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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

## 40. Russian Federation

[Original: Russian]
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### Responses to the questions of UNCITRAL Secretariat regarding legislative framework with respect to cross-border enforcement of international commercial settlement agreements (resulting from international commercial mediation/conciliation proceedings)

1. In the Russian Federation, the main regulatory acts applicable in resolving the issue of enforcement of international commercial settlement agreements are Federal Act No. 193-FZ of 27 July 2010 on the alternative dispute settlement procedure with the participation of an intermediary (mediation procedure), Russian Federal Act No. 5338-1 of 7 July 1993 on international commercial arbitration, and Russian Federal Arbitration Procedure Code No. 95-FZ of 24 July 2002.

(i) An amicable agreement on the settlement of a dispute (mediation agreement) is enforceable as a normal court judgement if it has been approved by a court. This rule applies if an agreement is reached as a result of a conciliation proceeding (mediation) held following referral of the dispute to a court or arbitral tribunal. In order to be approved by the court, the mediation agreement must be concluded in writing and contain information about the parties, the matter in dispute, the mediation proceeding, the mediator and the obligations, conditions and time frame for their implementation agreed by the parties. If a settlement agreement was reached by the parties as a result of a mediation proceeding without the referral of the dispute to a court or arbitral tribunal, such an agreement is regarded as a civil transaction, to which the rules of civil law on compensation for termination of contract, novation, debt forgiveness, offset of counterclaims of a similar kind and compensation for harm apply. The protection of rights violated as a result of non-enforcement or improper enforcement of such a mediation agreement is exercised by means provided for in civil law.

(ii) Federal Act No. 193-FZ of 27 July 2010 on the alternative dispute settlement procedure with the participation of an intermediary (mediation procedure) imposes no restrictions on nationality or objective content as regards a conciliation proceeding (mediation) carried out on the territory of the Russian Federation. Further, the current legislation does not provide for special procedures for the enforcement of international commercial settlement agreements, where such agreements are the result of a conciliation/mediation proceeding (mediation). There is no procedure for the expedited enforcement of international commercial settlement agreements.

(iii) Under Russian legislation on international commercial arbitration, parties who have concluded an international commercial settlement agreement may request an international arbitral tribunal within the territory of the Russian Federation to make an arbitral award on agreed terms in accordance with the commercial settlement agreement submitted by them.

The enforcement of an international commercial settlement agreement which has been formalized as an arbitral award on agreed terms is governed by the legislation on international commercial arbitration.

(1) There are no special rules in Russian legislation relating to the procedure for the rendering, content and drafting of an award on agreed terms. In particular, there is no obligation whatsoever to conduct arbitral proceedings if the parties have requested the arbitral tribunal to make an arbitral award on the basis of a settlement agreement submitted by them.

(2) Russian legislation does not contain any specific requirements, as regards either form or content, applicable to a settlement agreement submitted by the parties to an arbitral tribunal for approval and for the issuance of an award on agreed terms. It is not stipulated in the legislation that a settlement agreement submitted to the arbitral tribunal for an award on agreed terms must have been reached by the parties as a result of conciliation proceedings (mediation). It is reasonable to conclude therefore that, when making an arbitral award on agreed terms, an arbitral tribunal will apply the general provisions that apply when making conventional international arbitral awards.

(3) There is currently no information on judicial practice relating either to the challenging or enforcement of international arbitral awards on agreed terms made in the Russian Federation, or to the recognition and enforcement of foreign arbitral awards in accordance with the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) and the European Convention on International Commercial Arbitration (Geneva, 1961). Nevertheless, we may assume that if such situations arise, Russian courts will approach the enforcement of international arbitral awards on agreed terms in the same way as they approach normal international arbitral awards. In particular, they will consider whether under Russian law the matter in dispute settled by the agreement is admissible as the subject of the arbitration proceeding, and consider whether the arbitral award on agreed terms is contrary to the public policy of the Russian Federation.

2. According to established judicial practice, if a settlement agreement is presented for approval by the court, the court may refuse to approve the settlement agreement and thereby exclude the possibility of its enforcement if the conditions of the agreement are inconsistent with the existing legislation or violate the rights and legitimate interests of others. If the settlement agreement takes the form of an arbitral award on agreed terms, its enforcement will be denied unconditionally if the object of the dispute to which the settlement agreement relates may not under Russian law be admitted as a subject of arbitral proceedings, and if the content of the settlement agreement would be contrary to the public policy of the Russian Federation.

3. Russian legislation does not impose any criteria with which an international commercial settlement agreement must comply in order to be considered valid. A general requirement of Federal Act No. 193-FZ of 27 July 2010 on the alternative dispute settlement procedure with the participation of an intermediary (mediation procedure) is that the settlement agreement (mediation agreement) must be in

writing and contain information about the parties, the matter in dispute, the mediation proceeding, the mediator and the obligations, conditions and time frames of their implementation agreed by the parties. In accordance with this law, an agreement to have the dispute dealt with in the framework of a mediation proceeding must be in writing. Moreover, such an agreement must contain information on the matter in dispute; on the mediator, mediators or organization handling the mediation procedure; on the procedure for conducting the mediation proceeding; on the conditions of the sharing of costs related to the mediation by the parties; and on the time periods for conducting the mediation proceeding. The question of whether flaws in the agreement to participate in conciliation may be grounds for challenging a settlement agreement reached as a result of the procedure provided for by this agreement is not resolved directly in law. Further, the law does not provide for any procedure or grounds for challenging the validity of a settlement (mediation) agreement reached within the framework of mediation/conciliation proceedings.

4. In the Russian Federation, the practice of using mediation/conciliation proceedings in commercial relations is currently in the very early stages of development. The business community in the Russian Federation has not yet gained the necessary experience for a broad application of this alternative method of settling disputes and differences of opinion in both domestic and international trade. However, it appears that the use of this method of settling commercial disputes in international commercial trade is unlikely to become more frequent in the coming years because, as practice shows, the availability of international arbitration procedures to contractors on the whole meets the demand dictated by the current level of development of international economic relations. Almost all international contracts drawn up in the vast majority of commercial transactions in international commercial trade include an arbitration clause. This allows contractors who have reached a settlement agreement resulting from mediation/conciliation proceedings to have such an agreement enforced, having requested an arbitral tribunal to convert their settlement agreement into an arbitral award on agreed terms. Even when the counterparties to an international commercial transaction have the opportunity to apply to a court for approval of a settlement agreement, they are unlikely to prefer this way, because in many cases this will mean involving a national court in their relationship, which they sought to avoid by including an arbitration clause in their contract. In view of the range of problems arising in this area of legal regulation, it appears that the legal mechanism needed to enforce international settlement agreements is unlikely to be less complex than the current mechanism for enforcing international arbitral awards. In addition, to develop it will require unified solutions, which will be extremely difficult to achieve given the rather profound differences in approach in this matter among domestic legal systems, which largely reflect their prevailing cultural and legal traditions.