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Settlement of commercial disputes: enforceability of settlement agreements resulting from international commercial conciliation/mediation

Note by the Secretariat

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V.14-08044 (E)

I. Introduction

1. At its forty-seventh session (New York, 7-18 July 2014), the Commission agreed that the Working Group should consider at its sixty-second session the issue of enforcement of settlement agreements resulting from international commercial conciliation proceedings and should report to the Commission, at its forty-eighth session, in 2015, on the feasibility and possible form of work in that area.[1]

2. At that session, the Commission had before it a proposal on enforcement of settlement agreements resulting from international commercial conciliation (A/CN.9/822). In support of that proposal, it was said that one obstacle to greater use of conciliation was that settlement agreements reached through conciliation might be more difficult to enforce than arbitral awards. In general, it was said that settlement agreements reached through conciliation are already enforceable as contracts between the parties but that enforcement under contract law cross-border can be burdensome and time-consuming. Finally, it was said that the lack of easy enforceability of such contracts was a disincentive to commercial parties to mediate. Consequently, it was proposed that the Working Group develop a multilateral convention on the enforceability of international commercial settlement agreements reached through conciliation, with the goal of encouraging conciliation in the same way that the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958) ("New York Convention") had facilitated the growth of arbitration.[2]

3. Support was expressed for possible work in that area on many of the bases expressed above. Doubts were also expressed as to the feasibility of the project and questions were raised in relation to that possible topic of work, including: (a) whether the new regime of enforcement envisaged would be optional in nature; (b) whether the New York Convention was the appropriate model for work in relation to mediated settlement agreements; (c) whether formalizing enforcement of settlement agreements would in fact diminish the value of mediation as resulting in contractual agreements; (d) whether complex contracts arising out of mediation were suitable for enforcement under such a proposed treaty; (e) whether other means of converting mediated settlement agreements into binding awards obviated the need for such a treaty; and (f) what the legal implications for a regime akin to the New York Convention in the field of mediation might be.[3]

4. It was furthermore observed that UNICTRAL had previously considered that issue when preparing the UNCITRAL Model Law on International Commercial Conciliation (2002) ("Model Law on Conciliation" or "Model Law"),[4] and particular reference was made to article 14 of the Model Law and paragraphs 90 and 91 of the Guide to Enactment and Use[5] of that text.[6]

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[1] *Official Records of the General Assembly, Sixty-ninth session, Supplement No. 17* (A/69/17), para. 129.

[2] Ibid., para. 123.

[3] Ibid., para. 124.

[4] *UNCITRAL Yearbook*, vol. XXXIII: 2002, part three, annex I.

[5] Ibid., annex II.

5. Previous discussions on the question of enforcement of settlement agreements resulting from conciliation may be found in the following documents published by UNCITRAL:

- Notes by the Secretariat: A/CN.9/460, paragraphs 16-18; A/CN.9/WG.II/WP.108, paragraphs 34-42; A/CN.9/WG.II/WP.110, paragraphs 105-112; A/CN.9/WG.II/WP.113/Add.1, footnote 39; A/CN.9/WG.II/WP.115, paragraphs 45-49; A/CN.9/WG.II/WP.116, paragraphs 66-71; A/CN.9/514, paragraphs 77-81.
- Reports of the Working Group on Arbitration: thirty-second session (A/CN.9/468, paras. 38-40); thirty-fourth session (A/CN.9/487, paras. 153-159); thirty-fifth session (A/CN.9/506, paras. 38-48; 133-139; 160 and 161).
- Report of the thirty-fifth session of the Commission: *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 17* (A/57/17), paragraphs 119-126 and 172.

6. To facilitate discussions of the Working Group on that topic, the present note contains background information on previous consideration by UNCITRAL of the topic, a presentation of existing legislative solutions and questions underlying possible harmonized solutions.

II. Enforceability of settlement agreements resulting from international commercial conciliation/mediation[7]

A. General remarks

7. UNCITRAL previously developed two important instruments aimed at harmonizing international commercial conciliation: the Conciliation Rules (1980) and the Model Law on Conciliation (2002), which form the basis of an international framework for conciliation.[8] The Conciliation Rules were the first international step taken in harmonizing that field. When adopting the Model Law on Conciliation, the Commission endorsed "the general policy that easy and fast enforcement of settlement agreements should be promoted".[9] The United Nations General Assembly recognized that the use of conciliation "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

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[6] *Official Records of the General Assembly, Sixty-ninth session, Supplement No. 17* (A/69/17), para. 125.

[7] The terms "mediation" and "conciliation" are used interchangeably in that note, as broad notions referring to proceedings in which a person or a panel of persons assists the parties in their attempt to reach an amicable settlement of their dispute (see article 1(3) of the Model Law on Conciliation and para. 5 of its Guide to Enactment and Use).

[8] Legislation based on the Model Law on International Commercial Conciliation has been enacted in Albania, Belgium, Canada (Nova Scotia and Ontario), Croatia, France, Honduras, Hungary, Luxembourg, Montenegro, Nicaragua, Slovenia, Switzerland, Turkey and United States of America (District of Columbia, Hawaii, Idaho, Illinois, Iowa, Nebraska, New Jersey, Ohio, South Dakota, Utah, Vermont and Washington).

[9] Guide to enactment of the Model Law on International Commercial Conciliation, para. 88.

commercial parties and producing savings in the administration of justice by States."[10] Enforcement of settlement agreements is often cited as one crucial aspect that would make mediation a more efficient tool for resolving disputes.

Background information on work done by UNCITRAL on the topic

8. The Working Group considered the question of enforcement of settlement agreements at its thirty-second (Vienna, 20-31 March 2000) to thirty-fifth (Vienna, 19-30 November 2001) sessions, when it prepared the Model Law on Conciliation. The Working Group discussed whether, because of the diversity of legislative approaches as summarized in document A/CN.9/WG.II/WP.110, paragraphs 106-111, it would be desirable and feasible to prepare a uniform model provision on enforcement of settlement agreements that would be universally acceptable and, if so, what the substance of the uniform rule should be.

9. The Working Group considered model legislative provisions as a vehicle for harmonization and did not discuss at that time the preparation of a treaty. The various options envisaged in its deliberations on article 14 ("Enforcement of settlement agreements") of the Model Law on Conciliation were as follows.

10. One option considered by the Working Group was to provide that a settlement agreement should be dealt with as a contract. That solution was not retained because it was considered that a more effective enforcement regime should be established, through which a settlement agreement would be accorded a higher degree of enforceability than any unspecified contract (A/CN.9/506, para. 40).

11. Another option was to prepare a model legislative provision that would give recognition to a situation where the parties appointed an arbitral tribunal with the specific purpose of issuing an award based on the terms settled upon by the parties. Such an award, envisaged in article 30 of the UNCITRAL Model Law on International Commercial Arbitration ("Model Law on Arbitration"), would be capable of enforcement as any arbitral award. That option was also rejected as it was considered inappropriate for a model legislative provision to suggest in a general manner that all conciliation proceedings leading to a settlement agreement should result in the appointment of an arbitral tribunal.[11]

12. More generally, it was considered that uncertainties might arise from the interplay of the two legal regimes that might be applicable, namely the general law of contracts and the legal regime governing arbitral awards. For example, as to the reasons that might be invoked for challenging the binding and enforceable character of a settlement agreement, it was stated that the grounds listed in article V of the New York Convention and in article 36 of the Model Law on Arbitration for refusing enforcement, as well as the grounds listed under article 34 of that Model Law for setting aside an arbitral award, might be insufficient or inappropriate to deal with circumstances such as fraud, mistake, duress or any other grounds on which the validity of a contract might be challenged (A/CN.9/506, para. 43).

13. Yet, another suggestion was that the legal regime of notarized acts in certain countries might constitute a useful model. It was pointed out, however, that such a

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[10] Resolution 57/18 of 19 November 2002.

[11] See also, *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 17* (A/57/17), para. 121.

model might require the establishment of form requirement for settlement agreements, thus introducing a level of formalism that could contradict existing conciliation practice.

14. At its thirty-fifth session, in 2002, the Commission adopted the following version of the relevant provision for inclusion in the Model Law on Conciliation: "Article 14. Enforceability of settlement agreement - If the parties conclude an agreement settling a dispute, that settlement agreement is binding and enforceable ... [*the enacting State may insert a description of the method of enforcing settlement agreements or refer to provisions governing such enforcement*]."

15. That model legislative provision states the principle that settlement agreements are enforceable, without attempting to specify the method by which such settlement agreements may actually be enforced, a matter that is left to each enacting State. It is also noteworthy that the solution adopted does not contain any form requirements. The text adopted in the Model Law does not take a stand on the nature of a settlement agreement. It only expresses that a contractual obligation, "binding" on the parties, is "enforceable" by State courts. In the preparation of the Model Law, the Commission was generally in agreement with the general policy that easy and fast enforcement of settlement agreements should be promoted. However, it was realized that methods for achieving such expedited enforcement varied greatly between legal systems and were dependent upon the technicalities of domestic procedural law, which do not easily lend themselves to harmonization by way of uniform legislation.[12] However, States were encouraged to adopt expedited enforcement mechanisms or simplified procedures.

Statistics and data on conciliation and enforcement of settlement agreements

16. The use of conciliation for settling commercial disputes has increased considerably since the adoption of the UNCITRAL Conciliation Rules in 1980. Legislation on conciliation has been enacted in a growing number of jurisdictions;[13] conciliation and mediation institutes have proliferated, as well as specific training for conciliators or mediators.

17. A project led by the World Bank on "Investing Across Borders (IAB)" collected data on mediation and/or conciliation laws and centres.[14] The project provides an overview of the framework on mediation, without focussing on the question of enforcement of settlement agreements. A brief summary of the main findings of the project is reproduced in an annex to this note in the form in which it was received by the Secretariat from the World Bank.

18. The use of conciliation/mediation varies greatly depending on jurisdictions. For instance, in the European Union ("EU"), a recent study showed that one country has a reported number of mediation cases exceeding 200,000 annually, the next

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[12] UNCITRAL Model Law on International Commercial Conciliation, Guide to Enactment and Use, para. 88.

[13] Policy Research Working Paper, Arbitrating and Mediating Disputes, Benchmarking Arbitration and Mediation Regimes for Commercial Disputes Related to Foreign Direct Investment, The World Bank, Financial and Private sector Development Network, Global Indicators and Analysis Department, October 2013, at p. 9.

[14] World Bank Group, International Finance Corporation, Investing Across Borders available on 26 November 2014 on the Internet at http://iab.worldbank.org/data/fdi-2012-data.

three countries exceeded 10,000, while a significant number of EU Member States reported less than 500 mediation cases per year. The study also suggests that if enforcement of settlement agreements were uniform, mediation would become more attractive, in particular, in the international business sector. Uniformity would also limit the likelihood of forum shopping among parties.[15]

19. The Working Group may wish to note that, save for recent surveys,[16] there were no reported or available consolidated studies on the specific question of enforcement of settlement agreements by State courts.

B. Current legislative trends

20. In August 2014, the Secretariat has circulated to States a questionnaire on the legislative framework on enforcement of international settlement agreements resulting from mediation. The questionnaire aimed at collecting information on whether States have already adopted legislation addressing enforcement of settlement agreements, and in particular, (i) whether expedited procedures were already in place; (ii) whether a settlement agreement could be treated as an award on agreed terms; (iii) the grounds for refusing enforcement of a settlement agreement; and (iv) the criteria to be met for a settlement agreement to be deemed valid. It also included questions on the validity of an agreement to refer a dispute to mediation. The replies received by the Secretariat will be published in advance of the forty-eighth session of the Commission, in 2015. They reflect the fact that legislative solutions regarding the enforcement of settlements reached in conciliation proceedings differ widely.

Contractual nature of a settlement agreement in some States

21. Some States have no special provisions on the enforceability of such settlements, with the result that general contract law applies.

Court enforcement

22. Other States provide for enforcement of settlement agreements as court judgements, where a settlement agreement approved by a court is deemed an order of the relevant court and may be enforced accordingly. Such procedure may or may not include specific expedited enforcement mechanisms. For instance, in some jurisdictions, a settlement agreement can be enforced in a summary fashion, provided that the settlement is signed by the mediator or by legal counsel

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[15] European Parliament, Directorate-General for Internal Policies, Policy Department, Citizen's Rights and Constitutional Affairs, "Rebooting the Mediation Directive: Assessing the Limited Impact of its Implementation and Proposing Measures to Increase the Number of Mediations in the EU".

[16] The Working Group may wish to note the publication of a recent survey, titled "Use and Perception of International Commercial Mediation and Conciliation: A Preliminary Report on Issues Relating to the Proposed Convention on International Commercial Mediation and Conciliation", available on 26 November 2014 on the Internet at http://ssrn.com/abstract=2526302; the International Mediation Institute has also published a survey, titled "How Users View the Proposal for a UN Convention on the Enforcement of Mediated Settlements", available on 26 November 2014 on the Internet at http://imimediation.org/un-convention-on-mediation.

representing the parties, and that the settlement agreement contains a statement expressing the parties' intent to seek summary enforcement of the agreement. Other jurisdictions opted for the method of deposition or registration at the court as a way to make a settlement agreement enforceable.

23. The status of an agreement reached following conciliation sometimes depends on whether or not the conciliation took place within the court system as a legal proceeding. It is also worth noting that, in some jurisdictions, the situation may differ depending on whether the settlement agreement is reached through mediation by a qualified arbitrator. For instance, in one jurisdiction, a mediated settlement agreement reached before a mediator who is a qualified arbitrator has the same force and effect as that of an award on agreed terms.

24. The practice of requesting a notary public to notarize the settlement agreement is adopted by a number of jurisdictions as a means of enforcement.

25. It may be noted that, in some jurisdictions, if a settlement agreement has been confirmed by a court decision in a foreign State, such decision can then be recognized and enforced under the law governing the recognition and enforcement of foreign judgments. Similarly, if a settlement agreement has been notarized for the purpose of enforcement, cross-border enforcement may then proceed on the basis of existing multilateral or bilateral conventions.

Award on agreed terms

26. The law in certain jurisdictions empowers parties who have settled a dispute to appoint an arbitral tribunal for the specific purpose of issuing an award on agreed terms based on the agreement of the parties. After having reached an agreement in the course of the conciliation proceedings, the parties could at the same time establish an ad hoc arbitration and appoint the conciliator as a sole arbitrator. In that case the parties are able to transform their settlement agreement into an arbitral award for enforcement purposes.[17] That practice is prohibited in certain jurisdictions.

Combination of various means for enforcement

27. It is also worth noting that certain States tend to combine various means in order to make a settlement agreement enforceable (such as to permit that the settlement agreement be (i) filed for enforcement as a contract or as an arbitral award, or (ii) transposed in the form of either a notarial deed for enforcement, or a specific court order).

Grounds for refusing enforcement

28. The grounds for refusing enforcement of a settlement agreement vary depending on the means chosen for enforcement. They would be similar to grounds for refusing enforcement of court decisions when the settlement agreement is given

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[17] Certain organizations allow mediated settlement agreements to be treated as arbitral awards for the purpose of enforcement (for instance, the Singapore Mediation Centre and the Singapore International Arbitration Centre (SMC-SIAC Med Arb Services), the Stockholm Chamber of Commerce (article 14 of the rules of the Swedish Mediation Institute), article 11 of the International Commercial Mediation Rules of the Japan Commercial Arbitration Association).

the status of a judgment, and would include, for example, public policy, a jurisdictional test and lack of due process. When contract law principles apply, the grounds for challenging the validity of a settlement agreement would include, for example, consideration of the capacity of the parties, and whether the agreement was procured by misrepresentation, duress or undue influence.

Assessment of the validity of an agreement to refer a dispute to mediation

29. In general, the validity of an agreement to refer a dispute to mediation is assessed in accordance with applicable provisions of contract law.

Final remarks

30. As briefly outlined above, the Working Group may wish to note that national legislation is diverse, and no dominant trend can be identified. It is noteworthy that States tend to adopt legislation on mediation, and to provide various solutions for enforcement of settlement agreements. The diversity of approaches toward the objective of enforcing settlement agreement might militate in favour of considering whether harmonization of the field would be timely.

C. Questions underlying possible harmonized solutions

31. At the forty-seventh session of the Commission, a proposal ("Proposal") for undertaking the preparation of a convention on enforcement of settlement agreements resulting from mediation was made on the basis that a convention, modelled on the New York Convention, would draw upon the approach taken by a number of jurisdictions that make conciliated settlement agreements easier to enforce by treating them in the same manner as arbitral awards (see above, paras. 1 to 3). It was explained by its proponents that such a convention would address the enforceability of settlement agreements directly, rather than relying on the legal fiction of deeming them to be arbitral awards. It was further explained that that approach would also eliminate the need to initiate an arbitration process (with the attendant time and costs) simply to incorporate a settlement agreement into an award.[18]

32. Questions that the Working Group may wish to address, that were raised during the session of the Commission in respect of the Proposal, are as follows:[19]

- *On the principle of preparing a convention on enforcement of settlement agreements resulting from international commercial mediation*

  (a) Whether formalizing enforcement of settlement agreements might have the unintended effect of diminishing the value of mediation as resulting in contractual agreements, since mediation is characterized by its flexibility;

  (b) Whether complex contracts arising out of mediation, or settlement agreements providing for in-kind compensation were suitable for enforcement under the proposed convention;

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[18] A/CN.9/822, at p. 3.

[19] *Official Records of the General Assembly, Sixty-ninth session, Supplement No. 17* (A/69/17), para. 124.

(c) Whether other means of converting mediated settlement agreements into binding awards would obviate the need for such a convention.

- *On the modalities*

(d) Whether the envisaged new regime of enforcement would be optional in nature; the Working Group may wish to consider that question in light of existing legislation and enforcement mechanisms, taking into account that the legal enforcement process may differ depending on whether the settlement agreement is embodied in a consent award, a judgment or a contract;

(e) Whether the New York Convention is the appropriate model for work in relation to mediated settlement agreements and what the legal implications for a regime akin to the New York Convention in the field of mediation might be.

- *On the content of such a convention*

33. If the Working Group considers that preparing a convention on enforcement of settlement agreements resulting from mediation is a desirable way forward, it may wish to note that the Proposal highlighted that a convention should apply to "international" settlement agreements, resolving "commercial" disputes, as opposed to other types of disputes (such as employment law or family law matters, and agreements involving consumers). Such limitations to the scope of the proposed convention are likely to reinforce its acceptability.

34. The Proposal further suggested that the convention should provide (i) certainty regarding the form of covered settlement agreements, for example, agreements in writing, signed by the parties and the conciliator; and (ii) flexibility for each party to the convention to declare to what extent the convention would apply to settlement agreements involving a government. The Proposal further stated that the convention would provide that settlement agreements falling within its scope are binding and enforceable (similar to Article III of the New York Convention), subject to certain limited exceptions (similar to Article V of the New York Convention).[20] The Working Group may wish to consider the following questions in relation to the Proposal, as follows:

(a) Regarding the settlement agreements covered by the proposed convention, the Working group may wish to consider (i) whether there should be a distinction depending on whether or not the settlement agreement came out of a process in which a third-party intermediary assisted with the settlement; and if there is such a distinction, how to avoid too formalistic an approach (such as requiring that the settlement agreement bears certain mentions, or is signed by mediators or parties' counsels); moreover, whether or to what extent, such third-party have to fulfil certain qualifications; and (ii) how to address enforcement of settlement agreements that are conditional on certain future events or future conditions being met (it may be noted in relation to this last point that the Proposal includes a question on whether limits on enforcement under the convention would be appropriate in such cases);[21]

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[20] A/CN.9/822, at p. 3.

[21] A/CN.9/822, at p. 5.

(b) Regarding the grounds for refusing enforcement, if those listed in the proposed convention include grounds found in contract law to challenge the validity of a settlement agreement, then the Working Group may wish to consider questions such as the extent of court review under the proposed convention, and the benefit of such a convention compared to existing expedited enforcement mechanisms;

(c) Other matters for consideration at this stage may include whether (i) and, in the affirmative, how the proposed convention should address possible subsequent procedure on rectification if unforeseen circumstances arise in the course of enforcement; and (ii) whether certain claims should be excluded from its scope;

(d) Whether further methods of harmonization in the field of enforcing settlement agreements may also include model legislative provisions, eventually coupled with model contractual provisions; as well as preparation of a recommendation on the application of the New York Convention to consent awards rendered by an arbitrator appointed following a mediated settlement agreement. Indeed, the New York Convention is silent on the question of its applicability to decisions that record the terms of a settlement between parties; the travaux préparatoires of the New York Convention show that the issue of the application of the Convention to consent awards was raised, but not decided upon;[22] reported case law does not address this issue.[23]

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[22] *Travaux préparatoires*, Recognition and Enforcement of Foreign Arbitral Awards, Report by the Secretary-General, Annex I, Comments by Governments, E/2822, at 7, 10; *Travaux préparatoires*, United Nations Conference on International Commercial Arbitration, Consideration of the Draft Convention on the Recognition and Enforcement of Foreign Arbitral Awards, E/CONF.26/L.26. See also *Travaux préparatoires*, United Nations Conference on International Commercial Arbitration, Activities of Inter-Governmental and Non-Governmental Organizations in the Field of International Commercial Arbitration, Consolidated Report by the Secretary-General, E/CONF.26/4, at 26.

[23] UNCITRAL Secretariat Guide on the New York Convention, Article I, para. 37, available on the Internet at www.newyorkconvention1958.org.

Annex 1

World Bank mediation and conciliation data note

The 2012 World Bank Group's **Investing Across Borders (IAB)**[24] Project collected data relating to mediation and/or conciliation through a standard questionnaire that was administered with arbitration, mediation and conciliation experts in 100 economies, including lawyers, law professors, arbitrators, members of arbitration and mediation institutions, and government regulators, on a pro-bono basis. The questionnaire was distributed in late 2011, with responses received through mid-2012.

Table 1 shows the 100 economies across 7 regions which were surveyed.

Table 1: AMD indicators coverage:	
East Asia and the Pacific 11 economies	Brunei Darussalam; Cambodia; Hong Kong SAR, China; Indonesia; Malaysia; Papua New Guinea; Philippines; Singapore; Taiwan, China; Thailand; Viet Nam
Eastern Europe and Central Asia 21 economies	Albania; Armenia; Azerbaijan; Belarus; Bosnia and Herzegovina; Bulgaria; Croatia; Cyprus; Georgia; Kazakhstan; Kosovo; Kyrgyz Republic; Macedonia, FYR; Moldova; Montenegro; Poland; Romania; Russian Federation; Serbia; Turkey; Ukraine
Latin America and the Caribbean 15 economies	Argentina; Bolivia (Plurinational State of); Brazil; Chile; Colombia; Costa Rica; Dominican Republic; Ecuador; Guatemala; Haiti; Honduras; Mexico; Nicaragua; Peru; Venezuela (Bolivarian Republic of)
Middle East and North Africa 8 economies	Algeria; Egypt, Arab Rep.; Iraq; Jordan; Morocco; Saudi Arabia; Tunisia; Yemen, Rep.
High income OECD 17 economies	Australia; Austria; Canada; Czech Republic; France; Germany; Greece; Ireland; Italy; Japan; Korea, Rep.; Netherlands; New Zealand; Slovak Republic; Spain; United Kingdom; United States
South Asia 6 economies	Afghanistan; Bangladesh; India; Nepal; Pakistan; Sri Lanka
Sub-Saharan Africa 22 economies	Angola; Burkina Faso; Burundi; Cameroon; Chad; Congo, Dem. Rep.; Côte d'Ivoire; Ethiopia; Ghana; Kenya; Madagascar; Mali; Mauritius; Mozambique; Nigeria; Rwanda; Senegal; Sierra Leone; South Africa; Tanzania; Uganda; Zambia
Source: FDI Regulations Database, 2012	

Methodology:

The surveyed respondents answered the following questions on mediation and conciliation:

- Does your country have a consolidated law encompassing substantially all aspects of commercial mediation or conciliation?
- If yes, please specify if it is relevant to mediation or conciliation or both, and indicate the applicable provision(s) and the years when they were adopted.

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[24] All data relating to the survey and the indicators used is available at http://iab.worldbank.org/data/fdi-2012-data.

- If yes, please specify if it is relevant to mediation or conciliation or both.
- What is the year of enactment?
- If yes, in your view, is that statute based on the language of the UNCITRAL Model Law on International Commercial Conciliation?
- Please describe, if applicable any significant ways in which your national mediation or conciliation statute differs in substance from the UNCITRAL Model Law.
- In commercial disputes where court proceedings have been instituted, do the laws of your country provide for court referrals of cases to mediation or conciliation?
- If yes, please indicate the applicable rules and the year(s) when they were adopted.
- What is the year of enactment?
- Please specify for what type of cases and/or in what circumstances.
- Please specify, if relevant, the name of the institution to which such cases are usually referred.
- If possible, please specify what percentage of cases referred to mediation or conciliation is settled.
- Is/are the law(s) on mediation or conciliation available online through a government supported website?
- If yes, please indicate the Internet address of any public institution's website.
- Please indicate the Internet address of any other private websites.

Findings from the survey:

The following represents the main findings based on the answers provided by the surveyed respondents.

Out of court mediation/conciliation:

Out of the 100 economies that were surveyed, 46 economies indicated that they have enacted a law on out of court mediation and/or conciliation. The year of enactment of such law varied between regions. For example in High Income OECD countries, the most recent enactment of a separate mediation and/or conciliation law was in France which was done in 2012 and the oldest being Japan in 1951. On the contrary, in sub-Saharan African countries, only Mauritius (2010), Mozambique (1999), Burkina Faso (2012) and Uganda (2000) have enacted a comprehensive law for mediation and law.

Court referred mediation and/or conciliation:

Out of the 100 economies surveyed it was found that 64 economies did have laws that provide for court referral of cases to mediation or conciliation in commercial disputes where court proceedings have been initiated. Some of these laws narrow the type of cases that may be submitted to mediation or conciliation services under

certain conditions. For example, in Colombia, conciliation is a prerequisite before litigation in commercial, family, and administrative law cases. During commercial trials, there is a special preliminary hearing for the purpose of conciliation, in which the judge acts as a conciliator. In addition, according to the 2010-2011 statistics provided by the Colombian Ministry of Justice Website, some 50 per cent of the cases referred to conciliation are settled, highlighting the importance of such practices.

Further, the year of enactment of laws providing the courts to refer cases to mediation and/or conciliation ranged in the surveyed economies. For example 90 per cent of the countries surveyed in the Latin America and Caribbean Region enacted relevant laws in the past 10 years with an exception of Guatemala being the earliest law in 1964. Similarly, in the OECD countries, Japan is the earliest in 1951, along with Slovak Republic in 1963, and France being the most recent in 2011.

Arbitration and mediation institutions:

Around 80 economies out of the 100 economies surveyed indicated that their leading arbitration institutions, also provided mediation and/or conciliation services.

Table 2 below provides the breakdown of the number of economies by region relative to certain findings on mediation and/or conciliation.

Region and number of economies surveyed	Countries that have laws for out of court mediation and/or conciliation (year of enactment)	Countries that have laws for referral of cases to mediation and conciliation (year of enactment)	Countries where the arbitration institutions act as the leading provider for mediation and/or conciliation services
East Asia and the Pacific **11 economies**	Indonesia (1999); Papua New Guinea (2010); Philippines (2004)	Brunei Darussalam (2012); Hong Kong (2010); Indonesia (2008); Papua New Guinea (2010); Philippines (2011); Singapore (1996 revised in 2006); Taiwan (1935); Thailand (2000 and 2011); Viet Nam (2004 with amendment in 2011)	Cambodia; Hong Kong SAR, China; Indonesia; Malaysia; Philippines; Taiwan, China; Viet Nam
Eastern Europe and Central Asia **21 economies**	Albania (2011); Armenia (2008); Belarus (1998); Bosnia and Herzegovina (2004); Bulgaria (2004); Croatia (2011); Kazakhstan (2011); former Yugoslav Republic of Macedonia (2006); Moldova (2007); Montenegro (2005); Poland (2005);	Belarus (2011); Bosnia and Herzegovina (2003 with amendment in 2006); Bulgaria (2007); Croatia (1977 with several subsequent amendments); Kazakhstan (1999); Kosovo (2008);	Albania; Azerbaijan; Belarus; Bosnia and Herzegovina; Bulgaria; Croatia; Cyprus; Georgia; Kazakhstan; Kosovo; former Yugoslav Republic of Macedonia; Moldova; Poland;

Region and number of economies surveyed	Countries that have laws for out of court mediation and/or conciliation (year of enactment)	Countries that have laws for referral of cases to mediation and conciliation (year of enactment)	Countries where the arbitration institutions act as the leading provider for mediation and/or conciliation services
	Romania (2006); Russian Federation (2010); Serbia (2005)	former Yugoslav Republic of Macedonia (2010); Montenegro (2010); Poland (2005); Romania (2010 mediation; 2000 conciliation); Russian Federation (2002); Serbia (2004)	Romania; Russian Federation; Serbia; Turkey
Latin America and the Caribbean **15 economies**	Argentina (2010); Bolivia (1997); Columbia (2001); Costa Rica (1997); Ecuador (1997); Guatemala (1995); Honduras (2000); Mexico (2008); Nicaragua (2005)	Argentina (2010); Bolivia (Plurinational State of) (2011); Chile (1992); Columbia (2010); Dominican Republic (2005); Ecuador (1997); Guatemala (1964); Honduras (2006); Mexico (2001); Nicaragua (1998)	Argentina; Bolivia (Plurinational State of); Brazil; Chile; Colombia; Costa Rica; Dominican Republic; Ecuador; Guatemala; Haiti; Honduras; Mexico; Nicaragua; Venezuela (Bolivarian Republic of)
Middle East and North Africa **8 economies**	Algeria (2008); Jordan (2006); Morocco (2007)	Algeria (2008); Jordan (2006)	Algeria; Egypt, Arab Rep.; Morocco; Tunisia
High Income OECD **17 economies**	Austria (2003); Canada (2010); France (2012); Greece (2010); Italy (2010); Japan (1951); Korea (1990); Slovak Republic (2004)	Canada (2010); France (2011); Germany (2009); Greece (2010); Ireland (2011); Italy (2010); Japan (1951); Korea (1990); New Zealand (2008); Slovak Republic (1963); United Kingdom (1999)	Australia; Austria; Canada; Czech Republic; France; Germany; Greece; Ireland; Italy; Japan; Korea, Rep.; Netherlands; New Zealand; Slovak Republic; Spain; United Kingdom; United States
South Asia **6 economies**	Afghanistan (2007); Bangladesh (2003); India (1996); Nepal (2011); Sri Lanka (1988)	Bangladesh (2003); India (1908 amended 2002); Nepal (1996 amended in 2003); Pakistan (1908); Sri Lanka (1988)	Afghanistan; Bangladesh: India

Region and number of economies surveyed	Countries that have laws for out of court mediation and/or conciliation (year of enactment)	Countries that have laws for referral of cases to mediation and conciliation (year of enactment)	Countries where the arbitration institutions act as the leading provider for mediation and/or conciliation services
Sub-Saharan Africa **22 economies**	Mauritius (2010); Mozambique (1999); Nigeria (2005); Uganda (2000): Burkina Faso (2012)	Burkina Faso (2009); Ghana (2010); Kenya (2010); Madagascar (2003); Mali (1999); Mauritius (2010); Mozambique (1961 with amendments 2009); Nigeria (2004); Rwanda (2008); Tanzania (1966 amended 2002); Uganda (2007); Zambia (1997)	Burkina Faso; Cameroon; Côte d'Ivoire; Democratic Republic of the Congo; Ethiopia: Ghana: Kenya; Madagascar; Mali; Mauritius; Mozambique; Nigeria; Rwanda; Senegal; Sierra Leone; South Africa; Uganda; Zambia