening access to justice, and to the rule of law.[33]

These two instruments should indeed accomplish the important roles predicted by UNICTRAL.

[33] UNCITRAL, "General Assembly Adopts United Nations Convention on International Settlements Resulting from Mediation," 21 Dec. 2018 (https://uncitral.un.org/en/news/general-assembly-adopts-united-nations-convention-international-settlement-agreements-resulting).

APPENDIX A

Annex I

United Nations Convention on International Settlement Agreements Resulting from Mediation

Preamble

The Parties to this Convention,

Recognizing the value for international trade of mediation as a method for settling commercial disputes in which the parties in dispute request a third person or persons to assist them in their attempt to settle the dispute amicably,

Noting that mediation is increasingly used in international and domestic commercial practice as an alternative to litigation,

Considering that the use of mediation results in significant benefits, such as reducing the instances where a dispute leads to the termination of a commercial relationship, facilitating the administration of international transactions by commercial parties and producing savings in the administration of justice by States,

Convinced that the establishment of a framework for international settlement agreements resulting from mediation that is acceptable to States with different legal, social and economic systems would contribute to the development of harmonious international economic relations,

Have agreed as follows:

Article 1. Scope of application

1. This Convention applies to an agreement resulting from mediation and concluded in writing by parties to resolve a commercial dispute ("settlement agreement") which, at the time of its conclusion, is international in that:

(a) At least two parties to the settlement agreement have their places of business in different States; or

(b) The State in which the parties to the settlement agreement have their places of business is different from either:

(i) The State in which a substantial part of the obligations under the settlement agreement is performed; or

(ii) The State with which the subject matter of the settlement agreement is most closely connected.

2. This Convention does not apply to settlement agreements:

(a) Concluded to resolve a dispute arising from transactions engaged in by one of the parties (a consumer) for personal, family or household purposes;

(b) Relating to family, inheritance or employment law.

3. This Convention does not apply to:

(a) Settlement agreements:

(i) That have been approved by a court or concluded in the course of proceedings before a court; and

(ii) That are enforceable as a judgment in the State of that court;

(b) Settlement agreements that have been recorded and are enforceable as an arbitral award.

Article 2. Definitions

1. For the purposes of article 1, paragraph 1:

(a) If a party has more than one place of business, the relevant place of business is that which has the closest relationship to the dispute resolved by the settlement agreement, having regard to the circumstances known to, or contemplated by, the parties at the time of the conclusion of the settlement agreement;

(b) If a party does not have a place of business, reference is to be made to the party's habitual residence.

2. A settlement agreement is "in writing" if its content is recorded in any form. The requirement that a settlement agreement be in writing is met by an electronic communication if the information contained therein is accessible so as to be useable for subsequent reference.

3. "Mediation" means a process, irrespective of the expression used or the basis upon which the process is carried out, whereby parties attempt to reach an amicable settlement of their dispute with the assistance of a third person or persons ("the mediator") lacking the authority to impose a solution upon the parties to the dispute.

Article 3. General principles

1. Each Party to the Convention shall enforce a settlement agreement in accordance with its rules of procedure and under the conditions laid down in this Convention.

2. If a dispute arises concerning a matter that a party claims was already resolved by a settlement agreement, a Party to the Convention shall allow the party to invoke the 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.

Article 4. Requirements for reliance on settlement agreements

1. A party relying on a settlement agreement under this Convention shall supply to the competent authority of the Party to the Convention where relief is sought:

(a) The settlement agreement signed by the parties;

(b) Evidence that the settlement agreement resulted from mediation, such as:

(i) The mediator's signature on the settlement agreement;

(ii) A document signed by the mediator indicating that the mediation was carried out;

(iii) An attestation by the institution that administered the mediation; or

(iv) In the absence of (i), (ii) or (iii), any other evidence acceptable to the competent authority.

2. The requirement that a settlement agreement shall be signed by the parties or, where applicable, the mediator is met in relation to an electronic communication if:

(a) A method is used to identify the parties or the mediator and to indicate the parties' or mediator's intention in respect of the information contained in the electronic communication; and

(b) The method used is either:

(i) As reliable as appropriate for the purpose for which the electronic communication was generated or communicated, in the light of all the circumstances, including any relevant agreement; or

(ii) Proven in fact to have fulfilled the functions described in subparagraph (a) above, by itself or together with further evidence.

3. If the settlement agreement is not in an official language of the Party to the Convention where relief is sought, the competent authority may request a translation thereof into such language.

4. The competent authority may require any necessary document in order to verify that the requirements of the Convention have been complied with.

5. When considering the request for relief, the competent authority shall act expeditiously.

Article 5. Grounds for refusing to grant relief

1. The competent authority of the Party to the Convention where relief is sought under article 4 may refuse to grant relief at the request of the party against whom the relief is sought only if that party furnishes to the competent authority proof that:

(a) A party to the settlement agreement was under some incapacity;

(b) The settlement agreement sought to be 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;

(c) The obligations in the settlement agreement:

(i) Have been performed; or

(ii) Are not clear or comprehensible;

(d) Granting relief would be contrary to the terms of the settlement agreement;

(e) 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; or

(f) 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.

2. The competent authority of the Party to the Convention where relief is sought under article 4 may also refuse to grant relief if it finds that:

(a) Granting relief would be contrary to the public policy of that Party; or

(b) The subject matter of the dispute is not capable of settlement by mediation under the law of that Party.

Article 6. Parallel applications or claims

If an application or a claim relating to a settlement agreement has been made to a court, an arbitral tribunal or any other competent authority which may affect the relief being sought under article 4, the competent authority of the Party to the Convention where such relief is sought may, if it considers it proper, adjourn the decision and may also, on the request of a party, order the other party to give suitable security.

Article 7. Other laws or treaties

This Convention shall not deprive any interested party of any right it may have to avail itself of a settlement agreement in the manner and to the extent allowed by

the law or the treaties of the Party to the Convention where such settlement agreement is sought to be relied upon.

Article 8. Reservations

1. A Party to the Convention may declare that:

(a) It shall not apply this Convention to settlement agreements to which it is a party, or to which any governmental agencies or any person acting on behalf of a governmental agency is a party, to the extent specified in the declaration;

(b) It shall apply this Convention only to the extent that the parties to the settlement agreement have agreed to the application of the Convention.

2. No reservations are permitted except those expressly authorized in this article.

3. Reservations may be made by a Party to the Convention at any time. Reservations made at the time of signature shall be subject to confirmation upon ratification, acceptance or approval. Such reservations shall take effect simultaneously with the entry into force of this Convention in respect of the Party to the Convention concerned. Reservations made at the time of ratification, acceptance or approval of this Convention or accession thereto, or at the time of making a declaration under article 13 shall take effect simultaneously with the entry into force of this Convention in respect of the Party to the Convention concerned. Reservations deposited after the entry into force of the Convention for that Party to the Convention shall take effect six months after the date of the deposit.

4. Reservations and their confirmations shall be deposited with the depositary.

5. Any Party to the Convention that makes a reservation under this Convention may withdraw it at any time. Such withdrawals are to be deposited with the depositary, and shall take effect six months after deposit.

Article 9. Effect on settlement agreements

The Convention and any reservation or withdrawal thereof shall apply only to settlement agreements concluded after the date when the Convention, reservation or withdrawal thereof enters into force for the Party to the Convention concerned.

Article 10. Depositary

The Secretary-General of the United Nations is hereby designated as the depositary of this Convention.

Article 11. Signature, ratification, acceptance, approval, accession

1. This Convention is open for signature by all States in Singapore, on 1 August 2019, and thereafter at United Nations Headquarters in New York.

2. This Convention is subject to ratification, acceptance or approval by the signatories.

3. This Convention is open for accession by all States that are not signatories as from the date it is open for signature.

4. Instruments of ratification, acceptance, approval or accession are to be deposited with the depositary.

Article 12. Participation by regional economic integration organizations

1. A regional economic integration organization that is constituted by sovereign States and has competence over certain matters governed by this Convention may similarly sign, ratify, accept, approve or accede to this Convention. The regional economic integration organization shall in that case have the rights and obligations of a Party to the Convention, to the extent that that organization has competence over

matters governed by this Convention. Where the number of Parties to the Convention is relevant in this Convention, the regional economic integration organization shall not count as a Party to the Convention in addition to its member States that are Parties to the Convention.

2. The regional economic integration organization shall, at the time of signature, ratification, acceptance, approval or accession, make a declaration to the depositary specifying the matters governed by this Convention in respect of which competence has been transferred to that organization by its member States. The regional economic integration organization shall promptly notify the depositary of any changes to the distribution of competence, including new transfers of competence, specified in the declaration under this paragraph.

3. Any reference to a "Party to the Convention", "Parties to the Convention", a "State" or "States" in this Convention applies equally to a regional economic integration organization where the context so requires.

4. This Convention shall not prevail over conflicting rules of a regional economic integration organization, whether such rules were adopted or entered into force before or after this Convention: (a) if, under article 4, relief is sought in a State that is member of such an organization and all the States relevant under article 1, paragraph 1, are members of such an organization; or (b) as concerns the recognition or enforcement of judgments between member States of such an organization.

Article 13. Non-unified legal systems

1. If a Party to the Convention has two or more territorial units in which different systems of law are applicable in relation to the matters dealt with in this Convention, it may, at the time of signature, ratification, acceptance, approval or accession, declare that this Convention is to extend to all its territorial units or only to one or more of them, and may amend its declaration by submitting another declaration at any time.

2. These declarations are to be notified to the depositary and are to state expressly the territorial units to which the Convention extends.

3. If a Party to the Convention has two or more territorial units in which different systems of law are applicable in relation to the matters dealt with in this Convention:

(a) Any reference to the law or rule of procedure of a State shall be construed as referring, where appropriate, to the law or rule of procedure in force in the relevant territorial unit;

(b) Any reference to the place of business in a State shall be construed as referring, where appropriate, to the place of business in the relevant territorial unit;

(c) Any reference to the competent authority of the State shall be construed as referring, where appropriate, to the competent authority in the relevant territorial unit.

4. If a Party to the Convention makes no declaration under paragraph 1 of this article, the Convention is to extend to all territorial units of that State.

Article 14. Entry into force

1. This Convention shall enter into force six months after deposit of the third instrument of ratification, acceptance, approval or accession.

2. When a State ratifies, accepts, approves or accedes to this Convention after the deposit of the third instrument of ratification, acceptance, approval or accession, this Convention shall enter into force in respect of that State six months after the date of the deposit of its instrument of ratification, acceptance, approval or accession. The Convention shall enter into force for a territorial unit to which this Convention has been extended in accordance with article 13 six months after the notification of the declaration referred to in that article.

Article 15. Amendment

1. Any Party to the Convention may propose an amendment to the present Convention by submitting it to the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the Parties to the Convention with a request that they indicate whether they favour a conference of Parties to the Convention for the purpose of considering and voting upon the proposal. In the event that within four months from the date of such communication at least one third of the Parties to the Convention favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations.

2. The conference of Parties to the Convention shall make every effort to achieve consensus on each amendment. If all efforts at consensus are exhausted and no consensus is reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the Parties to the Convention present and voting at the conference.

3. An adopted amendment shall be submitted by the depositary to all the Parties to the Convention for ratification, acceptance or approval.

4. An adopted amendment shall enter into force six months after the date of deposit of the third instrument of ratification, acceptance or approval. When an amendment enters into force, it shall be binding on those Parties to the Convention that have expressed consent to be bound by it.

5. When a Party to the Convention ratifies, accepts or approves an amendment following the deposit of the third instrument of ratification, acceptance or approval, the amendment shall enter into force in respect of that Party to the Convention six months after the date of the deposit of its instrument of ratification, acceptance or approval.

Article 16. Denunciations

1. A Party to the Convention may denounce this Convention by a formal notification in writing addressed to the depositary. The denunciation may be limited to certain territorial units of a non-unified legal system to which this Convention applies.

2. The denunciation shall take effect 12 months after the notification is received by the depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation shall take effect upon the expiration of such longer period after the notification is received by the depositary. The Convention shall continue to apply to settlement agreements concluded before the denunciation takes effect.

DONE at ---- this [X] day of [X] ------, in a single original, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic.

APPENDIX B

Annex II

UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation, 2018 (amending the UNCITRAL Model Law on International Commercial Conciliation, 2002)

Section 1 — General provisions

Article 1. Scope of application of the Law and definitions

1. This Law applies to international commercial[1] mediation[2] and to international settlement agreements.

2. For the purposes of this Law, "mediator" means a sole mediator or two or more mediators, as the case may be.

3. For the purposes of this Law, "mediation" means a process, whether referred to by the expression mediation, conciliation or an expression of similar import, whereby parties request a third person or persons ("the mediator") to assist them in their attempt to reach an amicable settlement of their dispute arising out of or relating to a contractual or other legal relationship. The mediator does not have the authority to impose upon the parties a solution to the dispute.

Article 2. Interpretation

1. In the interpretation of this Law, regard is to be had to its international origin and to the need to promote uniformity in its application and the observance of good faith.

2. Questions concerning matters governed by this Law which are not expressly settled in it are to be settled in conformity with the general principles on which this Law is based.

Section 2 — International commercial mediation

Article 3. Scope of application of the section and definitions

1. This section applies to international[3] commercial mediation.

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1 The term "commercial" should be given a wide interpretation so as to cover matters arising from all relationships of a commercial nature, whether contractual or not. Relationships of a commercial nature include, but are not limited to, the following transactions: any trade transaction for the supply or exchange of goods or services; distribution agreement; commercial representation or agency; factoring; leasing; construction of works; consulting; engineering; licensing; investment; financing; banking; insurance; exploitation agreement or concession; joint venture and other forms of industrial or business cooperation; and carriage of goods or passengers by air, sea, rail or road.

2 In its previously adopted texts and relevant documents, UNCITRAL used the term "conciliation" with the understanding that the terms "conciliation" and "mediation" were interchangeable. In preparing this Model Law, the Commission decided to use the term "mediation" instead in an effort to adapt to the actual and practical use of the terms and with the expectation that this change will facilitate the promotion and heighten the visibility of the Model Law. This change in terminology does not have any substantive or conceptual implications.

3 States wishing to enact this section to apply to domestic as well as international mediation may wish to consider the following changes to the text:

- Delete the word "international" in paragraph 1 of articles 1 and 3; and
- Delete paragraphs 2, 3 and 4 of article 3, and modify references to paragraphs accordingly.

2. A mediation is "international" if:

(a) The parties to an agreement to mediate have, at the time of the conclusion of that agreement, their places of business in different States; or

(b) The State in which the parties have their places of business is different from either:

(i) The State in which a substantial part of the obligations of the commercial relationship is to be performed; or

(ii) The State with which the subject matter of the dispute is most closely connected.

3. For the purposes of paragraph 2:

(a) If a party has more than one place of business, the place of business is that which has the closest relationship to the agreement to mediate;

(b) If a party does not have a place of business, reference is to be made to the party's habitual residence.

4. This section also applies to commercial mediation when the parties agree that the mediation is international or agree to the applicability of this section.

5. The parties are free to agree to exclude the applicability of this section.

6. Subject to the provisions of paragraph 7 of this article, this section applies irrespective of the basis upon which the mediation is carried out, including agreement between the parties whether reached before or after a dispute has arisen, an obligation established by law, or a direction or suggestion of a court, arbitral tribunal or competent governmental entity.

7. This section does not apply to:

(a) Cases where a judge or an arbitrator, in the course of judicial or arbitral proceedings, attempts to facilitate a settlement; and

(b) […].

Article 4. Variation by agreement

Except for the provisions of article 7, paragraph 3, the parties may agree to exclude or vary any of the provisions of this section.

Article 5. Commencement of mediation proceedings[4]

1. Mediation proceedings in respect of a dispute that has arisen commence on the day on which the parties to that dispute agree to engage in mediation proceedings.

2. If a party that invited another party to mediate does not receive an acceptance of the invitation within 30 days from the day on which the invitation was sent, or within such other period of time as specified in the invitation, the party may elect to treat this as a rejection of the invitation to mediate.

Article 6. Number and appointment of mediators

1. There shall be one mediator, unless the parties agree that there shall be two or more mediators.

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[4] The following text is suggested for States that might wish to adopt a provision on the suspension of the limitation period:

Article X. Suspension of limitation period

1. When the mediation proceedings commence, the running of the limitation period regarding the claim that is the subject matter of the mediation is suspended.

2. Where the mediation proceedings have terminated without a settlement agreement, the limitation period resumes running from the time the mediation ended without a settlement agreement.

2. The parties shall endeavour to reach agreement on a mediator or mediators, unless a different procedure for their appointment has been agreed upon.

3. Parties may seek the assistance of an institution or person in connection with the appointment of mediators. In particular:

(a) A party may request such an institution or person to recommend suitable persons to act as mediator; or

(b) The parties may agree that the appointment of one or more mediators be made directly by such an institution or person.

4. In recommending or appointing individuals to act as mediator, the institution or person shall have regard to such considerations as are likely to secure the appointment of an independent and impartial mediator and, where appropriate, shall take into account the advisability of appointing a mediator of a nationality other than the nationalities of the parties.

5. When a person is approached in connection with his or her possible appointment as mediator, he or she shall disclose any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence. A mediator, from the time of his or her appointment and throughout the mediation proceedings, shall without delay disclose any such circumstances to the parties unless they have already been informed of them by him or her.

Article 7. Conduct of mediation

1. The parties are free to agree, by reference to a set of rules or otherwise, on the manner in which the mediation is to be conducted.

2. Failing agreement on the manner in which the mediation is to be conducted, the mediator may conduct the mediation proceedings in such a manner as the mediator considers appropriate, taking into account the circumstances of the case, any wishes that the parties may express and the need for a speedy settlement of the dispute.

3. In any case, in conducting the proceedings, the mediator shall seek to maintain fair treatment of the parties and, in so doing, shall take into account the circumstances of the case.

4. The mediator may, at any stage of the mediation proceedings, make proposals for a settlement of the dispute.

Article 8. Communication between mediator and parties

The mediator may meet or communicate with the parties together or with each of them separately.

Article 9. Disclosure of information

When the mediator receives information concerning the dispute from a party, the mediator may disclose the substance of that information to any other party to the mediation. However, when a party gives any information to the mediator, subject to a specific condition that it be kept confidential, that information shall not be disclosed to any other party to the mediation.

Article 10. Confidentiality

Unless otherwise agreed by the parties, all information relating to the mediation proceedings shall be kept confidential, except where disclosure is required under the law or for the purposes of implementation or enforcement of a settlement agreement.

Article 11. Admissibility of evidence in other proceedings

1. A party to the mediation proceedings, the mediator and any third person, including those involved in the administration of the mediation proceedings, shall not

in arbitral, judicial or similar proceedings rely on, introduce as evidence or give testimony or evidence regarding any of the following:

(a) An invitation by a party to engage in mediation proceedings or the fact that a party was willing to participate in mediation proceedings;

(b) Views expressed or suggestions made by a party in the mediation in respect of a possible settlement of the dispute;

(c) Statements or admissions made by a party in the course of the mediation proceedings;

(d) Proposals made by the mediator;

(e) The fact that a party had indicated its willingness to accept a proposal for settlement made by the mediator;

(f) A document prepared solely for purposes of the mediation proceedings.

2. Paragraph 1 of this article applies irrespective of the form of the information or evidence referred to therein.

3. The disclosure of the information referred to in paragraph 1 of this article shall not be ordered by an arbitral tribunal, court or other competent governmental authority and, if such information is offered as evidence in contravention of paragraph 1 of this article, that evidence shall be treated as inadmissible. Nevertheless, such information may be disclosed or admitted in evidence to the extent required under the law or for the purposes of implementation or enforcement of a settlement agreement.

4. The provisions of paragraphs 1, 2 and 3 of this article apply whether or not the arbitral, judicial or similar proceedings relate to the dispute that is or was the subject matter of the mediation proceedings.

5. Subject to the limitations of paragraph 1 of this article, evidence that is otherwise admissible in arbitral or judicial or similar proceedings does not become inadmissible as a consequence of having been used in a mediation.

Article 12. Termination of mediation proceedings

The mediation proceedings are terminated:

(a) By the conclusion of a settlement agreement by the parties, on the date of the agreement;

(b) By a declaration of the mediator, after consultation with the parties, to the effect that further efforts at mediation are no longer justified, on the date of the declaration;

(c) By a declaration of the parties addressed to the mediator to the effect that the mediation proceedings are terminated, on the date of the declaration; or

(d) By a declaration of a party to the other party or parties and the mediator, if appointed, to the effect that the mediation proceedings are terminated, on the date of the declaration.

Article 13. Mediator acting as arbitrator

Unless otherwise agreed by the parties, the mediator shall not act as an arbitrator in respect of a dispute that was or is the subject of the mediation proceedings or in respect of another dispute that has arisen from the same contract or legal relationship or any related contract or legal relationship.

Article 14. Resort to arbitral or judicial proceedings

Where the parties have agreed to mediate and have expressly undertaken not to initiate during a specified period of time or until a specified event has occurred

arbitral or judicial proceedings with respect to an existing or future dispute, such an undertaking shall be given effect by the arbitral tribunal or the court until the terms of the undertaking have been complied with, except to the extent necessary for a party, in its opinion, to preserve its rights. Initiation of such proceedings is not of itself to be regarded as a waiver of the agreement to mediate or as a termination of the mediation proceedings.

Article 15. Binding and enforceable nature of settlement agreements

If the parties conclude an agreement settling a dispute, that settlement agreement is binding and enforceable.

Section 3 — International settlement agreements[5]

Article 16. Scope of application of the section and definitions

1. This section applies to international agreements resulting from mediation and concluded in writing by parties to resolve a commercial dispute ("settlement agreements").[6]

2. This section does not apply to settlement agreements:

(a) Concluded to resolve a dispute arising from transactions engaged in by one of the parties (a consumer) for personal, family or household purposes;

(b) Relating to family, inheritance or employment law.

3. This section does not apply to:

(a) Settlement agreements:

(i) That have been approved by a court or concluded in the course of proceedings before a court; and

(ii) That are enforceable as a judgment in the State of that court;

(b) Settlement agreements that have been recorded and are enforceable as an arbitral award.

4. A settlement agreement is "international" if, at the time of the conclusion of the settlement agreement:[7]

(a) At least two parties to the settlement agreement have their places of business in different States; or

(b) The State in which the parties to the settlement agreement have their places of business is different from either:

(i) The State in which a substantial part of the obligations under the settlement agreement is to be performed; or

(ii) The State with which the subject matter of the settlement agreement is most closely connected.

5. For the purposes of paragraph 4:

(a) If a party has more than one place of business, the relevant place of business is that which has the closest relationship to the dispute resolved by the

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[5] A State may consider enacting this section to apply to agreements settling a dispute, irrespective of whether they resulted from mediation. Adjustments would then have to be made to relevant articles.

[6] A State may consider enacting this section to apply only where the parties to the settlement agreement agreed to its application.

[7] A State may consider broadening the definition of "international" settlement agreement by adding the following subparagraph to paragraph 4: "A settlement agreement is also 'international' if it results from international mediation as defined in article 3, paragraphs 2, 3 and 4."

settlement agreement, having regard to the circumstances known to, or contemplated by, the parties at the time of the conclusion of the settlement agreement;

(b) If a party does not have a place of business, reference is to be made to the party's habitual residence.

6. A settlement agreement is "in writing" if its content is recorded in any form. The requirement that a settlement agreement be in writing is met by an electronic communication if the information contained therein is accessible so as to be useable for subsequent reference.

Article 17. General principles

1. A settlement agreement shall be enforced in accordance with the rules of procedure of this State, and under the conditions laid down in this section.

2. If a dispute arises concerning a matter that a party claims was already resolved by a settlement agreement, the party may invoke the settlement agreement in accordance with the rules of procedure of this State, and under the conditions laid down in this section, in order to prove that the matter has already been resolved.

Article 18. Requirements for reliance on settlement agreements

1. A party relying on a settlement agreement under this section shall supply to the competent authority of this State:

(a) The settlement agreement signed by the parties;

(b) Evidence that the settlement agreement resulted from mediation, such as:

(i) The mediator's signature on the settlement agreement;

(ii) A document signed by the mediator indicating that the mediation was carried out;

(iii) An attestation by the institution that administered the mediation; or

(iv) In the absence of (i), (ii) or (iii), any other evidence acceptable to the competent authority.

2. The requirement that a settlement agreement shall be signed by the parties or, where applicable, the mediator, is met in relation to an electronic communication if:

(a) A method is used to identify the parties or the mediator and to indicate the parties' or mediator's intention in respect of the information contained in the electronic communication; and

(b) The method used is either:

(i) As reliable as appropriate for the purpose for which the electronic communication was generated or communicated, in the light of all the circumstances, including any relevant agreement; or

(ii) Proven in fact to have fulfilled the functions described in subparagraph (a) above, by itself or together with further evidence.

3. If the settlement agreement is not in an official language of this State, the competent authority may request a translation thereof into such language.

4. The competent authority may require any necessary document in order to verify that the requirements of this section have been complied with.

5. When considering the request for relief, the competent authority shall act expeditiously.

Article 19. Grounds for refusing to grant relief

1. The competent authority of this State may refuse to grant relief at the request of the party against whom the relief is sought only if that party furnishes to the competent authority proof that:

(a) A party to the settlement agreement was under some incapacity;

(b) The settlement agreement sought to be 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;

(ii) Is not binding, or is not final, according to its terms; or

(iii) Has been subsequently modified;

(c) The obligations in the settlement agreement:

(i) Have been performed; or

(ii) Are not clear or comprehensible;

(d) Granting relief would be contrary to the terms of the settlement agreement;

(e) 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; or

(f) 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.

2. The competent authority of this State may also refuse to grant relief if it finds that:

(a) Granting relief would be contrary to the public policy of this State; or

(b) The subject matter of the dispute is not capable of settlement by mediation under the law of this State.

Article 20. Parallel applications or claims

If an application or a claim relating to a settlement agreement has been made to a court, an arbitral tribunal or any other competent authority which may affect the relief being sought under article 18, the competent authority of this State where such relief is sought may, if it considers it proper, adjourn the decision and may also, on the request of a party, order the other party to give suitable security.