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Settlement of commercial disputes: Draft convention on international settlement agreements resulting from mediation — Draft model law on international commercial mediation and international settlement agreements resulting from mediation

Compilation of comments

Note by the Secretariat

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I. Introduction

1. At its forty-eighth session, in 2015, the Commission agreed that Working Group II (Dispute Settlement) should commence work regarding international settlement agreements resulting from mediation.¹ At its sixty-third to sixty-eighth sessions, the Working Group undertook work on the preparation of instruments on enforcement of international settlement agreements resulting from mediation, consisting of a draft convention and draft amendments to the UNCITRAL Model Law on International Commercial Conciliation (the “instruments”)² At its sixty-eighth session, the Working Group completed its preparation of the instruments, and requested the Secretariat to circulate them to Governments for their comments, with a view to consideration by the Commission at its fifty-first session (A/CN.9/934, para. 13).

2. Further to that request, the Secretariat circulated the draft instruments in the form set out in documents A/CN.9/942 (draft convention) and A/CN.9/943 (draft amendments to the UNCITRAL Model Law on International Commercial Conciliation.) The present document reproduces comments received by the Secretariat on the draft instruments. Comments received by the Secretariat after the issuance of the present document will be published as addenda thereto in the order in which they are received.

II. Comments on the draft instruments

A. Belgium

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[Date: 17 May 2018]

Draft Convention

In the French version of article 3, § 1, the word “exécute” should be replaced by the words “accorde l’exécution de”, in view of keeping the same French translation of the word “enforce” as the one contained in article III of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

In the French version of article 5, § 1, in the introductory sentence, the words “à l’encontre de laquelle ils ont été formés” should be replaced by the words “à l’encontre de laquelle ils ont été introduits”, in view of keeping the same French translation of the words “seeking relief” as the one in article 2, § 4.

Draft amended Model Law

In the footnote 6 under article 16, the words “A settlement agreement is ‘international’ if” should be replaced by the words “A settlement agreement is also ‘international’ if”.

In the French version of article 19, in the introductory sentence, the words “à l’encontre de laquelle ils ont été formés” should be replaced by the words “à l’encontre de laquelle ils ont été introduits”, in view of keeping the same French translation of the words “seeking relief” as the one contained in article 16, § 7.

¹ *Official Records of the General Assembly, Seventieth Session, Supplement No. 17 (A/70/17)*, para. 142.

² The reports of the Working Group on the work of its sixty-third to sixty-eighth sessions are contained in documents A/CN.9/861, A/CN.9/867, A/CN.9/896, A/CN.9/901, A/CN.9/929 and A/CN.9/934, respectively.

B. Republic of Korea

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1. *Title of Section 2*

At present, the Draft Model Law appearing in [A/CN.9/943](#) uses the term “Mediation” as a title for Section 2. As the title of the Model Law uses the term “International Commercial Mediation” as opposed to “Mediation”, and as comparable Section 3 uses the term “International Settlement Agreement” copied from the title of the Model Law, it would be prudent, for the sake of consistency, to use the term “International Commercial Mediation” as the title for Section 2. As a matter of fact, what is provided in Section 2 is not merely “mediation” but “international commercial mediation”. Mediation is currently being used in other contexts as well, such as state-to-state mediation or investor-state mediation in lieu of ISDS proceedings. As such, it would be more accurate and appropriate to use an accurate term as the title for Section 2.

2. *Ambiguity of the Term “Settlement Agreement” in Article 15*

Article 15 of the Model Law uses the term “settlement agreement”. On the other hand, in Section 3, from Article 16 to Article 20, the term “settlement agreement” is then used in a specific manner as defined in paragraph 1 of Article 16. Thus, the term “settlement agreement” in Article 15 may cause confusion. In light of this, it may be prudent to use the term “agreement” rather than “settlement agreement” in Article 15 (both in the title and in the text). The article then would read as follows:

“Article 15: Binding and enforceable nature of agreement settling disputes

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

3. *Title of Article 17*

The current title of Article 17 reads “General Principle”. As the term would be interpreted as general principle applicable to the entire text of the Model Law as in Section 1, the Secretariat might want to consider using more specific terms to describe Article 17. For instance, the title of the provision may read: “General Principles Regarding Enforcement”, or something along the line. As it currently stands, Section 1 of the Model Law already uses the term “General Provision”. So, the term “General Principles” of the Article 17 may be found to be slightly confusing to the readers.