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Settlement of commercial disputes

Enforcement of settlement agreements resulting from international commercial conciliation/mediation

Compilation of comments by Governments (*continued*)

Note by the Secretariat

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III. Compilation of comments

31. Algeria

[Original: French]
[Date: 20 April 2015]

Question 1: Information regarding the legislative framework

i. There is no specific procedure in the existing laws and regulations in Algeria concerning international commercial settlement agreements resulting from conciliation/mediation proceedings.

However, the general civil procedure regime includes as enforceable titles:

- Records of conciliation or agreements approved by Algerian judges and filed with a court registry.
- Notarized documents and certified documents and instruments prepared abroad which may be enforced in Algeria only if they have been declared enforceable by Algerian courts.

ii. There is no procedure for expedited enforcement of international commercial settlement agreements.

iii. There are no provisions to the effect that an international commercial settlement agreement be treated as an arbitral award given that our Civil Procedure Code provides for only two types of arbitration: ad-hoc arbitration and institutional arbitration.

Question 2: Grounds for refusing enforcement of a commercial settlement agreement

There are no specific grounds for refusing enforcement of a commercial settlement agreement in our country, but the general rule applicable to any agreement is that it must not be contrary to Algerian legislation, public policy or morality.

Question 3: Validity of international commercial settlement agreements

There are no specific conditions for international commercial settlement agreements to be deemed valid, but the general rule applicable to any agreement is that it must not be contrary to Algerian legislation, public policy or morality.

There are no bases in law for challenging the validity of an agreement to refer a dispute to mediation/conciliation or the validity of the resulting mediated/conciliated settlement agreement. However, the parties may provide, in their agreement, an arbitration clause on mediation or conciliation, subject to the legal conditions provided for in the Civil Procedure Code.

Question 4: Other comments

Mediation/conciliation remains the most appropriate procedure to resolve commercial disputes.

The international community would benefit from promoting mediation/conciliation by developing provisions to ensure the enforcement of international settlement agreements resulting from mediation/conciliation.

Algeria is willing to make its contribution to that end.

32. Cameroon

[Original: French]
[Date: 20 April 2015]

Question 1: Information regarding the legislative framework

Act No. 2007/001 of 19 April 2007 establishes the office of enforcement judge and also establishes the conditions for the enforcement in Cameroon of foreign judicial decisions and public acts, as well as foreign arbitral awards.

Question 2: Grounds for refusing enforcement of a commercial settlement agreement

According to the provisions of the above-mentioned Act, foreign arbitral awards have the effect of res judicata and may be recognized and rendered enforceable in Cameroon by the enforcement judge, subject to the conditions provided for in the applicable international conventions or, in the absence of such conventions, under the same conditions as those set forth in the provisions of the Uniform Act on Arbitration Law of the Organization for the Harmonization of Business Law in Africa (OHADA) and Act No. 2003/009 of 10 July 2003 designating competent courts under the Uniform Act on Arbitration Law and establishing the procedure for referral to those courts.

Accordingly, foreign public acts, in particular foreign notarized instruments that are enforceable in the State in which they were issued, are declared enforceable in Cameroon by the president of the court of first instance of the place where enforcement is taking place or is envisaged or by a judge of the same court who has been appointed by the president for that purpose.

The enforcement judge verifies that such acts fulfil the necessary conditions with respect to their authenticity in their countries of origin and that they are not contrary to public order in Cameroon.

Question 3: Validity of international commercial settlement agreements

In accordance with the aforementioned Act, the president of the court of first instance or the judge delegated by him or her is the judge responsible for determining whether foreign court rulings and public acts, as well as foreign arbitral awards, are enforceable.

A party requesting the recognition or enforcement of an instrument relating to a civil, commercial or social matter must submit the following documents to the judge: a certified copy of the decision that fulfils the necessary conditions with respect to its authenticity; the original of the record of service of the decision or any other legal instrument confirming service of the decision; a court registrar's certificate to the effect that the decision has not been subject to challenge or appeal; if appropriate, a copy of the notice or summons issued to a party that has failed to

appear before the court, a certified copy issued by the registrar of the court that issued the decision and any other documents required in order to establish that the notice or summons reached the party in good time.

The enforcement judge is required only to verify that: the decision was issued by a competent court in the country of origin; the parties have been duly summonsed, represented and declared in default; the decision is enforceable in its country of origin; the decision is contrary neither to public order in Cameroon nor to a final court decision rendered in Cameroon.

Question 4: Any other comment

In view of the foregoing, it can be said that Cameroonian legislation contains provisions on the enforceability of foreign public acts and foreign arbitral awards and thus agreements resulting from conciliation/mediation, which are enforceable as any contract between the parties. In other words, a written conciliation statement and a written arbitration award would have equal legal validity and effect.

The enforcement judge is required simply to record in his or her decision the outcome of his or her verifications. Enforcement may be granted in part, with respect to any part of the decision in question.

The decision of the enforcement judge may be challenged only through an appeal to the Supreme Court. Failure to submit one of the above-listed documents to the judge may also be considered as a ground for challenging the validity of an international commercial agreement resulting from mediation/conciliation proceedings and for rendering the agreement unenforceable.

33. Chile

[Original: Spanish]
[Date: 20 April 2015]

Question 1: Information regarding the legislative framework

In Chile, mediation, broadly understood as an alternative dispute resolution mechanism in which a mediator assists parties in their attempt to reach an amicable settlement to their dispute, has been progressively incorporated into the domestic legal system in various areas, for example in family law and labour law. However, it has not yet been provided for in national legislation in the area of international commercial settlements.

In particular, with regard to alternative means of dispute resolution, it should be noted that articles 2446 et seq. of the Chilean Civil Code regulate settlement agreements, defining them as agreements in which the parties settle pending disputes out of court, or take steps to prevent possible future disputes.

In addition, articles 262 et seq. of the Civil Procedure Code provide for conciliation proceedings, which may be conducted in any civil action in which settlement is admissible, with certain exceptions specifically identified.

Question 2: Grounds for refusing enforcement of a commercial settlement agreement — Question 3: Validity of international commercial settlement agreements

However, it should be noted that the enforcement of international mediation or settlement agreements is not specifically regulated in national law. As regards decisions on disputes tried abroad, Chilean legislation regulates the enforcement of foreign decisions in articles 242 to 251 of the Civil Procedure Code, Title XIX No. 2 "On decisions passed by foreign courts", which establish the rules governing the recognition and enforcement of decisions handed down by foreign courts. These rules also apply to the decisions issued by judges in arbitral proceedings. In this regard, the law provides that decisions delivered in foreign countries shall have the same force in Chile as they are granted by the relevant treaties and shall be enforced according to the procedures established by Chilean law, unless otherwise modified by the treaties.

In the absence of relevant treaties with the State where the decisions originate, the decisions shall be given the same force as those issued in Chile. In cases where the aforementioned rules cannot be applied, the decisions of foreign courts shall have the same force in Chile as if they had been issued by Chilean courts, provided that they meet the conditions expressly provided for in the Civil Procedure Code.

Therefore, in accordance with the Chilean legal system, it is possible to confer enforceability on international commercial settlement agreements through their recognition by a court.

Furthermore, it should be noted that article 30 of Act No. 19.971 on international commercial arbitration provides that, during arbitral proceedings, the parties may reach a settlement resolving the dispute, allowing the arbitral tribunal to terminate proceedings, and, at the request of both parties and if the arbitral tribunal has no objections, the settlement may be recorded in the form of an arbitral award under the terms agreed by the parties. Consequently, it is also possible to confer enforceability on an international commercial settlement agreement concluded within arbitral proceedings.

34. Mexico

[Original: Spanish]
[Date: 16 April 2015]

Question 1: Information regarding the legislative framework

Concept of "international commercial settlement agreement"

The concept of "international commercial settlement agreement" does not exist in Mexican law. Furthermore, the Government of Mexico is unaware of the existence of such a concept in comparative law.

The concept may therefore be understood in two ways. The first would be as the result of international conciliation proceedings. It is likely that some States have enacted legislation defining international commercial settlement agreements for the purposes of their domestic law.

If that is the case, since there are no provisions in Mexican legislation for the enforcement of such agreements under a special regime, the general regime described below would apply.

The second way in which the concept may be understood would be that an international commercial settlement exists if the parties reach a settlement with respect to a dispute arising from a relationship or contract that is considered to be international in accordance with provisions in force that govern such status. No special regime would apply to such settlements under Mexican law. For example, in the case of a settlement agreement resulting from a dispute concerning an international sales contract in the terms of the United Nations Convention on Contracts for the International Sale of Goods, the Code of Commerce would apply to the enforcement of that agreement.

Consequently, the responses to the secretariat's questionnaire refer exclusively to settlement agreements in general with respect to legal relations under Mexican commercial law.

Conciliation proceedings excluded

Mexico is one of the countries that regulate civil law and commercial law separately. Civil law applies according to local jurisdiction, as a result of which each federal entity has a civil code and a code of civil procedure. Consequently, provisions are established in each federal entity with respect to the enforcement of settlement agreements reached in relation to civil cases.

Following a trend that appears to be universal, laws on conciliation have been enacted in all or most of the federal entities of Mexico. Since those entities are State-level jurisdictions, settlement agreements in such cases are typically non-commercial. However, in many cases, the parties agree to conciliation proceedings in accordance with the provisions of those laws and conclude agreements that settle their disputes. By virtue of the rule that the will of the parties prevails, such settlement agreements may be considered valid and enforceable under the legislation of the federal entity concerned.

Such laws usually establish special procedures facilitating the enforcement of settlement agreements reached through or formalized by a conciliator. They typically establish requirements of nationality and professional qualification that are incompatible with conciliation in relation to international commerce and have therefore not been taken into account in the completion of this questionnaire.

There are other relations for which separate regulatory provisions are established, such as employer-employee relations and relations between providers of goods and services and consumers.

Legal regulation of conciliation

The law applicable to commercial settlement agreements is the Code of Commerce. The Federal Civil Code supplements the Code of Commerce. Since the Code of Commerce has no specific provisions regarding settlement agreements, the following provisions of the Federal Civil Code apply: 10.1 "Article 2944. A settlement is a contract whereby the parties end or prevent a dispute by making reciprocal concessions." 10.2 "Article 2945. In the case of a settlement that prevents

future disputes, if the value exceeds 200 pesos, that fact must be recorded in writing." 10.3 "Article 2953. The settlement shall have, with respect to the parties, the same effect and force as res judicata; however, a request to terminate the settlement agreement or render it null and void may be made in the cases permitted by law."

The following provisions of the Code of Commerce are relevant to the enforcement of settlement agreements: 11.1 "Article 1391. Enforcement proceedings take place where an action is based on an enforceable document. The following documents are enforceable [...] II. Public instruments, as well as statements and certified copies thereof issued by a notary public; […] VII. … any other commercial contracts signed and legally recognized by the debtor ..."

Question 2: Grounds for refusing enforcement of a commercial settlement agreement

The grounds for refusing enforcement of a commercial settlement agreement in Mexico are the same as those for refusing enforcement of any other contract under the applicable law of obligations and contracts.

Agreements to settle disputes through conciliation and settlement agreements that have been concluded in another State in accordance with the laws of that State are recognized in Mexico (Federal Civil Code, article 13-I). However, if a settlement agreement involves the creation, regulation and extinguishment of rights in rem in respect of immovable property, leasing contracts or contracts for the temporary use of such property and movable property, it is governed by the law of the jurisdiction in which it was concluded, even if the parties to the agreement are foreign.

There are no specific provisions for the enforcement of international settlement agreements.

Commercial settlement agreements as awards

In Mexican law there is no provision for the treatment of a commercial settlement agreement as a final award. The only possibility for a settlement agreement to take the form of an award is under article 1447 of the Code of Commerce (the text of which is identical to that of article 30 of the UNCITRAL Model Law on International Commercial Arbitration), which provides for the recording of the settlement in the form of an award on the terms agreed by the parties if requested by the parties and not objected to by the arbitral tribunal.

Under Mexican law it would be legally impossible to initiate arbitration proceedings with the sole objective of recording a settlement between the parties as an award. According to the definition of "arbitration agreement" as set out in article 1416-I of the Code of Commerce and article 7 of the Model Law on International Commercial Arbitration, disputes which have arisen or which may arise between the parties are the subject of arbitration. A settlement constitutes the resolution of the dispute (Federal Civil Code, article 2944, and Code of Commerce, article 78) and requires only the agreement of the parties, as a result of which arbitration would be inappropriate because there is no dispute for the arbitrator to resolve.

Question 3: Validity of international commercial settlement agreements

In Mexican law, no specific conditions or formalities are required in order for the settlement agreement to be valid and binding. Article 78 of the Code of Commerce provides that, under commercial agreements, each party agrees to become bound in the manner and on the terms that they wish; the validity of the agreement does not depend on the fulfilment of specific requirements or formalities. The Federal Civil Code does not establish any requirements with regard to the settlement of a dispute that has arisen between parties. Requirements are established only with regard to disputes that may arise in the future, and then only when the value of the dispute exceeds 200 pesos (currently 0.2 pesos).

However, in order for enforcement to take place with respect to a commercial matter, it is necessary for the settlement to be recorded in a public instrument (i) issued by a notary public or commercial notary public or (ii) signed before or recognized by a judicial authority (Code of Commerce, article 1391).

Unlike awards on terms agreed between the parties that have been issued in Mexico in accordance with article 1440 of the Code of Commerce (article 30 of the UNCITRAL Model Law on International Commercial Arbitration), it is doubtful whether such an award rendered abroad falls within the scope of the 1958 New York Convention. There is no indication in published case law that Mexican courts have ruled on this matter.

Draft legislation

A draft law enacting the UNCITRAL Model Law on International Commercial Conciliation is to be submitted to Congress, containing the following provisions:

21.1 “Article 14. If the parties, by means of conciliation or negotiation, reach an agreement settling a dispute, that agreement shall constitute a commercial settlement.” “The settlement shall have, with respect to the parties, the same effect and force as res judicata; however, nullity or termination of the settlement agreement may be requested in the cases permitted by law.” “The commercial settlement shall be binding and enforceable as a commercial settlement, in accordance with the [special procedure established for the recognition and enforcement of awards].” “With the exception of [provisions relating to the transfer of rights and strict interpretation], the provisions [of the Federal Civil Code relating to settlement agreements] shall also apply to commercial settlements.”

21.2 “Article 15. If the recognition and enforcement of a commercial settlement is requested, only exceptions made after the settlement has been reached or specifically provided for by law may be admitted, and such exceptions must be supported by documentary evidence or replies to interrogatories. Once those exceptions are ruled on, no further exceptions may be admitted.”

21.3 “Article 16. If, in the commercial settlement agreement, the parties have agreed on an arbitration clause, any disputes arising from or relating to the commercial settlement shall, unless otherwise agreed, be settled by arbitration. If a party applies to a judicial authority, proceedings shall take place in accordance with article 1424 of the Code of Commerce (article 8 of the UNCITRAL Model Law on International Commercial Arbitration).”

35. Philippines

[Original: English]
[Date: 17 April 2015]

Question 1: Information regarding the legislative framework

The following are the legislative framework in the Philippines relating to the enforcement of international commercial settlement agreements arising out of mediation/conciliation proceedings: Republic Act (RA) No. 9285,[1] otherwise known as the "Alternative Dispute Resolution Act of 2004", which was issued on 2 April 2004; Implementing Rules and Regulations (IRR) of the Alternative Dispute Resolution Act of 2004 (ADR Act),[2] as embodied in the Philippine Department of Justice's Department Circular No. 98 dated 4 December 2009; Special Rules of Court on Alternative Dispute Resolution (Special ADR Rules), which took effect on October 30, 2009.

(i) Section 17 of the ADR Act provides for the enforcement of mediated settlement agreements, to quote: […] "(a) A settlement agreement following successful mediation shall be prepared by the parties with the assistance of their respective counsel, if any, and by the mediator. The parties and their respective counsels shall endeavour to make the terms and conditions thereof complete and make adequate provisions for the contingency of breach to avoid conflicting interpretations of the agreement. (b) The parties and their respective counsels, if any, shall sign the settlement agreement. The mediator shall certify that he/she explained the contents of the settlement agreement to the parties in a language known to them. (c) If the parties so desire, they may deposit such settlement agreement with the appropriate Clerk of a Regional Trial Court of the place where one of the parties resides. Where there is a need to enforce the settlement agreement, a petition may be filed by any of the parties with the same court, in which case, the court shall proceed summarily to hear the petition, in accordance with such rules of procedure as may be promulgated by the Supreme Court."

Complementary to the foregoing is Article 3.20 of the IRR of the ADR Act, as embodied in the Philippine Department of Justice's Department Circular No. 98 dated 4 December 2009. […]

Likewise, Rule 15 of the Special Rules of Court for ADR specifically laid down the rules for the deposit and enforcement of mediated settlement agreements. It states: […] "Rule 15.5. Enforcement of mediated settlement agreement. - Any of the parties to a mediated settlement agreement, which was deposited with the Clerk of Court of the Regional Trial Court, may, upon breach thereof, file a verified petition with the same court to enforce said agreement. Rule 15.6. Contents of petition. - The verified petition shall: a. Name and designate, as petitioner or respondent, all parties to the mediated settlement agreement and those who may be affected by it; b. State the following: (i). The address of the petitioner and respondents; and (ii). The ultimate facts that would show that the adverse party has defaulted to perform its obligations under said agreement; and c. Have attached to it the

[1] "An Act to institutionalize the use of an alternative dispute resolution system in the Philippines and to establish the office for alternative dispute resolution, and for other purposes".

[2] A.M. NO.07-11-08-SC.

following: (i). An authentic copy of the mediated settlement agreement; and (ii). Certificate of Deposit showing that the mediated settlement agreement was deposited with the Clerk of Court. Rule 15.7. Opposition. - The adverse party may file an opposition, within fifteen (15) days from receipt of notice or service of the petition, by submitting written proof of compliance with the mediated settlement agreement or such other affirmative or negative defences it may have. Rule 15.8. Court action. - After a summary hearing, if the court finds that the agreement is a valid mediated settlement agreement, that there is no merit in any of the affirmative or negative defences raised, and the respondent has breached that agreement, in whole or in part, the court shall order the enforcement thereof; otherwise, it shall dismiss the petition."

(ii) The procedure stated above does not include a procedure for expedited enforcement of international commercial settlement agreements.

(iii) Under Paragraph (d), Section 17 of the ADR Act, it is provided therein that a settlement agreement shall be treated as an arbitral award, if the parties agree in the settlement agreement that the mediator shall become a sole arbitrator for the dispute. As the settlement agreement is treated as an arbitral award it shall be subject to enforcement under RA No. 876, otherwise known as "The Arbitration Law". It states: […] "(d) The parties may agree in the settlement agreement that the mediator shall become a sole arbitrator for the dispute and shall treat the settlement agreement as an arbitral award which shall be subject to enforcement under Republic Act No. 876, otherwise known as the Arbitration Law, notwithstanding the provisions of Executive Order No. 1008 for mediated disputes outside of the CIAC." A restatement of this provision was made in Paragraph (d), Article 3.20 of the IRR of the ADR Act […].

As mentioned in the immediately preceding paragraphs, the provisions of RA No. 876[3] shall apply to a settlement agreement that shall be treated as an arbitral award. […] Relevant to the foregoing is Section 40 of the ADR Act […].

To reiterate, the provisions of RA No. 876 shall apply to a settlement agreement that shall be treated as an arbitral award. Hence, for the confirmation of a settlement agreement that was considered as an arbitral award, Section 28 of RA No. 876 requires the following: "SEC. 28. Papers to accompany motion to confirm, modify, correct, or vacate award. - The party moving for an order confirming, modifying, correcting, or vacating an award, shall at the time that such motion is filed with the court for the entry of judgement thereon also file the following papers with the Clerk of Court: (a) The submission, or contract to arbitrate; the appointment of the arbitrator or arbitrators; and each written extension of the time, if any, within which to make the award. (b) A verified copy of the award. (c) Each notice, affidavit, or other paper used upon the application to confirm, modify, correct or vacate such award, and a copy of each of the court upon such application."

RA No. 876 is silent with respect to the application of the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards to awards on agreed terms.

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[3] "An Act to authorize the making of arbitration and submission agreements, to provide for the appointment of arbitrators and the procedure for arbitration in civil controversies, and for other purposes".

Question 2: Grounds for refusing enforcement of a commercial settlement agreement

RA No. 9285 or the ADR Act and its IRR as well as the Special Rules of Court on ADR are silent with respect to the grounds for refusing to enforce a commercial settlement agreement.

Question 3: Validity of international commercial settlement agreements

For the validity of international commercial settlement agreements, the procedure prescribed under Section 17 of the ADR Act, Article 3.20 of the IRR of the ADR Act and Rule 15 of the Special Rules of Court for ADR should be followed.

RA No. 9285 or the ADR Act and its IRR and the Special Rules of Court on ADR are silent with respect to the question on challenging the validity of an agreement to refer a dispute to mediation/conciliation or the validity of the resulting mediated/conciliated settlement agreement.

36. Qatar

[Original: English]
[Date: 5 May 2015]

Question 1: Information regarding the legislative framework

Mediation or conciliation is a recognized pattern for the amicable settlement of disputes under Qatari Law. Several contracts include the agreement of the parties to resort to mediation or conciliation before either going to litigation or arbitration.

There is no legal framework organizing mediation practice. Therefore, the concerned partners are free to organize the mediation according to their wishes and concerns.

Within the Chamber of Commerce & Industry of Qatar, the Qatar International Center for Conciliation & Arbitration (QICCA) has issued in 2012 a specific set of mediation rules largely inspired from the UNCITRAL Conciliation Rules. Article l5 of the QICCA conciliation rules governs the “settlement agreement” reached by the parties with the assistance of the conciliator. Such agreement is subject to the general rules of contract under the Qatari Civil Code issued by law n. 22 of 2004. Also, a settlement agreement may be considered in respect of the so-called “contract of compromise” which is regulated by art. 573-581 of the Qatari Civil Code. The applicable law to the enforcement of the conciliation agreement shall be the law decided by the parties (autonomy of the parties principle).

There is no difference in the applicable rules whether the enforcement of the settlement (or compromise) agreement results from conciliation or not.

No procedure exists for “expedited” enforcement of international commercial settlement agreements.

Question 2: Grounds for refusing enforcement of a commercial settlement agreement

A settlement agreement is not treated as a final award rendered by an arbitral tribunal. The parties enjoy full liberty to organize the conciliation and to draft the settlement agreement in the form they consider appropriate.

In case a settlement between parties is reached during arbitration proceedings, it may happen that the parties opt for requesting from the arbitral tribunal to record the settlement in the form of an arbitral award on agreed terms (see art. 37 of QICCA Arbitration Rules).

A settlement agreement should be in writing, signed by the parties and the conciliator. Qatari Courts shall consider "awards on agreed terms" enforceable under the New York Convention of 1958. Yet, there are not many applications of the enforcement of foreign arbitral awards in Qatar.

The traditional grounds for refusing the enforcement of a commercial settlement agreement are the same for any contract such as in case the subject of the contract is contrary to public order, or in case the parties are under legal capacity, etc.

Question 3: Validity of international commercial settlement agreements

There are no specific criteria regarding the validity of the settlement agreement in Qatar.

37. Spain

[Original: Spanish]
[Date: 16 April 2015]

Question 1: Information regarding the legislative framework

The regulatory framework for the enforcement of international commercial settlement agreements arising out of mediation/conciliation proceedings in Spain consists of the following legislation:

(a) Act No. 5/2012 of 6 July 2012 on mediation in civil and commercial matters (hereinafter "the Mediation Act");

(b) Act No. 1/2000 of 7 January 2000 on civil procedure (hereinafter "the Civil Procedure Act").

(a) The Mediation Act regulates mediation in civil or commercial matters, including cross-border disputes, provided that such mediation does not affect rights and obligations unavailable to the parties under the applicable legislation.

Its preamble states that the advantages of mediation include the fact that it provides practical, effective and financially beneficial solutions to certain disputes between parties and is therefore an alternative to legal proceedings or arbitration, from both of which it must be clearly distinguished. Mediation consists of the appointment of a neutral professional mediator who facilitates settlement of the dispute by the parties themselves in an equitable way, enabling underlying relationships to be maintained and allowing the parties to retain control over the outcome of the dispute.

Furthermore, the preamble to the Mediation Act defines as one of the Act's primary objectives the establishment of a general regime applicable to any mediation proceedings that take place in Spain and that have binding legal effect. The Act applies only to civil and commercial matters and is part of a model that takes into account the provisions of the UNCITRAL Model Law on International Commercial Conciliation of 24 June 2002.

The following are excluded from the scope of application of the Mediation Act: mediation in criminal cases; mediation in disputes involving government entities; mediation in labour disputes; and mediation in consumer matters.

The scope of application of the Mediation Act includes mediation in cross-border disputes, which are defined as follows: "1. A dispute is cross-border when at least one of the parties is domiciled or habitually resident in a State other than that in which any other party is domiciled and the parties agree to refer the dispute to mediation or mediation is obligatory under the applicable law. Disputes covered by or resolved by means of mediation agreements shall also be regarded as cross-border disputes, regardless of the place where the mediation agreement is concluded, if, as a consequence of transfer of domicile of any of the parties, the enforcement of the agreement or of any of its consequences is sought in the territory of a different State. 2. In cross-border litigation between parties residing in different member States of the European Union, domicile shall be determined pursuant to articles 59 and 60 of Council Regulation (EC) No. 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters."

(b) The Civil Procedure Act regulates the enforcement by Spanish judicial bodies of agreements arising from mediation. To that end, the Act establishes a finite list of instruments (documents) that are enforceable by Spanish courts.

Extrajudicial mediation agreements are recognized as enforceable, as are agreements between the parties to terminate legal proceedings that have already commenced, the latter being referred to as "court settlement" agreements. The Civil Procedure Act thus recognizes the following as enforceable: arbitral awards or decisions and mediation agreements, with the requirement that the latter be recorded in a notarial instrument in accordance with the Mediation Act; court rulings that approve or confirm court settlements and agreements reached during proceedings, accompanied, if necessary in order to record their specific content, by the corresponding official copies of the record of proceedings.

i. On specific enforcement procedures, it is important to differentiate between:

(a) Requirements of form with respect to mediation agreements of a general nature;

(b) Additional formalities required for the enforcement of such mediation agreements; and

(c) Additional requirements for the enforcement of cross-border or international mediation agreements.

(a) With respect to mediation agreements of a general nature, both the Mediation Act and the Civil Procedure Act require the mediation agreement to comply with a

series of requirements of form. Furthermore, the mediation agreement is required to be recorded in a public instrument in the presence of a notary public.

The mediation agreement must meet the following requirements: it must be in writing; it may deal with a part or the whole of the matter submitted to mediation; it must state the identity and domicile of the parties and the place and date of its signature; it must state the obligations assumed by each party; it must certify that mediation proceedings have been conducted in line with the provisions of the Mediation Act, indicating the mediator or mediators that have taken part in those proceedings and, where applicable, the mediation institution where the proceedings were conducted; it must be signed by the parties or their representatives.

(b) In addition to the requirements set out above, the mediation agreement must be recorded in a public instrument before a notary public in order to be considered by the courts to be enforceable. If an agreement is reached after legal proceedings have commenced, it is submitted for approval by the court or judicial body considering the case rather than being recorded in a notarial instrument. The mediation agreement is submitted by the parties to a notary public, accompanied by a copy of the records of the constitutive and closing sessions of the proceedings, without the presence of the mediator being required. In order for the mediation agreement to be recorded in a notarial instrument, the notary public must verify that it complies with the requirements of the Mediation Act and that its content is not contrary to law.

Where the mediation agreement is to be enforced in another State, in addition to being recorded in a notarial instrument, it must comply with the requirements, if any, of the relevant international conventions to which Spain is a party and of the relevant European Union instruments.

Where an agreement has been reached through mediation conducted after legal proceedings have begun, the parties may request the court to approve it.

(c) With respect to the enforcement of cross-border mediation agreements, the Mediation Act distinguishes between those mediation agreements that have become enforceable in the State in which they were concluded and those that have not. Mediation agreements are enforceable if declared as such by the judicial authority and/or the entity concerned. If the agreement is not enforceable, it must be recorded in a public instrument before a Spanish notary public at the request of the parties.

The Mediation Act and the Civil Procedure Act thus establish that: “1. Without prejudice to the terms set forth in the relevant European Union instruments and the international conventions in force in Spain, a mediation agreement that has already become enforceable in another State may be enforced in Spain only if it is declared enforceable by a competent authority that carries out functions equivalent to those performed by the Spanish authorities. 2. A mediation agreement that has not been declared enforceable by a foreign authority may be enforced in Spain only if it has been recorded in a public instrument by a Spanish notary public at the request of the parties, or at the request of one of the parties with the express consent of the others. 3. A foreign document may not be enforced when it is manifestly contrary to Spanish public order.”

ii. As indicated in the response to question i. above, a mediation agreement that has already become enforceable in another State may be enforced in Spain if it is

declared enforceable by a competent authority that carries out functions equivalent to those performed by the Spanish authorities.

A mediation agreement that has not been declared enforceable by a foreign authority may be enforced in Spain only if it has been recorded in a public instrument by a Spanish notary public at the request of the parties, or at the request of one of the parties with the express consent of the others.

iii. The Arbitration Act (Act No. 60/2003) of 23 December 2003 enables parties to reach a settlement agreement in the course of arbitral proceedings. Such settlement agreements end the arbitral proceedings. They take the form of an award and the content agreed upon by the parties is enforceable in the same way as an award rendered by an arbitral tribunal.

Article 36 of the Arbitration Act thus provides as follows: "Award by agreement of the parties 1. If, during arbitration proceedings, the parties reach an agreement that settles the dispute wholly or partially, the arbitrators shall terminate the proceedings with respect to the matters agreed upon and, if they are requested by both parties to do so and consider that there are no grounds to object to that request, shall record the settlement in an award on the terms agreed by the parties. 2. The award shall be rendered in accordance with the following article and shall have the same legal consequences as any other award rendered on the merits of the case."

Such agreements constitute genuine arbitral awards that comply with the requirements of form applicable to an arbitral award. The proceedings resulting in the award are conducted by arbitrators rather than mediators or conciliators.

Awards on terms agreed by the parties as described above are enforceable under the New York Convention.

Question 2: Grounds for refusing enforcement of a commercial settlement agreement

As a rule, a nullity action may be filed with respect to the terms agreed upon in a mediation agreement only on the ground of contract invalidity.

If the contents of the mediation agreement meet the general requirements of form and the requirements for its enforcement, as described in the response to question (1) i. of this questionnaire, there are very limited grounds for refusing enforcement.

The party to the agreement against whom an action is to be enforced may, within 10 days following notice of issue of the writ of execution by the judicial authority concerned, object to the enforcement in writing on the basis that payment has been made or the action required of that party under the mediation agreement has been performed, providing documentary evidence thereof.

An objection may also be raised with respect to the time limit for enforcement and to any agreements or settlements that have been agreed upon in order to avoid enforcement, provided that such agreements and settlements are recorded in a notarial instrument.

Furthermore, in international mediation agreements, a foreign document may not be enforced if it is manifestly contrary to Spanish public order.

Question 3: Validity of international commercial settlement agreements

There are no such bases or criteria in domestic Spanish law beyond the general requirements set out in the response to question (1) i. of this questionnaire. It should also be borne in mind that no agreement may be enforced if it is contrary to public order; consequently, there is no scope in such cases for challenging the validity of the agreement.

38. Switzerland

[Original: English]
[Date: 14 April 2015]

Swiss law has no specific rules as to the enforcement of commercial settlement agreements resulting from international mediation or conciliation proceedings. Agreements of that kind are not treated in any different way than other commercial agreements between private parties.

39. Viet Nam

[Original: English]
[Date: 29 May 2015]

Viet Nam's legal documents relevant to this issue include the 2004 Code of Civil Procedure and the 2010 Law on Commercial Arbitration. These legal documents contain provisions on the enforcement of commercial settlement agreements mediated by a domestic court or an arbitral tribunal established in accordance with the Vietnamese Law on Arbitration, provided that these agreements are recorded in the form of decisions by that court or tribunal. Currently, Viet Nam is considering regulations on procedures for Vietnamese courts to recognize and enforce commercial settlement agreements mediated by mediation centres established under Vietnamese laws.

However, Vietnamese laws do not provide for the cross-border enforcement of international commercial settlement agreements resulting from international commercial mediation and conciliation proceedings.

Likewise, Vietnamese laws remain silent on the issues stated in the UNCITRAL's list of questions, including those on the grounds for refusing enforcement of a commercial settlement agreement, criteria for the validity of commercial settlement agreements, bases in law for commercial settlement agreements to be deemed as invalid.